

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

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In the Matter of the Application of ) DOCKET NO. 06-2275-01  
DSLnet Communications LLC., and MDS )  
Acquisition, Inc., for Approval of an )  
Transfer of Control of DSLnet ) ORDER APPROVING  
Communications ) TRANSFER OF CONTROL  
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SYNOPSIS

The Commission finds the proposed transfer of control of DSLnet Communications, LLC., to be in the public interest and approves the same.

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ISSUED: December 28, 2006

By The Commission:

PROCEDURAL HISTORY

On September 25, 2006, DSLnet Communications LLC. (“DSLnet”), and MDS Acquisition, Inc. (“MDS Acquisition”) (hereinafter jointly referred to as the “Applicants”) filed a Joint Application (“Application”), pursuant to *Utah Code Ann.* §§ 54-4-28 and -29, seeking Commission approval of the proposed transfer of control of DSLnet to MDS Acquisition. Applicants request expedited treatment of the Application prior to December 31, 2006, to permit consummation of the proposed transaction. On December 18, 2006, the Division of Public Utilities (“Division”) filed a memorandum of its investigation of the proposed transfer; recommending approval of the same.

DSLnet is a Delaware limited liability company whose sole member and managing entity is DSL.net, Inc. (“Parent”), a Delaware corporation. DSLnet provides local exchange and interexchange services in Utah pursuant to a Certificate of Public Convenience

and Necessity granted by the Commission on July 14, 1999, in Docket No. 99-2275-01. DSLnet is also authorized by the Federal Communications Commission to provide international and domestic interstate telecommunications services as a non-dominant carrier. MDS Acquisition is a privately held Delaware corporation; a wholly owned subsidiary of MegaPath Inc. (“MegaPath”). MDS Acquisition has been formed solely for the purpose of acquiring Parent and, thereby, DSLnet. MegaPath is a provider of Internet Protocol services. Neither MegaPath, MDS Acquisition or their affiliates hold any federal or state certificates to provide telecommunications services.

Under the proposed transaction, MDS Acquisition will purchase certain convertible promissory notes of Parent, which, by their terms, will allow MDS Acquisition to acquire control of DSLnet through the conversion of the convertible promissory notes into common stock of Parent. Following these conversions, MegaPath intends to merge Parent with and into MDS Acquisition, with MDS Acquisition surviving. As a result of these conversions and merger, MDS Acquisition will have direct control of DSLnet and DSLnet will become a wholly owned indirect subsidiary of MegaPath.

Applicants assert the proposed transaction transferring control of DSLnet will be seamless and transparent to consumers in Utah and that DSLnet will continue to offer its services to existing customers with no change in their rates, terms or conditions of service. Applicants believe the transfer of control will serve the public interest by enabling DSLnet to strengthen its financial and corporate resources. Through its December 18, 2006, Memorandum, the Division gives its analysis of the Application and provides the Division’s conclusions concerning the

Application. The Division recommends that the Commission approve the application and the transfer of control.

*Utah Administrative Code* Rule 746-110-1, authorizes the Commission to adjudicate a matter informally under *Utah Code Ann.* § 63-46b-5 when the Commission “determines that the matter can reasonably be expected to be unopposed and uncontested.” We note that more than three months have passed since Applicants filed their Application yet no one has sought intervention in this matter or opposed the transfer of control. We therefore view this matter as unopposed and uncontested and conclude it is in the public interest to proceed informally without hearing. Pursuant to Rule 746-110-2, we conclude good cause exists to waive the 20-day tentative period for an order issued in an informally adjudicated proceeding. Accordingly, this order will become effective on the date of issuance.

Based upon the evidence submitted by Applicants, as well as the Division’s recommendation, and pursuant to *Utah Code Ann.* §§ 54-4-28 and -29, we find and conclude that the proposed indirect transfer of control will not harm and can provide benefits to the State of Utah, its citizens, or to Applicants’ Utah customers and is in the public interest.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED, that:

1. This matter be, and it is, converted to an informal proceeding pursuant to §63-46b-4(3), UCA 1953, as amended.
2. The Applications, with its proposed transfer of control of DSLnet Communications LLC., is approved.

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3. The approval granted herein is effective as of the date of this Order.

Pursuant to Utah Code §§63-46b-12 and 54-7-15, agency review or rehearing of this order may be obtained by filing a request for review or rehearing with the Commission within 30 days after the effective date of the order. Responses to a request for agency review or rehearing must be filed within 15 days of the filing of the request for review or rehearing. If the Commission fails to grant a request for review or rehearing within 20 days after the filing of a request for review or rehearing, it is deemed denied. Judicial review of the Commission's final agency action may be obtained by filing a Petition for Review with the Utah Supreme Court within 30 days after final agency action. Any Petition for Review must comply with the requirements of Utah Code §§63-46b-14, 63-46b-16 and the Utah Rules of Appellate Procedure.

DATED at Salt Lake City, Utah, this 28<sup>th</sup> day of December, 2006.

/s/ Ric Campbell, Chairman

/s/ Ted Boyer, Commissioner

/s/ Ron Allen, Commissioner

Attest:

/s/ Julie Orchard  
Commission Secretary  
G#51921