

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of the Application of COMM)
 SOUTH COMPANIES, INC., and TOPP)
 TELECOM, INC., for Approval of Transfer)
 of Control)

DOCKET NO. 99-2285-01

REPORT AND ORDER

ISSUED: November 17, 1999

SYNOPSIS

No detriment to the public interest appearing, the Commission approved the acquisition of a Utah-certificated telephone corporation's stock by the Applicant.

By The Commission:

PROCEDURAL HISTORY

On July 8, 1999, Applicant above named filed its Application seeking Commission approval for the acquisition of all its common stock by Topp Telecom, Inc.(TT) The matter was referred for review to the Division of Public Utilities, Utah Department of Commerce (DPU), which filed a memorandum recommending approval October 8, 1999. The Application has engendered no opposition, nor does it appear likely to do so. Since an evidentiary hearing appears neither necessary nor helpful in the disposition of this matter, we have determined to dispose of it without further proceedings. The Administrative Law Judge, having been fully advised in the matter, now enters the following Report, containing proposed findings of fact, conclusions of law, and the Order based thereon.

FINDINGS OF FACT

1. Comm South Companies, Inc. (CS), is a privately-held Texas corporation, whose principal business office is at 6830 Walling Lane, Dallas, Texas 75231. It is certificated to provide local exchange services in Utah. It is controlled by three shareholders: Jim Graham, Steve Harvanek, and William Tobin Wilson.

- TT is a Florida corporation with its principal business office at 8390 N.W. 25th Street, Miami, Florida 33122. It is a leading provider of prepaid wireless services in the United States. It was incorporated in 1996 and currently operates as a cellular reseller in all 50 states, the District of Columbia, Puerto Rico, and the Virgin Islands.
 - Although the acquisition will result in a change of control of CS, it will not involve a change in the manner in which services are provided to CS's customers, nor a transfer of CS's Utah Certificate of Convenience and Necessity. After the acquisition, CS will become a wholly-owned subsidiary of TT and will continue to operate in Utah with its current name under existing price lists. It will be managed by a team of management personnel who have considerable experience in the telecommunications industry. The Applicants claim that the proposed transaction will be virtually transparent to CS's Utah customers.
 - According to the TT's financial statements, it is financially solvent and has a positive net worth after major purchases of stock by Inmobiliaria Aztlan S.A. de CV, a wholly-owned subsidiary of Telefonos de Mexico S.A. de CV ("TelMex"). The Company received \$140 million in cash from the sale of the common stock and TelMex obtained 77.3% of the outstanding Class A and Class B common stock of the Company.
 - The DPU sent one set of data requests to the Applicants, which requested TT to provide its latest financial statements, chart of accounts, proof of sufficient managerial and technical ability to provide local exchange services, evidence of positive net worth and sufficient cash flow, proof of a \$100,000 bond, proof of

authority to conduct business in the state, a statement regarding complaints or investigations of slamming or other illegal activities, and a statement about TT's written policies regarding the solicitation of new customers. The Applicants have responded to these data requests to the Division's satisfaction.

DISCUSSION

The Applicants assert that consummation of the proposed transaction will serve the public interest because "the acquisition of CS will promote competition by enabling CS to have access to TT's technical resources and distribution capabilities so that it may expand its facilities and service offerings in Utah and throughout the country. In short, CS will be positioned to become a more effective competitor in the Utah telecommunications market." Whether or not that assertion proves too optimistic, the acquisition appears to present no detriment to the public interest.

CONCLUSIONS OF LAW

The Application should be granted.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED, that:

- The acquisition of all the outstanding stock of Comm South Companies, Inc., by Topp Telecom, Inc., be, and it is, approved effective the date of this Order.
- Any person aggrieved by this Order may petition the Commission for review within 20 days of the date of this Order. Failure so to do will forfeit the right to appeal to the Utah Supreme Court.

DATED at Salt Lake City, Utah, this 17th day of November, 1999.

/s/ A. Robert Thurman
Administrative Law Judge

Approved and Confirmed this 17th day of November, 1999, as the Report and Order of the Public Service Commission of Utah.

/s/ Stephen F. Mecham, Chairman

/s/ Constance B. White, Commissioner

/s/ Clark D. Jones, Commissioner

Attest:

/s/ Julie Orchard
Commission Secretary