

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

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|-------------------------------------|---|------------|
| THE VERIFIED JOINT APPLICATION OF |) | |
| BRANDENBURG COMMUNICATIONS |) | |
| CORPORATION AND BRANDENBURG |) | CASE NO. |
| TELEPHONE COMPANY FOR THE EXPEDITED |) | 2017-00209 |
| TRANSFER OF CERTAIN OWNERSHIP |) | |
| SHARES OF BRANDENBURG |) | |
| COMMUNICATIONS CORPORATION |) | |

ORDER

On May 19, 2017, Brandenburg Communications Corporation (“Brandenburg Communications”) and Brandenburg Telephone Company (“Brandenburg Telephone”) (collectively “Joint Applicants”) filed an application (“Application”) for expedited approval by the Commission for the distribution of Brandenburg Communications shares by the estate (the “Estate”) of Joseph D. Tobin, Jr. (“Mr. Tobin”). The Commission issued a letter indicating that there were no deficiencies, and assigned a filing date of May 19, 2017, to the Application. In support of this request, Joint Applicants have submitted the terms of the distribution of shares through a verified Joint Application with Exhibits and responded to Commission Staff’s discovery request. No person has sought to intervene in this proceeding, or requested a hearing. This matter now stands submitted to the Commission for a decision.

DISCUSSION

Brandenburg Communications is a corporation organized and existing under the laws of Kentucky and is the sole shareholder of Brandenburg Telephone.¹ Brandenburg Telephone is a corporation and jurisdictional utility pursuant to KRS Chapter 278 that serves 15,249 customers in the Commonwealth of Kentucky.²

Prior to his death, Mr. Tobin made arrangements for the distribution of all of his ownership shares of Brandenburg Communications.³ The Estate is finalizing the transfers of Mr. Tobin's shares of Brandenburg Communications pursuant to the terms of his will and the November 22, 2016 Orders from the Probation Division of the Meade County District Court ("Court Orders").⁴

The Joint Applicants state that the proposed distribution of Brandenburg Communications shares will have no impact on the direct ownership of Brandenburg Telephone, and that Brandenburg Telephone will remain fully owned by Brandenburg Communications.⁵ The Joint Applicants further argue that Brandenburg Telephone's operating expenses are funded from its revenues and are not dependent on funding or investment from Brandenburg Communications.⁶ Therefore, the Joint Applicants

¹ Application at 1.

² Annual Report of Brandenburg Communications to the Public Service Commission for the Year Ended December 31, 2016, at 28.

³ Application at 2.

⁴ Application at 2-3.

⁵ Application at 5.

⁶ Joint Applicants' Response to Commission Staff's First Request for Information ("Response to Request for Information") (filed June 28, 2017), Item 11.

conclude that the distribution of Brandenburg Communications shares has no financial impact on Brandenburg Telephone.

Pursuant to the Court Orders, the Estate will distribute Mr. Tobin's Brandenburg Communications shares to his three children: Allison T. Willoughby ("Ms. Willoughby"), Joseph D. Tobin, III, and Tom H. Tobin.⁷ All three of the children have been shareholders in Brandenburg Communications since 1985, and they are the only shareholders who will individually own more than 10 percent of the shares due to the distribution.⁸ The Court Orders further approved a distribution of the remainder of Mr. Tobin's Brandenburg Communications shares to six individuals who did not previously own shares: Mr. Tobin's widow Ruth Crawford, and five grandchildren: Tom H. Tobin, Tara T. Hager, Blake B. Willoughby, Dray D. Willoughby, Kasey T. Beaton, and Kristin T. Dossett.⁹

The Joint Applicants further contend that the distribution will have no effect on the roles of the individuals charged with the day-to-day control of Brandenburg Telephone, including the existing financial, technical, and managerial staff.¹⁰ Mr. Tobin served as general manager of Brandenburg Telephone for more than 25 years, but transitioned his managerial duties to Ms. Willoughby in 2012.¹¹ Ms. Willoughby has been an employee of Brandenburg Telephone for 30 years, previously served for many years as assistant general manager, and is and shall remain the general manager of Brandenburg

⁷ Application at 3–4.

⁸ Response to Request for Information, Item 10.

⁹ Application at 4.

¹⁰ Application at 5.

¹¹ Response to Request for Information, Item 2.

Telephone.¹² Ms. Willoughby obtained her Accounting degree in 1980 and received her CPA certification in 1983.¹³ Further, Ms. Willoughby has extensive experience with compliance, safety matters, and supervision of the day-to-day office functions.¹⁴ In 2013 Ms. Willoughby replaced Mr. Tobin and was elected chair of the Brandenburg Telephone Board of Directors.¹⁵

Further, the Joint Applicants state that the distribution of Brandenburg Communications shares has no effect on the roles or management responsibilities of Brandenburg Telephone's existing management employees.¹⁶ The existing management employees that will remain after the distribution have experience ranging from 16 to 33 years at Brandenburg Telephone.¹⁷ The Joint Applicants contend that neither Joseph D. Tobin III nor Tom H. Tobin will have direct duties or responsibilities in the day-to-day operations and management of Brandenburg Telephone, but will instead rely on the financial, technical, and managerial ability of the experienced and continuing Brandenburg Telephone management team.¹⁸ However, the Joint Applicants do assert that as longtime owners of Brandenburg Communications shares, both Joseph D. Tobin III and Tom H. Tobin have gained familiarity with Brandenburg Telephone's business

¹² Response to Request for Information, Items 2–5.

¹³ Response to Request for Information, Item 10.

¹⁴ Application at 5 and Response to Request for Information, Items 2, 4, and 5.

¹⁵ Response to Request for Information, Item 2.

¹⁶ Response to Request for Information, Item 3.

¹⁷ *Id.*

¹⁸ Response to Request for Information, Items 6–10.

operations and management.¹⁹ Also, Joseph D. Tobin III previously served as an employee in Brandenburg Telephone's financial operations for 30 years.²⁰

The Joint Applicants requested that the Commission approve the proposed distribution of Brandenburg Communications shares pursuant to KRS 278.020(6) and KRS 278.020(7).

KRS 278.020(6) provides that:

No person shall acquire or transfer ownership of, or control, or the right to control, any utility under the jurisdiction of the commission . . . without prior approval by the commission. The commission shall grant its approval if the person acquiring the utility has the financial, technical, and managerial abilities to provide reasonable service.

KRS 278.020(7) provides that:

No individual, group, syndicate, general or limited partnership, association, corporation, joint stock company, trust, or other entity (an 'acquirer'), whether or not organized under the laws of this state, shall acquire control, either directory or indirectly, of any utility furnishing utility service in this state without having first obtained the approval of the commission.

KRS 278.020(7) further provides that the "commission shall approve any proposed 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."

Having reviewed the application and being otherwise sufficiently advised, the Commission finds that:

¹⁹ Response to Request for Information, Item 10.

²⁰ *Id.*

1. The remaining Brandenburg Telephone employees have the depth of experience and technical expertise to satisfy the statutory requirement for managerial and technical ability to provide reasonable service as required under KRS 278.020(6).

2. Brandenburg Telephone's operating expenses are funded from its revenues, and are not dependent on funding or investment from Brandenburg Communications. The distribution of Brandenburg Communications shares has no financial impact on Brandenburg Telephone. Thus, Brandenburg Telephone will continue to have the financial ability to provide reasonable service after distribution of the shares.

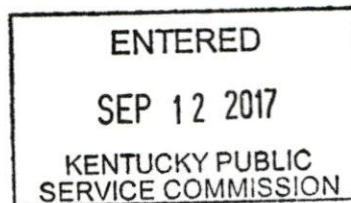
3. The distribution of Brandenburg shares is in accordance with law, for a proper purpose, and is consistent with the public interest.

IT IS THEREFORE ORDERED that:

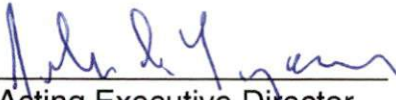
1. The proposed distribution of Brandenburg Communications shares by the Estate of Mr. Tobin is hereby approved.

2. Within 20 days of the completion of the proposed distribution, Joint Applicants shall notify the Commission in writing of the completion.

By the Commission



ATTEST:


Acting Executive Director


Case No. 2017-00209

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