

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

APPLICATION OF RCN TELECOM SERVICES)
(LEHIGH) LLC FOR APPROVAL TO) PSC Docket No. 13-144
PARTICIPATE IN FINANCING ARRANGEMENTS)
(FILED APRIL 4, 2013))

ORDER No. 8365

AND NOW, this 23rd day of April, 2013, the Delaware Public Service Commission (the "Commission") determines and Orders the following:

WHEREAS, 26 *Del. C.* §203A(a)(1) requires, in pertinent part, that no a 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 certificate of public convenience and necessity ("CPCN"); and

WHEREAS, 26 *Del. C.* §203A(c)(1) requires, in pertinent part, that no public utility may abandon or discontinue, in whole or in part, any regulated public utility business, operations or services provided under a CPCN or otherwise which are subject to jurisdiction of the Commission without first having received Commission approval for such abandonment or discontinuance; and

WHEREAS, 26 *Del. C.* §215(a)(3) requires, in pertinent part, that no public utility, without having first obtained the approval of the Commission, may assume any obligation or liability as guarantor or otherwise in respect of any security of any other person or corporation, payable or maturing more than 1 year after the date of such issue or assumption of liability; and

WHEREAS, on August 11, 2000, RCN Telecom Services, Inc. ("RCN") filed with the Commission an application for a CPCN to allow it to provide local exchange and competitive intrastate telecommunications services within Delaware. The Commission granted RCN a conditional CPCN on November 21, 2000, via Order No. 5587 and a CPCN on October 7, 2003, via Order No. 6280; and

WHEREAS, on March 19, 2010, RCN filed an application with the Commission requesting approval, under 26 *Del. C.* §215(b), of the transfer of control of RCN via a merger with and into RCN Telecom Services (Lehigh) LLC ("RCN Lehigh").¹ RCN also mentioned in its application that the Commission had "allowed similar mergers of affiliated companies in the past, along with transfers of CPCNs." (citing to PSC Docket No. 08-9). RCN did not, however, explicitly request approval of the transfer of its CPCN to the newly-formed company, RCN Lehigh; and

WHEREAS, on March 24, 2010, the Commission Staff ("Staff") issued a memorandum to the Commission recommending that no action be taken on the application so that under 26 *Del. C.* §215(d), the application would be deemed as approved by operation of law; and

WHEREAS, thereafter, RCN Lehigh has been operating as if it had been granted a CPCN by the Commission, and Staff has issued other memorandums that may support that assumption; and

WHEREAS, on April 4, 2013, RCN Lehigh filed an application ("Application") with the Commission and requested approval, under 26

¹ See PSC Docket No. 10-110. RCN also requested approval, under 26 *Del. C.* §§215(a)(1) and (3) to act as a guarantor and to pledge its assets as part of a financing transaction.

Del. C. §§215(a)(1) and (3), for it to act as a guarantor and to pledge its assets in a financing transaction; and

WHEREAS, Staff investigated the Application and has discovered that the Commission has never granted RCN Lehigh a CPCN to operate as a public utility and to provide telecommunications services and that RCN has never applied for and received Commission approval to abandon its CPCN;

NOW, THEREFORE, IT IS HEREBY ORDERED BY THE AFFIRMATIVE VOTE OF NO FEWER THAN THREE COMMISSIONERS:

1. That the application filed by RCN Telecom Services (Lehigh) LLC ("RCN Lehigh") requesting permission to act as a guarantor and to pledge its assets in a certain financing transaction is hereby approved with the condition that within 30 days of the date of this Order, RCN Lehigh must either:

(a) File with the Commission an application, pursuant to 26 *Del. C. §203A* and 26 *Del. Admin. C. §4001*, for the issuance of a Certificate of Public Convenience and Necessity ("CPCN") as soon as practicable, but no later than May 22, 2013; or

(b) Provide written notice to the Commission that it does not intend to conduct business as a regulated telecommunications provider in the State of Delaware, and will not provide any regulated intrastate telecommunications services in the State of Delaware, unless and until it receives a CPCN from the Commission after the filing of an application that meets all of the requirements of 26 *Del. C. §203A* and 26 *Del. Admin. C. §4001*.

2. That 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/ Jaymes B. Lester
Commissioner

Commissioner

Commissioner

ATTEST:

/s/ Alisa Carrow Bentley
Secretary