STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service Commission held in the City of Albany on February 22, 2018

COMMISSIONERS PRESENT:

John B. Rhodes, Chair
Gregg C. Sayre
Diane X. Burman
James S. Alesi

CASE 17-C-0608 – Joint Petition of Vernon Telephone Company, Inc. and Oriskany Falls Telephone Corporation for Authority to Merge into one legal entity with Vernon Telephone Company, Inc. being the surviving company, Pursuant to Public Service Law Sections 99(2) and 108.

ORDER APPROVING TRANSFER OF ASSETS AND AMENDED CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY WITH CONDITIONS

(Issued and Effective February 23, 2018)

BY THE COMMISSION:

INTRODUCTION

By Joint Petition filed September 29, 2017 (the Petition), Vernon Telephone Company, Inc. (Vernon) and Oriskany Falls Telephone Corporation (Oriskany Falls) request Commission authority under Public Service Law (PSL) §99(2) for the merger of the two companies through the transfer of all Oriskany Falls' assets to Vernon. The parties also request approval to surrender Oriskany Falls' Certificate of Public Convenience and Necessity (CPCN) and for Vernon's CPCN to be amended to reflect the addition of Oriskany Falls' territory.[1] Finally, the Petitioners request Commission approval under PSL §108 to dissolve Oriskany Falls as a corporate entity.

By this Order, the Commission finds that the transfer of Oriskany Falls' assets to Vernon is in the public interest. Vernon and Oriskany Falls are both well run companies that have operated synergistically as sister subsidiaries under common ownership since 1995. They have both historically provided exemplary service quality to their customers, a trend the Commission expects will continue. After the transaction, Vernon will continue to provide service to both its current customers and to customers of Oriskany Falls. The Commission finds that Vernon is financially sound and a suitable acquirer of Oriskany Falls. Therefore, the Petition is granted subject to the conditions discussed herein.

BACKGROUND

Vernon and Oriskany Falls are wholly owned subsidiaries of TDS Telecommunications Corporation (TDS), a publicly held corporation whose stock is traded on the New York Stock Exchange. TDS is a holding company that owns more than 100 incumbent local exchange carriers (ILECs) and competitive local exchange carriers (CLECs) that provide communication services, including local telephone network access, long distance, and broadband to rural and suburban communities in 30 states. In addition to Vernon and Oriskany Falls, TDS owns four

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[1] According to PSL §99(2), an application is deemed approved within 90 days, unless the Commission or its designee notifies the petitioner in writing that the public interest requires the Commission's review and its written order. The Petitioners were notified, by letter dated November 17, 2017, that the public interest requires a more detailed review of the Joint Petition and that the Commission will issue an Order in this proceeding.

other ILECs in New York: Edwards Telephone Company, Township Telephone Company, Inc., Deposit Telephone Company, Inc., and Port Byron Telephone Company.

Vernon is a rural ILEC with two exchanges, Vernon and Knoxboro, located in Oneida County. As of December 31, 2016, Vernon served 1,235 voice-grade equivalent access lines (704 residential and 531 business access lines). Vernon was granted a CPCN on August 4, 1959 in Case 19462, authorizing the company to provide telephone service to portions of the Towns of Augusta, Vernon, Verona, and Westmoreland in Oneida County and in part of the Town of Stockbridge in Madison County. Vernon has been the recipient of the Commission’s service quality commendation award every year from 2011 to 2016.

Oriskany Falls is a rural ILEC with one eponymous exchange, located in parts of Oneida County and Madison County. The Oriskany Falls exchange service territory is contiguous with the southern border of Vernon’s Knoxboro exchange. The smallest ILEC in New York, as of December 31, 2016, Oriskany Falls served 280 voice-grade equivalent access lines (215 residential and 65 business access lines). Oriskany Falls was the recipient of the Commission’s service quality commendation award in 2011, 2012, 2013, 2014 and 2016.

PETITION

Proposed Transaction

The Petitioners propose to merge Vernon and Oriskany Falls into one legal entity, with Vernon being the surviving company, through the transfer of all Oriskany Falls’ assets and obligations to Vernon. After the transaction, Vernon will continue to provide service to its current customers, as well as the customers of Oriskany Falls; Oriskany Falls will become the third exchange of Vernon. The proposed merger will not result in Vernon's acquisition of any outstanding Oriskany Falls capital stock.[2] Nor will the proposed merger entail the issuance of any stocks, bonds, notes or other evidence of indebtedness.[3]

The Petitioners request that the customer notice requirements of PSL §92-e(5) be waived.[4] The Petitioners indicate that both companies currently do business as TDS Telecom and that customers will continue to receive the same monthly invoice on the same date as they do now. Thus, the proposed transaction will be transparent to customers and any customer notification and corresponding expense to the surviving company is unnecessary.

The Petitioners state that for calendar years 2018-2020, Vernon and Oriskany Falls are currently authorized to receive annual disbursements of $182,035, and $128,677,

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[2] Because TDS is already the sole shareholder of both companies such a transaction is unnecessary. Instead, the 100 common shares that Oriskany Falls has outstanding will be canceled upon the effective date of the merger. Vernon too has 100 common shares outstanding, and will continue to have 100 shares outstanding on the effective date of the merger. Therefore, Commission approval of the transaction under PSL §100 is not applicable.

[3] Therefore, Commission approval of the transaction under PSL §101 is not applicable.

[4] Although the Petition references Section 92-e(a)(5), no such section exists and the Commission construes the request for a waiver of Section 92-e(5). Section 92-e(5) of the Public Service Law states as follows: When a customer or a new provider of telephone service on behalf of a customer makes a change in a provider of a telephone service, the new provider of telephone service shall be responsible for insertion of a conspicuous notice on or with the customer's first bill for which the change is effective or shall send a separate notice within sixty days informing the customer that such change was made. Any bill for intrastate interLATA, intraLATA, and/or local exchange service shall contain the name of each provider of telephone service for which billing is provided.

respectively from the State Universal Service Fund[5] (SUSF). Upon the Commission approval of the proposed merger the Petitioners request that the surviving company, Vernon, be authorized to draw the combined amount of annual SUSF funding, $310,712 for calendar years 2018-2020. The Petitioners stipulate that assuming the Commission's approval for Vernon to receive the combined current annual SUSF draw already awarded to both companies, Vernon will not file any rate cases requesting new or additional (SUSF) funding for the surviving company to become effective before January 1, 2020, while retaining its right to make an annual filing requesting additional SUSF funding to recover revenue deficiencies resulting from the FCC's phase-out of terminating access charges as already afforded to it through the Orders in the companies' last general rate proceedings, Case 13-C-0332 and Case 13-C-0333.

Additionally, the Petitioners request that the Commission allow the surviving company, Vernon, to file one 2017 Annual Report, which is due March 31, 2018, and one updated SUSF Transition Plan,[6] which is due May 15, 2018, that would include the combined operating results of both Vernon and Oriskany Falls. The Petitioners recognize that Vernon and Oriskany Falls will continue to be separate entities as of

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[5] Case 15-M-0742, Proceeding on Motion of the Commission to Review the State Universal Service Fund, Order Adopting Joint Proposal (issued September 16, 2016).

[6] See Case 15-M-0742, State Universal Service Fund, supra. Companies receiving or seeking SUSF funding for the first time are required to submit a plan to the Commission describing significant investments, maintenance, or other operational expenditures that it expects to incur, and to also provide a good faith description of how the recipient may reduce its future need for SUSF support (SUSF Transition Plan). SUSF Transition Plans are required to be updated annually.

December 31, 2017, but assert that TDS would realize administrative cost savings in filing one unified 2017 Annual Report and one updated SUSF Transition Plan.

Stated Benefits

The Petitioners state that the merger of Vernon and Oriskany Falls is in the public interest because it will produce net positive benefits for customers and TDS. For customers, the stipulation that the surviving company will not file any requests for rate increases or new additional SUSF funding to be effective before January 1, 2020 provides a benefit to customers, while the single operating entity will achieve synergies to help offset the current revenue requirements of the separate entities.

The Petitioners add that upon approval of the transaction, Oriskany Falls will become the third exchange of Vernon, but there will be no changes to the rates of any products and services identified in the current Oriskany Falls local and intrastate access tariffs. The Petitioners further propose to file a new Vernon tariff within one year of Commission approval of the merger that would explicitly identify where rates for the same products and services differ for the Oriskany Falls exchange compared to the other two Vernon exchanges.

The Petitioners state that as both Vernon and Oriskany Falls currently do business as TDS Telecom, customers will continue to receive the same monthly invoice on the same date as they do now, customer payments will continue to be mailed to the same payment address, and customers will use the same customer care telephone numbers that they use for billing and/or service inquiries now. For these reasons, the Petitioners state that the proposed merger will be transparent to the current customers of both Vernon and Oriskany Falls, and add that the merger will not impact the day-to-day operations, or the availability of services provided by the Companies.

The Petitioners present that an additional benefit of the proposed merger is that it will eliminate certain affiliate transactions that are currently required since Vernon and Oriskany Falls are separate legal entities. As an example, the Companies state that currently, Vernon's field service technicians who process Oriskany Falls-specific customer work orders must attribute their time to Oriskany Falls to ensure their wages are properly captured by Oriskany Falls, and the proposed merger will eliminate the need for this special employee time coding, resulting in administrative savings. As another example, the Petitioners state that the monthly rent payments from Oriskany Falls to Vernon for certain telecommunication switching services provided by Vernon's host central office switch will no longer be required once the merger becomes effective. Additionally, the Petitioners assert that the need to file regulatory and administrative reports for only one company instead of for two companies results in additional administrative cost reductions and efficiencies.

Accounting Treatment

The Petitioners state that, with the exception of Account 4510.1 Capital Stock-Common, the balance for each asset, liability, and equity account of Oriskany Falls will be transferred to Vernon using the same account. For Oriskany Falls Account 4510.1 Capital Stock-Common, the balance in this account will be reduced to zero via debit of $1,490 and the offsetting credit of $1,490 will be recorded to Vernon Account 4520 Additional Paid-in-Capital since Oriskany Falls' common stock will be cancelled. The Petitioners state that all revenues and expenses related to the Oriskany Falls exchange pre-merger will be recorded by Oriskany Falls and all post-merger Oriskany Falls exchange related revenues and expenses will be recorded by Vernon. They estimate that the transaction cost associated with legal expenses related to the merger to be about $7,000 in total. These expenses, as well as any other expenses incurred to consummate the transaction, will be recorded in Vernon Account 7370, Special Charges, as incurred. As a result, the expenses will not be considered in the surviving company's regulated earnings.

Appendix A shows the existing ownership structure for Vernon and Oriskany Falls as well as the post transaction structure for Vernon contemplated by the consummation of this transaction.

LEGAL AUTHORITY

In approving a proposed telephone company asset transfer under PSL §99(2), the Commission must find that the transaction is in the public interest. As the Commission has noted previously, "[a]lthough PSL §99(2) does not specify a standard of review, all such utility transfers have been interpreted as requiring an affirmative public interest determination by the Commission."[7] In cases such as this one, the public interest standard has been interpreted by the Commission in light of the unique challenges facing the smaller companies in the telephone industry and in a manner designed to

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[7] See Case 05-C-0237, Joint Petition of Verizon Communications and MCI, Inc. for a Declaratory Ruling Disclaiming Jurisdiction Over or in the Alternative for Approval of Agreement and Plan of Merger, Order Asserting Jurisdiction and Approving Merger Subject to Conditions (issued November 22, 2005), n.46.

protect ratepayers without unduly restricting the flow of capital.[8]

Commission approval of a public utility corporation's dissolution is required pursuant to PSL §108 prior to a public utility corporation's filing with the Department of State. Commission approval of a corporate dissolution under PSL §108 does not explicitly require a finding that the transaction is in the public interest; however, given that such dissolution in the instant case is inherently tied to approval under PSL §99(2), the PSL §108 request will be reviewed under the same standard.

DISCUSSION

The proposed transaction involves the merger of two small, rural sister ILECs, Vernon and Oriskany Falls, into a single entity. The Commission examines the relative benefits and detriments focusing on three primary areas: (1) maintenance of service quality at just and reasonable rates; (2) impact on competition; and, (3) financial integrity of the companies involved.

Both the companies have been, in practical terms, operating from Vernon's territory and with Vernon's resources for many years. Under the proposed merger, Vernon will merely assume official control and responsibility for providing local exchange service within the Oriskany Falls exchange. Regarding service quality, the Petition notes that both Vernon and Oriskany Falls have consistently met the criteria to earn the Commission's Service Quality Commendation award; that

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[8] See Case 14-C-0308, Joint Petition of Brick Skirt Holdings, Inc. DFT Telephone Holding Company, LLC, et al. for Authority to Transfer and Acquire Shares of Capital Stock and other Transactions, Order Approving Transfer of Control with Conditions (issued December 12, 2014).

superior level of performance has continued into 2017 and 2018 and there is no reason to expect less under Vernon's sole ownership. Likewise, there will not be any impact on competition due to the proposed merger, as the surviving company Vernon will continue to be 100% owned by its current parent company, TDS Telecom.

The merger will produce net positive benefits, including administrative efficiencies. More significantly, Vernon has agreed to not file a general rate case requesting rate increases or additional SUSF funding that would become effective before January 1, 2020. Considering the continued competitive market pressures facing Vernon, and its two-year commitment to refrain from seeking any rate relief, it is reasonable to approve the Petitioners' request to authorize Vernon to draw the current combined amount of annual SUSF funding for calendar years 2018-2020.[9] It is also reasonable to grant the Petitioners' request to allow the surviving company, Vernon, to file one Annual Report and one updated SUSF Transition Plan for the year 2017 combining the results of both Companies.

To adequately protect customers from costs related to this merger and ensure that the transaction is correctly accounted for, the $7,000 costs identified to be incurred due to the merger will be excluded from rate base, expenses, and capitalization in the determination of rates and earned returns of the surviving company Vernon for New York State regulatory accounting and reporting purposes.

[9] Vernon will also retain the right to make an annual filing requesting additional SUSF funding to recover revenue deficiencies resulting from the FCC's phase-out of terminating access charges.

Financial Condition: Pre- and Post-Merger

Currently, both Vernon and Oriskany Falls are entirely financed with equity. Following the merger, Vernon will maintain the same 100% equity ratio because the proposed merger will not entail the issuance of any bonds, notes or other evidence of indebtedness.

Oriskany Falls and Vernon have lost 23% and 28% of their access lines, respectively, since the Commission issued its last rate case Order for both companies in February 2014. In the Vernon rate case, the Commission authorized a return on common equity (ROE) of 6.67%.[10] Vernon has not been able to earn its authorized ROE however, achieving ROEs of only 1.40% and 1.20% in 2015 and 2016, respectively. In the Oriskany Falls rate case, the Commission authorized an ROE of 6.84%.[11] Similar to Vernon, Oriskany Falls' actual earnings have fallen short as the company only earned ROEs of 5.90% and 4.07% in 2015 and 2016, respectively.

In 2016, the combined revenues of Vernon and Oriskany Falls accounted for 0.04% of the consolidated revenues of their parent company, TDS Telecom. This small influx of revenues coming to TDS Telecom from Vernon and Oriskany Falls means that the merger will not materially impact TDS Telecom's ongoing financial operation. Financially this merger will not cause any harm to the surviving company Vernon, and the addition of Oriskany Falls' relatively good results may result in improved Vernon performance going forward.

[10] See Case 13-C-0333, Vernon Telephone Company, Order Approving Rate Increases and State Universal Service Fund Support (issued February 21, 2014)

[11] See, Case 13-C-0332, Oriskany Falls Telephone Company, Order Approving Rate Increases and State Universal Service Fund Support (issued February 21, 2014).

While ordinarily a dividend restriction would be applied as a classic ring-fencing mechanism to protect the New York State jurisdictional regulated entity in a merger/acquisition transaction and ensure adequate funds are kept in the business to continue investment and the provision of adequate service, this will not be required in this instance. However, since the explicit purpose of this merger is for the merged company to realize administrative savings and efficiencies and because it does not entail the issuance of any bonds, notes or other evidences of indebtedness, there is no concern of added financial risk posed by this transaction. Similarly, there are no concerns involving the pledging of utility assets or the creation of goodwill.

Tariff Modifications

The Petitioners propose no changes to the rates of any products and services identified in Vernon's or Oriskany Falls' respective local and intrastate access tariffs, and further propose to file a new Vernon tariff within one year of Commission approval of the merger that would specify where rates for the same products and services differ for the Oriskany Falls exchange compared to the other two Vernon exchanges. This proposal, however, is not practical because both Companies offer several identical services under different rates, which is contrary to the concept that customer rates should be uniform for the same service throughout a company's service territory. Accordingly, after discussions with Department Staff, the Petitioners agree to comprehensively review both companies local exchange and access tariffs and to modify Vernon's tariffs post-merger to incorporate rates for the Oriskany Falls exchange, while ensuring that the Oriskany Falls' rates mirror Vernon's rates whenever feasible. This is a reasonable proposal and the

Commission directs Vernon to file such tariff revisions no later than within 30 days of the issuance of this Order.

CPCN Amendment and Dissolution Request

Based upon the foregoing discussion, the Commission grants the Petitioners' request for approval under PSL §108 to dissolve Oriskany Falls as a corporate entity upon consummation of the transaction. At such time, Oriskany Falls shall be required to file a tariff cancellation supplements, cancelling its current PSC No. 5 – Telephone tariff as well as its Certificate of Public Convenience and Necessity.

The Commission further authorizes the amendment of Vernon's CPCN to include the Oriskany Falls exchange.

Customer Notice

Considering that both companies currently do business under the TDS Telecom name, and that customer billing and business office functions will be unchanged post-merger, the Commission grants the Petitioners' request to waive the customer notice requirements of PSL §92-e(5). However, the Commission directs Vernon to provide individual notice to any current Vernon and Oriskany Falls customers who will be impacted by the tariff changes discussed above. Vernon shall file a copy of the customer notice with the Secretary to the Commission no later than 30 days after the date of issuance of this Order. The Commission therefore waives the statutory and regulatory requirements for newspaper publication required by PSL §92(2) and 16 NYCRR §720-8.1.

SUSF Funds

Petitioners proposal to combine their current SUSF disbursements is reasonable, given the commitment to not file any rate cases requesting new or additional SUSF funding for the surviving company to become effective before January 1, 2020. Currently, Vernon is scheduled to receive $185,658 and

Oriskany Falls will receive $129,404 in 2018 disbursements.[12] After the merger is complete, Vernon is authorized to receive the combined 2018 disbursement total of $315,062.[13]

CONCLUSION

The Commission concludes that the proposed asset transfer resulting in the merger of Vernon and Oriskany Falls will result in benefits to both companies and their ratepayers, and is therefore approved. The transaction will have no adverse impact on Vernon's financial metrics. The merger will produce net positive benefits for customers and TDS, the joint owner of the two companies, including anticipated improved efficiency due to consolidation of their resources.

Accordingly, given the conditions the Commission is imposing here, the proposed transaction meets the public interest standard of review as applied under telephone acquisitions of this nature. We note that our approval, with conditions, is granted based upon the specific and unique set of facts presented in this case and the Commission will

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[12] The SUSF disbursements mentioned here are slightly higher than the figures submitted in the petition because the Commission approved the recovery of $3,623 and $727 in terminating access charge revenue losses for Vernon and Oriskany Falls, respectively, in an Order that was issued after the petition was originally filed. See, Case 15-M-0742, Proceeding on Motion of the Commission to Review the State Universal Service Fund, Order Approving Recovery of Access Charge Revenue Losses (issued December 15, 2017).

[13] As requested in the petition, Vernon would retain its right to make an annual filing requesting additional SUSF funding to recover revenue deficiencies resulting from the phase-out of terminating access charges as already afforded to it via the Orders in the Companies' last general rate proceedings, Case 13-C-0332 and Case 13-C-0333.

evaluate all future petitions of this nature on a case-by-case basis.

The Commission orders:

1. Vernon Telephone Company, Inc. and Oriskany Falls Telephone Corporation are authorized to transfer Oriskany Falls' assets to Vernon pursuant to Public Service Law §99(2).

2. Vernon Telephone Company, Inc. is authorized to amend its Certificate of Public Convenience and Necessity to reflect the addition of serving the customers of Oriskany Falls Telephone Corporation.

3. Oriskany Falls Telephone Corporation is authorized to cancel its Certificate of Public Convenience and Necessity.

4. Oriskany Falls Telephone Corporation is authorized, pursuant to PSL §108 to file a certificate of dissolution with the Department of State. The Secretary of the Commission is hereby directed to endorse this consent and approval when executed or to attach such consent and approval thereto.

5. The requested waiver of Public Service Law §92-e(5) is granted, consistent with the conditions listed in the body of this Order.

6. Within 30 days of the date of closing, but prior to formally dissolving, Oriskany Falls Telephone Corporation is directed to file a cancellation supplement, cancelling its tariff schedule PSC No. 5 – Telephone, effective on not less than one day's notice.

7. Within 30 days of the issuance of this Order, Vernon Telephone Company, Inc. is directed to file revisions to its PSC No. 18 – Telephone tariff to reflect the addition of

Oriskany Falls Telephone Corporation, consistent with the discussion in the body of this Order.

8. The requirements of Public Service Law §92(2) and 16 NYCRR §720-8.1 for newspaper publication of the supplement directed in Clause No. 6 and the tariff revisions directed in Clause No. 7 are waived.

9. Vernon Telephone Company, Inc. is directed to file with the Secretary to the Commission a copy of the direct notification provided to its customers informing of the tariff amendments directed in Clause 6 no later than 30 days after issuance of this Order.

10. Within 60 days after execution of the approved transfer, the Petitioners shall inform the Secretary to the Commission in writing that the transfer is complete. If the transfer is not completed within one year after the issuance of the Order, the Commission's authorization shall be deemed rescinded.

11. The costs of this merger will be excluded from rate base, expenses, and capitalization used in the determination of the rates and earned returns of Vernon Telephone Company, Inc. for New York State regulatory accounting and reporting purposes.

12. The Secretary may, in her sole discretion, extend the deadlines set forth in this Order. Any request for an extension must be in writing, must include a justification for the extension, and must be filed at least one day prior to the affected deadline.

13. This proceeding is closed, after compliance with Ordering Clauses 6, 7, 9, and 10.

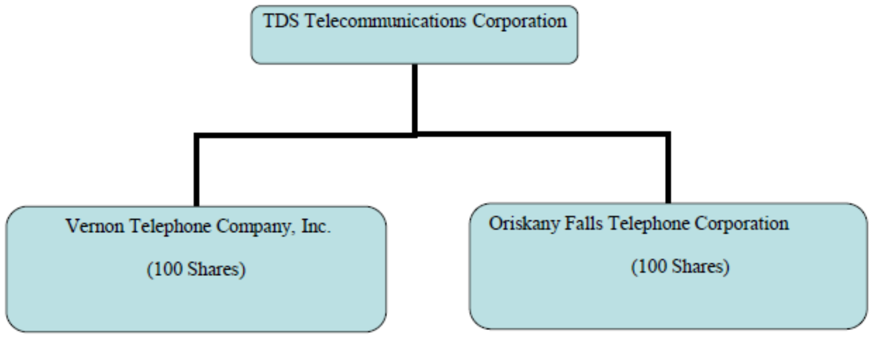
By the Commission,

(SIGNED)

KATHLEEN H. BURGESS
Secretary

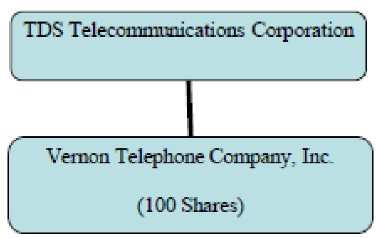
APPENDIX A

Existing Ownership Structure



Note: TDS Telecommunications Corporation owns 100% of the outstanding common shares of Vernon Telephone Company, Inc. and Oriskany Falls Telephone Corporation.

Post Merger Ownership Structure



Note: TDS Telecommunications Corporation will continue to own 100% of the outstanding common shares of Vernon Telephone Company, Inc. ("Vernon") at the effective date of the proposed merger. Vernon is not acquiring any capital stock from Oriskany Falls Telephone Corporation.