

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF DELAWARE

IN THE MATTER OF THE APPLICATION OF)
BLOCK COMMUNICATIONS, INC. AND BLOCK)
LINE SYSTEMS, LLC FOR APPROVAL UNDER)
THE PROVISIONS OF 26 *DEL. C.* §215 FOR)
ACQUISITION OF ASSETS OF LINE SYSTEMS,) PSC DOCKET NO. 14-0240
INC., INFINITE COMMUNICATION, LLC AND)
MAGELLAN HILL TECHNOLOGIES, LLC)
(FILED JULY 16, 2014; AMENDED)
SEPTEMBER 8, 2014; AMENDED)
SEPTEMBER 23, 2014))

ORDER NO. 8644

AND NOW, this 30th day of September, 2014, the Delaware Public Service Commission ("Commission") determines and orders the following:

WHEREAS, Line Systems, Inc. ("LSI") is authorized to provide local exchange and competitive intrastate telecommunications services in the State of Delaware pursuant to a Certificate of Public Convenience and Necessity ("CPCN") granted by the Commission via Order No. 5863 (January 8, 2002) in PSC Docket No. 01-393; and

WHEREAS, Infinite Communication, LLC ("IC") is authorized to provide local exchange and competitive intrastate telecommunications services in the State of Delaware pursuant to a CPCN granted by the Commission via Order No. 7217 (June 19, 2007) in PSC Docket No. 07-63; and

WHEREAS, Magellan Hill Technologies, LLC ("MHT") is authorized to provide local exchange and competitive intrastate telecommunications services in the State of Delaware pursuant to a CPCN granted by the Commission via Order No. 7218 (June 19, 2007) in PSC Docket No. 06-379; and

WHEREAS, on July 16, 2014, Block Communications, Inc. ("BCI") and its wholly-owned subsidiary Block Line Systems, LLC ("BLS") (together, "Applicants") filed a joint application ("Application") seeking Commission approval for BLS to acquire the respective assets of LSI, IC and MHT (jointly, the "Assignors"); and

WHEREAS, on July 28, 2014, Applicants filed an application requesting that the Commission grant BLS a CPCN to provide competitive local exchange and intrastate telecommunications services in the State of Delaware. See PSC Docket No. 14-0255. Staff has been reviewing this application and continues to do so as of this date; and

WHEREAS, on September 8 and 23, 2014, Applicants amended the Application (the "Amendments") to include evidence that it had provided notice as required by the Federal Communications Commission to the customers of the Assignors¹ and to provide verification regarding two legal requirements set forth in 26 *Del. C.* §215(d) ("in accordance with law" and "for a proper purposes"); and

WHEREAS, 26 *Del. C.* §924(b)(1) and (2) provide, in pertinent part, that no submitting carrier shall submit a change in the customer's selection of a carrier prior to obtaining authorization from the customer and verification of that authorization in accordance with the procedures prescribed in this subchapter and implementing regulations of the Commission;² and

¹ See 47 C.F.R. §64.1120(a) which provides, in pertinent part, that no telecommunications carrier shall submit or execute a change on the behalf of a subscriber in the subscriber's selection of a provider of telecommunications service except in accordance with the procedures prescribed in subpart K, part 64, Title 47.

² These state requirements match those set forth in 47 C.F.R. §§64.1120(a)(1)(i) and (ii).

WHEREAS, 26 Del. C. §925(a) provides that no carrier shall submit a preferred carrier change order unless and until the change order has first been confirmed in accordance with one of three procedures;³ and

WHEREAS, the Applicants have filed copies of the legal notices required by 47 C.F.R. §64.1120(e)(3); and

WHEREAS, the Applicants assert that they are in the process of obtaining specific authorization and verification of each customer that will be affected by the Transaction,⁴ and no Delaware Code provision or regulation allows a waiver of the specific authorization and verification requirements regarding anti-slamming under both Delaware laws and regulations and federal laws and regulations; and

WHEREAS, 26 Del. C. §215(a)(1) requires, in pertinent part, that no public utility, without having first obtained the approval of the Commission, may directly or indirectly sell, assign, or otherwise dispose of any essential part of its franchises, plant, equipment or other property, necessary or useful in the performance of its duty to the public; and

WHEREAS, 26 Del. C. §215(d) provides, in pertinent part, that the Commission shall approve any such proposed transfer or acquisition when it finds that the same is to be made "in accordance with law, for a proper purpose and is consistent with the public interest;" and

³ These three procedures match with the requirements of 47 C.F.R. §64.1120(c)(1), (c)(2), or (c)(3) or the streamlined process set forth in 47 C.F.R. §64.1120(e).

⁴ Counsel to the Applicants notified the Commission Staff via correspondence dated September 4, 2014, that the customers of IC are LSI and MHT and that "their authorization will be obtained in accordance with the requirements of 47 C.F.R. §64.1120(c) and (§64.1130) as set forth in the letter and provided for in the Commission's Rules for the Provision of Telecommunications Services, Part B, Sections 16 and 17." Thus, Staff cannot yet confirm that the Applicants have met the requirements of 47 C.F.R. §64.1120(c).

WHEREAS, 26 *Del. C.* §203A(a)(1) requires, in pertinent part, that no corporation may begin the business of a public utility, nor shall any public utility begin any extension of its regulated public utility business or operations, without having first obtained from the Commission a CPCN; and

WHEREAS, Applicants have asserted in the Application and the Amendments that the Transaction is (i) in accordance with Delaware law applicable to regulated utilities, (ii) for a proper purpose, and (iii) consistent with the public interest; and

WHEREAS, the Commission Staff ("Staff") has reviewed the Application and the Amendments and recommends that the Commission approve the Transaction subject to the condition that BLS must first obtain, pursuant to 26 *Del. C.* §203A and 26 *Del. Admin. C.* §4001, a CPCN for local exchange and intrastate telecommunications services in the State of Delaware;

**NOW, THEREFORE, IT IS ORDERED BY THE AFFIRMATIVE
VOTE OF NOT FEWER THAN THREE COMMISSIONERS:**

1. The Commission grants the request set forth in the Application and the Amendments, under 26 *Del. C.* §§215(a)(1) and (d), for LSI, IC, and MHT to sell and assign its customers (including the customers' contracts) and certain assets to BLS subject to the condition that BLS must first obtain, pursuant to 26 *Del. C.* §203A and 26 *Del. Admin. C.* §4001, a CPCN for local exchange and intrastate telecommunications services in the State of Delaware.

2. The Commission requires BLS to comply with the anti-slamming provisions of 26 *Del. C.* §§924(b)(1) and (2), 26 *Del. C.*

§925(a), and 26 *Del. Admin. C.* §§4001-13.0 to 19.0 and all applicable federal laws and regulations.

3. The Commission reserves the jurisdiction and authority to enter such further Orders in this matter as may be deemed necessary or proper.

BY ORDER OF THE COMMISSION:

/s/ Dallas Winslow
Chair

/s/ Joann T. Conaway
Commissioner

/s/ Harold B. Gray
Commissioner

/s/ Jeffrey J. Clark
Commissioner

/s/ Jaymes B. Lester
Commissioner

ATTEST:

/s/ Alisa Carrow Bentley
Secretary