

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of Joint Application of Comtel Telecom)
Assets LP and VarTec Telecom, Inc., Excel) **Case No. TM-2006-0186**
Telecommunications, Inc., and VarTec Solutions,)
Inc., for Approval of a Transfer of Assets)

ORDER APPROVING SALE OF ASSETS

Issue Date: February 3, 2006

Effective Date: February 6, 2006

On October 31, 2005, Comtel Telecom Assets LP, VarTec Telecom, Inc., Excel Telecommunications, Inc., and VarTec Solutions, Inc., filed a joint application for approval of a transaction in which Comtel would acquire certain assets from VarTec Telecom, Excel Telecommunications, and VarTec Solutions, hereafter collectively called the VarTec companies.

The applicants filed addenda to the application on November 8, and December 23, 2005. On January 26, 2006, the Staff of the Commission filed its Recommendation and Memorandum.

The Parties:

According to the application, the purchaser, Comtel Telecom Assets LP (Comtel), is a Texas limited partnership whose principal business will be telecommunications. Comtel has sought certificates of service authority to provide telecommunications services in Missouri in a separate case, TA-2006-0214.

VarTec Telecom, Inc., is a Texas corporation authorized to provide basic local and interexchange services in Missouri. VarTec Telecom, Inc., also provides interexchange services as VarTec Telecom, Inc., d/b/a Clear Choice Communications. Excel Telecommunications, Inc., is a corporation organized under the laws of the State of Texas, authorized to provide basic local and interexchange services in Missouri. VarTec Solutions, Inc., is a Delaware corporation authorized to provide interexchange services.

The Transaction:

The VarTec companies voluntarily filed for Chapter 11 bankruptcy on November 1, 2004, in the Dallas Division of the United States Bankruptcy Court for the Northern District of Texas. As part of the bankruptcy process, the VarTec companies have entered into an asset purchase agreement (APA) with Comtel Investments LLC, which is wholly owned by the same parties who own and control Comtel Telecom Assets LP. Comtel Investments has assigned its rights and obligations under the APA to Comtel Telecom Assets LP. Comtel Telecom Assets LP will acquire substantially all of the assets of the VarTec companies including all telecommunications equipment, customer accounts and records, business records, and licenses and permits. There are no employees, equipment, records, or other property involved in the transaction located in Missouri and no tax revenue impact is expected. The bankruptcy court approved the APA on July 25, 2005.

Comtel proposes to provide the same customer services as the VarTec companies using the VarTec companies' names as fictitious names. In Commission Case No. TA-2006-0214, Comtel seeks certificates of service authority to operate the following services under the following names: Comtel Telecom Assets LP d/b/a VarTec Telecom (basic local and interexchange); Comtel Telecom Assets LP d/b/a Clear Choice

Communications (interexchange); Comtel Telecom Assets LP d/b/a VarTec Solutions (interexchange); and Comtel Telecom Assets LP d/b/a Excel Telecommunications (basic local and interexchange).

Staff's Memorandum and Recommendation:

Staff filed its Memorandum and Recommendation on January 26, 2006. Staff notes that a transfer of assets for a telecommunications company is governed by Section 392.300¹ and 4 CSR 240-3.520. Applicable case law provides that the Commission may “not withhold its approval of the disposition of assets unless it can be shown that such disposition is detrimental to the public interest.” *State ex rel. Fee Fee Trunk Sewer, Inc. v. Litz*, 596 S.W.2d 466, 468 (Mo. App. E.D. 1980), citing *State ex rel. City of St. Louis v. Public Serv. Comm'n of Mo.*, 73 S.W.2d 393, 400 (Mo. banc 1934). Staff opines that the transaction will not be detrimental to the public interest. No negative impact on tax revenues attends. Staff notes that the transaction involves only competitively classified companies and is not detrimental to the public interest since a customer must receive advance notice and can freely switch to another provider. Staff notes that the Commission's “anti-slamming” rule at 4 CSR 240-33.150(4) applies to this transaction:

(4) Changes in subscriber carrier selections as a result of merger or consolidation or the sale, assignment, lease or transfer of assets.

(A) A telecommunications carrier may submit or execute a change in a subscriber's provider of telecommunications service on behalf of the subscriber without obtaining authorization and verification in accordance with the procedures prescribed in 4 CSR 240-33.150(2) and 4 CSR 240-33.150(3) when such change is a result of merger or consolidation or the sale, assignment, lease or transfer of assets approved by the commission.

¹ All statutory references are to the Revised Statutes of Missouri (RSMo), revision of 2000, unless otherwise specified.

(B) A telecommunications carrier will notify all subscribers of such change through a notice in each subscriber's bill at least thirty (30) days prior to the effective date of the change.

(C) A telecommunications carrier will notify all subscribers of the right to switch to another service provider.

Staff also notes that 4 CSR 240-3.520(6)(G) directs that customer notification shall inform customers of the name of the company that will be providing services after the transfer; the name, address, and contact information for the new company; the right to transfer service to another provider; and where to go to locate other carriers providing service in the area. Staff recommends that the Commission issue an order approving the proposed transfer of assets and customers and direct the applicants to send a customer notice in each subscriber's bill at least 30 days prior to the effective date of the change.

Discussion:

The Commission has reviewed the joint application, the supplemental filings, and Staff's Memorandum and Recommendation. Based upon its review, the Commission concludes that the proposed transaction does not pose a detriment to the public interest. Therefore, the Commission will approve the transaction and direct that it not be closed until Comtel has the necessary certificates and tariffs in place to provide service to the acquired customers. Comtel will be directed to send customer notice in each subscriber's bill at least 30 days prior to the effective date of the change and file a pleading notifying the Commission when the transaction has been completed so that the VarTec companies' certificates may be canceled.

IT IS ORDERED THAT:

1. The joint application, filed on October 31, 2005, by Comtel Telecom Assets LP, VarTec Telecom, Inc., Excel Telecommunications, Inc., and VarTec Solutions, Inc., is approved.
2. Comtel Telecom Assets LP, VarTec Telecom, Inc., Excel Telecommunications, Inc., and VarTec Solutions, Inc., are authorized to enter into and perform in accordance with the Asset Purchase Agreement referred to above once the necessary certificates and tariffs are in place authorizing telecommunications services.
3. The applicants are directed to send customer notice, as discussed above, in each subscriber's bill at least 30 days prior to the effective date of the change.
4. Comtel Telecom Assets, Inc., shall not change the rates, or the conditions or terms of service unless those customers are first notified by mail.
5. Comtel shall file a pleading with the Commission notifying it when the transfers have been completed so that the VarTec companies' certificates may be canceled.
6. This order shall become effective on February 6, 2006.

(S E A L)

BY THE COMMISSION



Colleen M. Dale
Secretary

Steven C. Reed, Regulatory Law Judge,
by delegation of authority pursuant
to Section 386.240, RSMo 2000.

Dated at Jefferson City, Missouri,
on this 3rd day of February, 2006.