

**THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS**

Before Commissioners: Pat Apple, Chairman
Shari Feist Albrecht
Jay Scott Emler

In the Matter of the Transfer of Ownership)
of Moundridge Telephone Company, Inc. to)
Emmental, Inc. a Kansas Corporation, and) Docket No. 17-MRGT-368-ACQ
its Wholly Owned Subsidiary Moundridge)
Telephone Company, Inc., a)
Telecommunications Public Utility.)

**ORDER APPROVING TRANSACTION TRANSFERRING OWNERSHIP AND
CONTROL OF MOUNDRIDGE TELEPHONE**

The above-captioned matter comes before the State Corporation Commission of the State of Kansas (Commission) for consideration and decision. Having reviewed its files and records, and being duly advised in the premises, the Commission makes the following findings:

I. Background

1. On January 17, 2017, Moundridge Telephone Company, Inc. (Moundridge), filed with the Commission a letter describing the transfer of the 100% controlling interest of Moundridge and its parent company, Emmental, Inc. (Emmental), from the Carl C. Krehbiel Revocable Trust to Harry M. Weelborg, J. Sommer Smith, and Troy Smith.

2. On February 9, 2017, Emmental and Moundridge (jointly, the Applicants) jointly filed a Submission of Information Related to Transfer of Ownership of Emmental, Inc. and Effective Control of Moundridge Telephone Company, Inc. (Application). In their Application, Applicants assert Emmental is a closely held corporation organized in 1989 and in good standing in the state of Kansas. Emmental is the sole owner of Moundridge.¹ Moundridge is a closely held corporation organized in 1904 and presently in good standing in the state of Kansas. The

¹ Submission of Information Related to Transfer of Ownership of Emmental, Inc. and Effective Control of Moundridge Telephone Company, Inc., February 9, 2017, ¶ 1. (Application, ¶ 1.)

Applicants further explain Moundridge is a telecommunications public utility, as defined in K.S.A. 66-1,187(n), and a rural telephone company, as defined in K.S.A. 1,187(l), “holding one or more certificates of convenience and authority from this Commission to provide telecommunications public utility service in [Kansas].”²

3. With respect to the transaction before this Commission, Applicants explain that 100% ownership of Emmmental, including Moundridge, was conveyed by the Carl C. Krehbiel Revocable Trust to Harry M. Weelborg, J. Sommer Smith, and Troy Smith in June of 2016 (this conveyance is referred to herein as “the transaction”).³ The Applicants note the Federal Communications Commission (FCC) approved the transaction on June 6, 2016.⁴ Emmmental and Moundridge request the Commission “determine that the information [contained in the Application] is sufficient to support any and all lawfully required approval of the transaction by the Commission.”⁵

4. In their Application, Applicants assert, “The transaction is in the best interests of consumers and the public generally.”⁶ In support, Applicants provide information to address the Commission’s standards⁷ for approval of transactions under K.S.A. 66-136, though the standards are not specifically identified in the Application (these standards are often referred to as the

² Application, ¶ 2.

³ Application, ¶ 3.

⁴ Application, ¶¶ 4, 18.

⁵ Application, p. 6.

⁶ Application, ¶ 6.

⁷ These standards are commonly referred to as the Commission’s “merger standards.” However, the standards have been routinely applied to all transactions (including both mergers and acquisitions) requiring Commission approval under K.S.A. 66-136. The standards were recently reaffirmed by the following orders: Docket No. 16-EPDE-410-ACQ, Order on Merger Standards, August 9, 2016; Docket No. 16-ITCE-512-ACQ, Order on Merger Standards, August 9, 2016; Docket No. 16-KCPE-593-ACQ, Order on Merger Standards, August 9, 2016. The original standards, copies of the more recent orders, and additional background can be found at the following link: http://www.kcc.state.ks.us/docket/kcc_discusses_merger_standards.htm.

Commission's "merger standards").⁸ Applicants also address the technical, managerial, and financial qualifications of the new ownership.⁹

5. On May 19, 2017, Commission Staff (Staff) filed a Report & Recommendation (R&R) analyzing and recommending approval of the transaction.¹⁰ In its R&R, Staff provides an analysis of Moundridge's technical, managerial, and financial qualifications, post-transaction, to ensure compliance with K.S.A. 66-2005(w). Next, Staff addresses Moundridge's continuing obligation to comply with the Commission's Quality of Service Standards. Finally, Staff specifically identifies and addresses each of the Commission's merger standards to analyze whether the transaction promotes the public interest, as required by K.S.A. 66-131 and K.S.A. 66-136.

6. Staff identifies no concerns regarding Moundridge's technical, managerial and financial qualification under its new ownership. In particular, Staff cites the extensive experience and institutional knowledge of Mr. Weelborg, who has over twenty-five years of telecommunications experience in a leadership position with Moundridge and will serve as its President and Chief Executive Officer following the transaction.¹¹

7. Staff next addresses Moundridge's ability to comply with the Commission's Quality of Service Standards under its new ownership. Since Moundridge has historically met its Quality of Service obligations and has retained the same personnel to fulfill the same duties as those performed prior to the transaction, Staff expects the company will be able to continue its compliance.¹²

⁸ Application, ¶¶ 6-15.

⁹ Application, ¶¶ 16-17.

¹⁰ Staff Report and Recommendation, filed May 19, 2017, p. 13. (Staff R&R, p. 13.)

¹¹ Staff R&R, pp. 4-5.

¹² Staff R&R, p. 5.

8. Finally, Staff addresses the Commission's merger standards and whether this transaction promotes the public interest. For each standard, Staff identifies the Applicants' position, as set forth in the Application, and states whether it agrees or disagrees, based on its investigation. The Commission will not recite Staff's review in its entirety. However, Staff's primary conclusions are summarized, by merger standard, as follows:

(a) The effect of the transaction on consumers, including:

- (i) The effect of the proposed transaction on the financial condition of the newly created entity as compared to the financial condition of the stand-alone entities if the transaction did not occur.**

9. Staff and the Applicants agree Moundridge will be in an equal or better financial position post-transaction. This conclusion is based on the fact that the purchase price is below net book value of the company's assets and anticipated financial stability provided by future Alternative Connect America Cost Model (A-CAM) federal support.¹³

- (ii) Reasonableness of the purchase price, including whether the purchase price was reasonable in light of the savings that can be demonstrated from the merger and whether the purchase price is within a reasonable range.**

10. While the purchase price is not specifically identified in Staff's R&R due to claims of confidentiality by the Applicants, Staff reports that it did review the purchase price as part of its investigation. Staff confirms the price does not include an acquisition premium, reflects the book value of the assets, liabilities assumed, profits, tax-related costs, goodwill, and was less than the net book value of the purchased assets. This transaction is not expected or intended to produce transaction-related savings. However, Staff recommends the standard is satisfied based on the reasonableness of the purchase price (including no acquisition premium),

¹³ Staff R&R, pp. 7-8.

which ensures no rate increases will result from the transaction and Moundridge will be in an equal or better financial position post-transaction.¹⁴

(iii) Whether ratepayer benefits resulting from the transaction can be quantified.

11. Staff notes both quantifiable and non-quantifiable benefits to the transaction. In particular, Staff agrees with Moundridge's position that, because there is no acquisition premium, Moundridge will not seek KUSF support or request to raise local rates as a result of the transaction. Staff also states that the public will benefit from Moundridge's acceptance of A-CAM support and the related commitment to deploy advanced services following the transaction.¹⁵

(iv) Whether there are operational synergies that justify payment of a premium in excess of book value.

12. As noted above, Staff does not expect this transaction to create any specific quantifiable operational synergies (transaction-related savings). However, the transaction does not include an acquisition premium. Therefore, Staff recommends this standard is met, without identification of operational synergies, since the transaction does not include the costs or risks associated with an acquisition premium that might otherwise only be justified by significant transaction-related savings.¹⁶

(v) The effect of the proposed transaction on the existing competition.

13. Since the transaction only results in a change in ownership of existing companies, Staff does not expect any detrimental effect on competition within the Moundridge study area as a result of the transaction.¹⁷

¹⁴ Staff R&R, pp. 8-9.

¹⁵ Staff R&R, p. 9.

¹⁶ Staff R&R, p. 10.

¹⁷ Staff R&R, p. 10.

(b) The effect of the transaction on the environment.

14. Staff and the Applicants agree there will be no impact on the environment as a result of this transaction.¹⁸

(c) Whether the proposed transaction will be beneficial on an overall basis to state and local economies and to communities in the area served by the resulting public utility operations in the state. Whether the proposed transaction will likely create labor dislocations that may be particularly harmful to local communities, or the state generally, and whether measures can be taken to mitigate the harm.

15. Staff recommends this standard weighs in favor of the transaction. In particular, Staff comments that Moundridge's post-transaction acceptance of A-CAM support for enhanced broadband service evidences a commitment by the new owners to providing new and advanced services to the Moundridge's consumers and the communities it serves. The Applicants also note the transaction will not result in any labor dislocations or loss of employment.¹⁹

(d) Whether the proposed transaction will preserve the jurisdiction of the KCC and the capacity of the KCC to effectively regulate and audit public utility regulations in the state.

16. Staff and the Applicants agree the transaction will have no impact on the Commission's jurisdictional authority. The transaction only affects ultimate ownership and control of Kansas public utilities. It will not alter or lessen the companies' regulatory obligations.²⁰

(e) The effect of the transaction on affected public utility shareholders.

17. Staff and Applicants agree only affected shareholders are the previous owner, Krehbiel Trust, and the new owners, Mr. Weelborg, J. Sommer Smith, and Troy Smith. Staff

¹⁸ Staff R&R, pp. 10-11.

¹⁹ Staff R&R, p. 11.

²⁰ Staff R&R, pp. 11-12.

asserts that this standard weighs in favor of the transaction, since the new shareholders own a regulated utility that is in an equal, or better, financial position than prior to the transaction.²¹

(f) Whether the transaction maximizes the use of Kansas energy resources.

18. Staff and Applicants agree there will be no impact on the use of Kansas energy resources as a result of this transaction.²²

(g) Whether the transaction will reduce the possibility of economic waste.

19. Staff identifies no concerns regarding economic waste as a result of the transaction. Staff cites a purchase price below net book value of the assets and the absence of an acquisition premium as factors in this conclusion.²³

(h) What impact, if any, the transaction has on the public safety.

20. Staff and Applicants agree the transaction should have no effect on public safety. Staff further comments that it expects Moundridge will continue to meet all required public safety standards.²⁴

21. In summary, Staff asserts its review supports a determination that the transaction promotes the public interest. Staff, therefore, recommends approval of the transaction.²⁵

II. Jurisdiction

22. As noted above, Moundridge is a certificated telecommunications public utility, as defined in K.S.A. 66-1,187(n), and a rural telephone company, as defined in K.S.A. 1,187(l). The Commission is given full power, authority and jurisdiction to supervise and control Moundridge, and is empowered to do all things necessary and convenient for the exercise of such power, authority, and jurisdiction.²⁶

²¹ Staff R&R, p. 12.

²² Staff R&R, p. 12.

²³ Staff R&R, p. 13.

²⁴ Staff R&R, p. 13.

²⁵ Staff R&R, p. 13.

²⁶ K.S.A. 66-1,188; Moundridge is defined as a "local exchange carrier" under K.S.A. 66-187(l) and 47 U.S.C.A.

23. In addition to its broad general regulatory authority, the Commission is granted specific jurisdiction over transactions affecting public utility certificates under K.S.A. 66-136.

The statute states as follows:

No franchise or certificate of convenience and necessity granted to a common carrier or public utility governed by the provisions of this act shall be assigned, transferred or leased, nor shall any contract or agreement with reference to or affecting such franchise or certificate of convenience and necessity or right thereunder be valid or of any force or effect whatsoever, unless the assignment, transfer, lease, contract or agreement shall have been approved by the commission.

Under the present transaction, Moundridge will continue to hold its certificate of public convenience and necessity. However, the ultimate ownership of, and control over, its certificate will be transferred from the Carl C. Krehbiel Revocable Trust to Harry M. Weelborg, J. Sommer Smith, and Troy Smith through the conveyance of Moundridge's parent company, Emmmental.²⁷ Therefore, the Commission finds the conveyance of Emmmental and its subsidiary, Moundridge, is both a "transfer" of Moundridge's certificate and a "contract or agreement with reference to or affecting such franchise or certificate" under K.S.A. 66-136. The Commission concludes it has jurisdiction over this transaction pursuant to K.S.A. 66-136.

III. Findings and Conclusions

24. The current proceeding involves the acquisition of a telecommunications public utility, Moundridge, which serves approximately 2,000 customers.²⁸ While Kansas statutes do not address specific standards the Commission should utilize in acquisition proceedings, the Commission must only grant a public utility the authority to transact business in the state of Kansas upon a finding that the public convenience will be promoted.²⁹ The Commission has

§ 153(44).

²⁷ Staff R&R, p. 3.

²⁸ Staff R&R, p. 4; Application, p. 2 of attached FCC Application.

²⁹ K.S.A. 66-131.

found, therefore, that it must also consider the public convenience and necessity, often referred to as the "public interest," when a certificate is transferred or affected under K.S.A. 66-136.³⁰ However, there are no other statutory standards the Commission is required to utilize in determining whether an application such as this is in the public interest. To address this vacuum, the Commission formulated and adopted specific standards it applies in merger and acquisition proceedings.³¹ Factor analysis was first adopted by the Commission in 1991 and has been consistently applied since that time.³²

25. The Commission's "merger standards" are addressed in Staff's R&R and are fully recited above. The Commission finds Staff's analysis of the merger standards is appropriate in this proceeding and provides a sufficient factual basis for the Commission to issue an order on Moundridge and Emmmental's Application. The Commission also finds it is appropriate to review Moundridge's technical, managerial, and financial qualifications, as well as its ability to comply with Quality of Service Standards, to ensure continued compliance with K.S.A. 66-2005(w) and past Commission orders.

26. Upon review of the record as a whole, the Commission agrees with Staff's analysis and recommendation and hereby adopts the same. More specifically, the Commission finds Moundridge, under its new ownership, continues to possess the requisite technical, managerial, and financial qualifications to operate and maintain a telecommunications public utility in Kansas. Next, the Commission finds Moundridge, under its new ownership, will be able to comply with the Commission's Quality of Service Standards. Finally, the Commission

³⁰ See consolidated Docket Nos. 172,745-U & 174,155-D, Order, November 15, 1991, p. 35; *See also* Docket No. 13-BHCG-509-ACQ, Order Approving Joint Application, October 3, 2013, ¶¶ 35-36.

³¹ Consolidated Docket Nos. 172,745-U & 174,155-D, Order, November 15, 1991, pp. 34-36.

³² On September 28, 1999, in Docket No. 97-WSRE-676-MER, the Commission reaffirmed the merger standards, but made clear they are to be supplemented by other considerations relevant to the unique facts and circumstances of each proposed transaction. As noted in footnote 7 above, the standards have also been reaffirmed in recent Commission dockets.

finds and concludes the transaction will promote the public interest, as evidenced by Staff's review of the merger standards described above. In consideration of these findings, the Commission approves the transaction transferring ownership and control of Moundridge Telephone Company, Inc., from the Carl C. Krehbiel Revocable Trust to Harry M. Weelborg, J. Sommer Smith, and Troy Smith.

THEREFORE, THE COMMISSION ORDERS:

A. The transaction transferring ownership and control of Moundridge Telephone Company, Inc., from the Carl C. Krehbiel Revocable Trust to Harry M. Weelborg, J. Sommer Smith, and Troy Smith is hereby approved pursuant to K.S.A. 66-136.

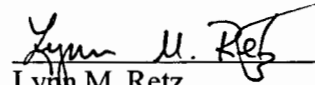
B. The parties have fifteen (15) days from the date this Order was served by electronic mail in which to petition for reconsideration.³³

C. The Commission retains jurisdiction over the subject matter and parties for the purpose of entering such further orders, as necessary.

BY THE COMMISSION IT IS SO ORDERED.

Apple, Chairman; Albrecht, Commissioner; Emler, Commissioner (not participating)

Dated: JUN 08 2017


Lynn M. Retz
Secretary to the Commission

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³³ K.S.A. 66-118b; K.S.A. 77-529(a)(1).

CERTIFICATE OF SERVICE

17-MRGT-368-ACQ

I, the undersigned, certify that the true copy of the attached Order has been served to the following parties by means of

Electronic Service on JUN 08 2017.

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