

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Request for approval of merger whereby Primary Network Holdings, Inc. (holding company of BroadSpan Communications, Inc. d/b/a Primary Network Communications, Inc., holder of IXC Certificate No. 7376 and ALEC Certificate No. 7445) will merge with Mpower Merger Sub., Inc. (holding company of MGC Communications, Inc. d/b/a Mpower Communications Corp., holder of IXC Certificate No. 5752 and ALEC Certificate No. 5279).

DOCKET NO. 000773-TP
ORDER NO. PSC-00-1448-PAA-TP
ISSUED: August 10, 2000

The following Commissioners participated in the disposition of this matter:

J. TERRY DEASON, Chairman
E. LEON JACOBS, JR.
LILA A. JABER

NOTICE OF PROPOSED AGENCY ACTION
ORDER APPROVING MERGER

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the action discussed herein is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

Section 364.33, Florida Statutes, provides that a person may not acquire ownership or control of any telecommunications facility, or any extension thereof for the purpose of providing telecommunications services to the public, including the acquisition, transfer, or assignment of majority organizational control or controlling stock ownership, without prior approval from this Commission.

DOCUMENT NUMBER-DATE

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COMMUNICATIONS SECTION

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By letter dated June 21, 2000, Primary Network Holdings, Inc. (Primary) and Mpower Merger Sub., Inc. (Mpower) filed with this Commission an application for approval of merger whereby Primary (holding company of Broadspan Communications, Inc. d/b/a Primary Network Communications, Inc., holder of IXC Certificate No. 7376 and ALEC Certificate No. 7445) will merge with Mpower (holding company of MGC Communications, Inc. d/b/a Mpower Communications Corp., holder of IXC Certificate No. 5752 and ALEC Certificate No. 5279). The companies have stated that the transaction will be virtually transparent to its customers in Florida and it will not affect the services being provided. The companies have stated that they will continue to operate under their existing certificated names and tariffs on file with this Commission.

In accordance with our authority under Section 364.33, Florida Statutes, to approve the acquisition or transfer of majority organizational control or controlling stock ownership of a telecommunications company providing service in Florida, we have reviewed the Petition of Primary and Mpower, and find it appropriate to approve it. We have based our review and decision upon an analysis of the public's interest in efficient, reliable telecommunications service. Our decision does not address the potential impact of the transfer on the competitive market in Florida, or on the companies' or their competitors' interests. We emphasize, however, that our approval of the Petition pursuant to our authority under Section 364.33, Florida Statutes, does not preclude us from addressing any of our concerns that may arise regarding this transaction to the appropriate federal or state agencies.

Based on the foregoing, it is,

ORDERED by the Florida Public Service Commission that Primary Network Holdings, Inc. and Mpower Merger Sub., Inc.'s request for approval of merger is hereby approved. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective upon the issuance of a Consummating Order unless an appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings or Judicial Review" attached hereto. It is further

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ORDERED that in the event this Order becomes final, this Docket shall be closed.

By ORDER of the Florida Public Service Commission, this 10th day of August, 2000.

BLANCA S. BAYÓ, Director
Division of Records and Reporting

By: Kay Flynn
Kay Flynn, Chief
Bureau of Records

(S E A L)

PW

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing that is available under Section 120.57, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

The action proposed herein is preliminary in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on August 31, 2000.

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In the absence of such a petition, this order shall become final and effective upon the issuance of a Consummating Order.

Any objection or protest filed in this docket before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.

M E M O R A N D U M

RECEIVED - FPSC

August 10, 2000

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RECORDS AND
REPORTING

TO: DIVISION OF RECORDS AND REPORTING

FROM: DIVISION OF LEGAL SERVICES (BANKS) *FRB*

RE: DOCKET NO. 000773-TP - REQUEST FOR APPROVAL OF MERGER WHEREBY PRIMARY NETWORK HOLDINGS, INC. (HOLDING COMPANY OF BROADSPAN COMMUNICATIONS, INC. D/B/A PRIMARY NETWORK COMMUNICATIONS, INC., HOLDER OF IXC CERTIFICATE NO. 7376 AND ALEC CERTIFICATE NO. 7445) WILL MERGE WITH MPOWER MERGER SUB., INC. (HOLDING COMPANY OF MGC COMMUNICATIONS, INC. D/B/A MPOWER COMMUNICATIONS CORP., HOLDER OF IXC CERTIFICATE NO. 5752 AND ALEC CERTIFICATE NO. 5279).

11/19/00

Attached is a NOTICE OF PROPOSED AGENCY ACTION ORDER APPROVING MERGER, to be issued in the above-referenced docket. (Number of pages in order - 4)

PW/anc
Attachment
cc: Division of Regulatory Oversight (Williams)
I: 000773.pw

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