

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

In the Matter of the Joint Application of)
Comtel Telecom Assets LP and VarTec)
Telecom, Inc., Excel Telecommunications,)
Inc., and VarTec Solutions, Inc., for)
Approval of a Transfer of Assets.)

Case No. TM-2006-0186

STAFF RECOMMENDATION

COMES NOW the Staff of the Missouri Public Service Commission and for its recommendation states:

1. On November 2, 2005, Comtel Telecom Assets LP joined by VarTec Telecom, Inc., Excel Telecommunications, Inc., and VarTec Solutions, Inc., (together, the “VarTec Companies”), filed an application for authority to complete the acquisition by Comtel of substantially all of the assets, including customer accounts, of the VarTec Companies.

2. The transfer of assets is governed by Section 392.300 RSMo. (2000). 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 to *State ex rel. City of St. Louis v. Public Serv. Comm’n of Mo.*, 73 S.W. 2d 392,400 (Mo. Banc 1934).

3. In the attached Memorandum, which is labeled Appendix A, the Staff recommends approval of the proposed transaction. The Staff opines that this transaction will not be detrimental to the public interest

4. Comtel’s application for certificates of service authority is pending in Case No. TA-2006-0214. Therefore, a Commission order approving the transfer should also direct that

Comtel shall not close on the sale until it has the necessary certificates and tariffs in place to provide service to the acquired customers.

5. The Commission's anti-slamming regulation, 4 CSR 240-33.150 (4) provides:

(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.

(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.

Commission Rule 4 CSR 240-3.520(6)(G) further directs that customer notification shall inform customers of the name of the company that will be providing service after the transfer; the name, address and contact information for the new company; the right to transfer their service to another provider; and where to go to locate other carriers providing service in the area.

Therefore, a Commission order approving the transfer should also direct Comtel and the VarTec Companies to provide the prescribed advance notice to the VarTec Companies' subscribers.

WHEREFORE, the Commission recommends that the Commission approve the proposed transfer of assets and customers, direct that the transaction shall not be closed until Comtel has the necessary certificates and tariffs in place to provide service to the acquired customers, direct Comtel and the VarTec Companies to provide advance customer notice of required by 4 CSR 240-33.150, and direct Comtel and the VarTec Companies to file a pleading to notify the

Commission when the transaction has been completed so that the VarTec Companies' certificates may be cancelled.

Respectfully submitted,

/s/ William K. Haas

William K. Haas
Deputy General Counsel
Missouri Bar No. 28701

Attorney for the Staff of the
Missouri Public Service Commission
P. O. Box 360
Jefferson City, MO 65102
(573) 751-7510 (Telephone)
(573) 751-9285 (Fax)
william.haas@psc.mo.gov

Certificate of Service

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record this 26th day of January 2006.

/s/ William K. Haas

William K. Haas

Memorandum

To: Missouri Public Service Commission Official Case File
 Case No. TM-2006-0186
 Comtel Telcom Assets LP d/b/a VarTec Telcom, Comtel Telcom Assets LP d/b/a Excel
 Telecommunications, Comtel Telcom Assets LP d/b/a VarTec Solutions, Comtel Telcom Assets LP
 d/b/a Clear Choice Communications
 VarTec Telcom d/b/a Clear Choice, VarTec Solutions, Excel Telecommunications, VarTec Telcom

From: Sara Buyak, Telecommunications Department
William L. Voight 1/25/06 William K. Haas 1/25/06
 Utility Operations Division/Date General Counsel's Office/Date

**Subject: Staff Recommendation for Application Seeking Commission Approval of
 Competitive Company Transaction**

Date: 1-25-06

The Telecommunications Department Staff (Staff) recommends the Commission (check, as applicable):

- Approve Merger Approve Consolidation Approve Transfer of Assets
 Approve Name Change
 Cancel Certificate(s) & Tariff(s) Approve Certificate(s) & Tariff(s)

According to Commission rules, competitively classified companies are required to provide minimal information in applications to merge, consolidate or sell/transfer assets. Based on the information provided to Staff, Staff does not believe this particular transaction will be detrimental to the public interest. This transaction solely involves competitively classified companies and is not detrimental to the public interest since a customer has/will receive advance notice and can freely switch to another provider. The following chart summarizes this transaction.

Companies Involved in Transaction	Customer Served By ("X", if applicable)		Sale of Assets ("X", if applicable)		Certificates* (If applicable, indicate "C" to cancel, "A" to approve)			Tariffs* (If applicable, indicate Tariff PSC MO Nos.)	
	Before	After	Seller	Buyer	IXC	Local	Basic Local	Cancel	Approve
VarTec Telcom, Inc	X		X		C		C		
Comtel Telcom Assets LP d/b/a VarTec Telcom		X		X					
VarTec Telcom, Inc d/b/a Clear Choice Communications	X		X		C				

Comtel Telcom Assets LP d/b/a Clear Choice Communications		X		X					
VarTec Solutions Inc.	X		X		C				
Comtel Telcom Assets LP d/b/a VarTec Solutions		X		X					
Excel Telecommunications	X		X		C		C		
Comtel Telcom Assets LP d/b/a Excel Telecommunications		X		X					

Merger, Consolidation, Sell or Transfer Assets

Will affected customers be switched to a different company?

No

Yes

Customers have been notified and a copy of the notification is attached to this Staff Recommendation.

Customers will be notified at least 30 days prior to being switched to a different company. (4 CSR 240-3.525) A copy of the notification is attached to this Staff Recommendation. Yes No

Company states on page 10 of the Application, customer notice will be provided to the Commission once the transaction is finalized.

Company Name Change Notification

Company has notified its customers of the name change. A copy of the customer notice is attached.

Staff recommends the Commission order the Company to notify its customers at or before the next billing cycle of the name change and file a copy of the notice with the Commission.

Does this transaction involve a company in bankruptcy? Yes No

If yes, a copy of the bankruptcy order is attached to Addendum to the Application.

Competitive Company Transaction Review Items

Administrative:

Application solely involves competitively classified companies.

No applications to intervene filed.

Noteworthy Transaction Application Requirements of 4 CSR 240-3.520 and 4 CSR 240-3.525:

Will have no impact on tax revenues pursuant to 4 CSR 240-3.520(F) or 4 CSR 240-3.525(F)

Appropriate Secretary of State authorization has been submitted for any applicant (or if previously submitted, reference to prior case number). Case No.

Missouri corporations: A Certificate of Good Standing.

Foreign corporations: Authorization to do business in Missouri.
If business conducted under a fictitious name: A copy of registration of the fictitious name.

- No pending or final judgments/decisions described in 4 CSR 240-2.060(1)(K).
- A statement that no annual report or assessment fees are overdue for any applicant.

Are there additional recommendations or special considerations? No Yes

If yes, explain in an attachment. See Below

- The Company is not delinquent in filing an annual report and paying the PSC assessment.
 - The Company is delinquent. Staff recommends the Commission grant the requested relief/action on the condition the applicant corrects the delinquency. The applicant should be instructed to make the appropriate filing in this case after it has corrected the delinquency.
- (No annual report Unpaid PSC assessment. Amount owed:)

Attachment to Staff Recommendation

1. Recommend approval of transfers, but order should note that Comtel shall not close on the sale until it has the necessary certificates and tariffs in place. Comtel's application for certification is pending in Case No. TA_2006-0124.
2. Direct Comtel to file a pleading with the Commission to notify it when transfers have been completed so sellers certificates may be cancelled.
3. Direct Comtel to file customer notice according to 4CSR 240-33.150.