

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

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.)

NOTICE OF FILING OF STAFF'S REPORT & RECOMMENDATION

The Staff of the State Corporation Commission of the State of Kansas (Staff and Commission, respectively) files the attached Report and Recommendation and states as follows:

1. Staff hereby files the attached Report and Recommendation analyzing the Application of Emmental, Inc., and Moundridge Telephone Company, Inc. (Moundridge), requesting approval of a transaction transferring ownership and control of Moundridge, a certificated Kansas public utility.

2. As detailed in its Report and Recommendation, Staff's review supports a determination that the transaction promotes the public interest. Staff, therefore, recommends approval of the transaction.

WHEREFORE Staff submits its Report and Recommendation for Commission review and consideration and for such other relief as the Commission deems just and proper.

Respectfully submitted,

/s/ Andrew J. French

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**REPORT AND RECOMMENDATION
UTILITIES DIVISION**

TO: Chairman Pat Apple
Commissioner Shari Feist Albrecht
Commissioner Jay Scott Emler

FROM: Sandy Reams, Assistant Chief of Telecommunications
Adam Gatewood, Managing Financial Analyst
Christine Aarnes, Chief of Telecommunications
Justin Grady, Chief Auditor
Jeff McClanahan, Utilities Division Director

DATE: May 18, 2017

SUBJECT: Docket No: 17-MRGT-386-ACQ
In the Matter of the Transfer of Ownership of Emmental, Inc., a Kansas Corporation, and its Wholly Owned Subsidiary Moundridge Telephone Company, Inc., a Telecommunications Public Utility.

EXECUTIVE SUMMARY:

In a letter dated January 12, 2017, Moundridge Telephone Company, Inc. (Moundridge) advised the Commission of the transfer of control of Moundridge and its parent company, Emmental, Inc. (Emmental) from the Carl C. Krehbiel Revocable Trust, dated December 2, 1992, Carl C. Krehbiel, Trustee (Krehbiel Trust), to Harry M. Weelborg, J. Sommer Smith, and Troy Smith. On February 9, 2017, Moundridge filed a Submission of Information Related to Transfer of Ownership of Emmental, Inc. and Effective Control of Moundridge Telephone Company, Inc. (Application). The Application addressed the Commission's Merger Standards¹ and contends the Transaction is in the public interest.

Staff's review and analysis of the Application is based on Kansas statutes and the Commission's Merger Standards and supports that the Transaction promotes the public interest. Staff recommends approval of the Transaction.

¹ Docket No. 16-ITCE-512-ACQ, Order on Merger Standards, August 9, 2016, available for viewing at: <http://estar.kcc.ks.gov/estar/ViewFile.aspx/20160809133328.pdf?Id=6ff4c577-59ee-47f9-9fc9-bc735d064a9c>. The Commission recently reaffirmed the Merger Standards in Docket 16-KCPE-593-ACQ.

I. BACKGROUND:

A. Parties to the Transaction:

Emmental, headquartered in Moundridge, Kansas, is a closely-held corporation.² Emmental owns 100% of Moundridge and Moundridge Telecom, Inc. (MTI). Emmental owns less than 5% of Kansas Fiber Network, LLC (Kansas Fiber) and, in a separate transaction, is purchasing Mid-Kansas Cable Services, Inc. (Mid-Kansas Cable).³

Moundridge is an incumbent Local Exchange Carrier (LEC) pursuant to K.S.A. 66-1,187(h); a rural telephone company pursuant to K.S.A. 66-1,187(l); a telecommunications public utility pursuant to K.S.A. 66-1,187(n); and the carrier of last resort in its service area pursuant to K.S.A. 66-2009. The Commission has jurisdiction over Moundridge pursuant to K.S.A. 66-1,188. Moundridge holds a Certificate of Convenience (COC) to operate as a rural LEC⁴ and offers service to approximately 2,000 subscribers in the Goessel and Moundridge exchanges.⁵ Moundridge, doing business as (d/b/a) Moundridge Communications Network, also offers Internet and cable television services.⁶ Moundridge owns Zaziwil, Inc., an investment holding company.⁷

MTI is a certificated interexchange carrier (IXC)⁸ that offers intrastate and interstate toll and long distance services to customers throughout Moundridge's service area. Kansas Fiber is a certificated competitive LEC⁹ and IXC¹⁰ that provides access, middle-mile access, and transport services. Mid-Kansas Cable provides cable television service in Moundridge's service area.

Mr. Weelborg serves as vice president and general manager of Emmental, Moundridge, and MTI.¹¹ Mr. Weelborg has over twenty-five years' experience with Emmental and Moundridge. Mr. and Mrs. Smith, employed by Emmental since the Transaction, manage the financial side of the business.¹² Mrs. Smith serves as Moundridge's Chief Financial Officer and Mr. Smith serves as Moundridge's Senior Vice President of Operations.

² Application, ¶1.

³ WC Docket 16-125, Streamlined Application for Transfer of Control of Domestic Blanket Section 214 Authorization (Section 214 Application), p. 6.

⁴ Application, ¶ 2.

⁵ Moundridge Telephone Company, Inc. Annual Report for the Year Ended December 31, 2015, schedule 19.

⁶ Moundridge services, last viewed April 6, 2017 at: <https://www.moundridgecommunications.net/services>.

⁷ Zaziwil, Inc.'s Kansas Secretary of State For-Profit Corporation Annual Reports, last viewed May 4, 2017: https://www.kssos.org/filed_doc_viewer/view_entity.aspx?id=07071989169474412&submit=View+History+and+Documents.

⁸ Docket No. 00-MRGC-940-COC, April 26, 2000 Order and Certificate.

⁹ Docket No. 10-KSFT-156-COC, May 12, 2010 Order.

¹⁰ Docket No. 12-KSFT-361-COC, March 6, 2012 Order.

¹¹ Section 214 Application, p. 5.

¹² Fogg, Randy. "Weelborg Buys Moundridge Telephone Co." The Ledger, 2 June 2016 (Ledger). <http://www.ledgernewspaper.net/archived-news/2016/june-2-2016-ledger/weelborg-buys-moundridge-telephone-co/>.

B. The Transaction:

The Transaction involved Mr. Weelborg, his daughter, J. Sommer Smith, and son-in-law, Troy Smith purchasing 100% of Emmental's issued and outstanding common stock from the Krehbiel Trust in June 2016.¹³ The ownership of Emmental, its affiliates, and its subsidiaries changed as a result of the Transaction; however, Emmental was the sole owner of Moundridge prior to the Transaction and remains the sole owner after the Transaction.¹⁴ Mr. Weelborg owns 51% of Emmental, J. Sommer Smith owns 25%, and Troy Smith owns 24%.

C. Standards of Review:

The Transaction affected the ownership and control of Emmental through the transfer of 100% of Emmental's stock, and therefore, Moundridge's COC and its assets, from the Krehbiel Trust to three Kansas residents: Harry M. Weelborg; J. Sommer Smith; and Troy Smith. The Transaction occurred at the parent-company level; however, the Transaction includes both the transfer of Moundridge's COC and is a "contract or agreement" affecting Moundridge's COC, therefore, pursuant to K.S.A. 66-136, the Commission has jurisdiction to review this Transaction to ensure the Transaction promotes the public convenience.

Furthermore, K.S.A. 66-131 and 66-136 provide that a public utility cannot transact business until it has obtained a COC from the Commission that the public convenience will be promoted and the Commission approves the assignment or transfer of a COC. K.S.A. 66-136 states, in part,

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...

Staff notes that, pursuant to K.S.A. 66-2005(z)(1), the Commission does not need to approve the transfer of MTI's COC arising from the Transaction.

Additionally, K.S.A. 66-2005(w) requires, in part:

[T]elecommunications carriers that were not authorized to provide switched local exchange telecommunications services in this state as of July 1, 1996 ... must receive a certificate of convenience based upon a demonstration of technical, managerial and financial viability and the ability to meet quality of service standards established by the commission.

In determining whether a COC should be assigned or transferred, the public convenience ought to be the Commission's primary concern, the interest of the public utility serving the territory

¹³ Application, ¶3.

¹⁴ Ibid., ¶12.

secondary, and the desires of the Applicants, a relatively minor consideration.¹⁵ The public convenience means the convenience of the public, not of any particular individual. Public necessity means a public need without which the public would be inconvenienced.¹⁶ The public convenience and necessity is established by proof of the conditions existing in the territory to be served.¹⁷

The Commission has determined that to be in the public interest, mergers and acquisitions involving Kansas utilities must provide positive benefits to the State of Kansas.¹⁸ The Commission established Merger Standards to analyze the level of benefits arising from such a transaction and to assess whether a transaction meets the public interest test.¹⁹ The Merger Standards were derived through an analysis of a transaction that involved two electric utilities with an aggregate customer base of over a half-million retail customers in Kansas. The Commission has recognized that each jurisdictional utility acquisition and/or merger is unique in the manner and the degree to which it affects Kansas communities, Kansas consumers, and the utilities' shareholders. The present Transaction affects approximately 2,000 customers.

II. ANALYSIS:

A. Technical, Managerial, and Financial Qualifications

Pursuant to K.S.A. 66-2005(w), the Commission must determine whether the new owners of Emmental and subsequently, Moundridge, possess the technical, managerial, and financial ability to operate and maintain Moundridge's Kansas telecommunications assets and provide services in an efficient and sufficient manner.

Mr. Weelborg, Moundridge's President and Chief Executive Officer, has over twenty-five years' of telecommunications experience with Moundridge.²⁰ Mr. Weelborg has served as Vice President and General Manager of Emmental,²¹ Vice President and General Manager of Moundridge, Vice President of Mid-Kansas Cable,²² and Vice President of Zaziwil. Mr. Weelborg is also part-owner and President of KCC Rentals, Inc.²³

¹⁵ Kansas Gas & Electric Co. v. Public Service Commission, 122 Kan. 462, 466, 251 P.1097 (1977).

¹⁶ Atchison, Topeka & Santa Fe Railway Co v. Public Service Commission, 130 Kan. 777, 288 P. 755 (1930); Central Kansas Power Co. v. State Corporation Commission, 206 Kan 670, 482 P.2d 1 (1970).

¹⁷ Atchison, Topeka & Santa Fe Railway Co. v. Public Service Commission, 130 Kan 777, 288 P.755 (1930).

¹⁸ Id.

¹⁹ Consolidated Docket Nos. 172,745-U & 174,155-D, November 15, 1991 Order, pp. 34-36 and September 28, 1999 Order on Merger Application.

²⁰ Ledger; Application, ¶16.

²¹ Emmental's Kansas Secretary of State Corporation Annual Reports, last viewed May 4, 2017:

https://www.kssos.org/filed_doc_viewer/view_entity.aspx?id=09071989170335412&submit=View+History+and+Documents.

²² Mid-Kansas Cable, Inc.'s Kansas Secretary of State Corporation Annual Reports, last viewed May 4, 2017:

https://www.kssos.org/filed_doc_viewer/view_entity.aspx?id=03101980062782812&submit=View+History+and+Documents.

²³ KCC Rental, Inc.'s Kansas Secretary of State Annual Reports, last viewed April 18, 2017:

https://www.kssos.org/filed_doc_viewer/view_entity.aspx?id=06072002333091712&submit=View+History+and+Documents. KCC Rentals is an affiliate of Emmental and leases a building to Moundridge. Docket No. 15-MRGT-097-AUD, Jan. 20, 2015 Direct Testimony of Ann Diggs on Behalf of Kansas Corporation Commission Staff, p. 6.

Mrs. Smith serves as Moundridge's Chief Financial Officer and Office Manager.²⁴ Mrs. Smith brings a variety of financial experience to Moundridge, including experience as Director of Financial Aid at Tabor College. Mr. Smith serves as Moundridge's Senior Vice President of Operations, Vice President, and Chief Operating Officer.²⁵ Mr. Smith has over 20 years' management experience with a Fortune 500 Company, including experience with regulatory compliance matters.

Moundridge has retained all prior employees,²⁶ meaning the day-to-day operations of the Company will not be disrupted.²⁷ The community served by Moundridge and Moundridge's customers benefit from the experience and retention of experienced employees. Staff has no concerns regarding the new owners' ability to manage and operate Moundridge's regulatory operations, especially in light of Mr. Weelborg's extensive knowledge of Emmet and Moundridge.

The financial condition of Moundridge will be sufficient, and potentially improved, with this Transaction. This is evidenced by the fact that the purchase price was less than the net book value of assets acquired, the company will be receiving A-CAM support of \$1,002,330 annually for the next ten years, and Moundridge currently has zero long-term debt. As a result of these unique factors, Staff's investigation did not include a review of the personal financial condition of the new owners of Moundridge. Staff also notes that it is generally concerned about the financial condition of individual owner(s) for gas utilities due to the potential capital requirements and safety considerations. These gas utility concerns do not generally apply to closely held telecommunications companies because they have access to low-cost debt financing, most have on-going operations that are highly leveraged, and they do not have the same capital requirements and safety considerations that gas utilities do. Telecommunications companies can operate with high leverage because they receive a number of subsidies for high-cost areas as well as other non-regulated revenue streams that support their respective debt obligations.

B. Quality of Service Standards

Moundridge is required to comply with the Commission's Quality of Service Standards.²⁸ Moundridge has historically met its Quality of Service obligations and have not been in a jeopardy or non-compliance status.²⁹ Moundridge has maintained the same personnel to fulfill the same duties as those performed prior to the Transaction,³⁰ thus, Staff believes Moundridge will continue to meet the Commission's Quality of Service standards. If Moundridge fails to meet the Commission Quality of Service requirements, the Commission can assess penalties for such non-compliance consistent with its current practices.

²⁴ Ledger; response to Staff DR 6; J. Sommer Smith, Linked-In: <https://www.linkedin.com/in/jane-sommer-smith-26029a67>.

²⁵ Ledger; response to Staff DR 6; Troy Smith, Linked-In: <https://www.linkedin.com/in/troy-smith-399b8b71>.

²⁶ Application, ¶ 8.

²⁷ Ibid., ¶ 17.

²⁸ Docket No. 95-GIMT-047-GIT, May 23, 2008 Order.

²⁹ Docket No. 14-GIMT-118-CPL and Docket No. 95-GIMT-047-GIT.

³⁰ Application, ¶ 17.

C. Merger Standards to Evaluate the Public Interest Standard

The proposed Transaction affects one Kansas rural LEC and MTI, as well as the Companies' ability to provide telecommunications services to approximately 2,000 subscribers. Therefore, in tandem with the evaluation of Emmmental's managerial, technical, and financial qualifications, the Applicants and Staff viewed the Transaction in light of the Merger Standards, as follows:

- a. The effect of the transaction on customers, 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;
 - 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;
 - iii. Whether ratepayer benefits resulting from the transaction can be quantified;
 - iv. Whether there are operational synergies that can justify payment in excess of book value; and
 - v. The effect of the proposed transaction on the existing competition.
- b. The effect of the transaction on the environment.
- 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.
- 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 operations in the state.
- e. The effect of the transaction on affected public utility shareholders.
- f. Whether the transaction maximizes the use of Kansas energy resources.
- g. Whether the transaction will reduce the possibility of economic waste.
- h. What impact, if any, the transaction has on public safety.

The Merger Standards assist in determining whether a proposed transaction provides a net benefit to ratepayers, shareholders, and the public generally and thereby, “promotes the public interest.” In most merger and acquisition cases involving utilities under the full economic and rate regulation of the Commission, the appropriate focus is whether the transaction results in benefits for the public that can be quantified. The Commission has recognized that with regard to evaluating a proposed transaction in light of the Merger Standards, some factors may be less relevant than others in the present proceeding.³¹

³¹ Docket No. 13-BHCG-509-ACQ, October 3, 2013 Order Approving Joint Application, ¶38.

Applicants provided their views of the Merger Standards as related to the Transaction in the Application. This Report summarizes the Applicants' position on each Merger Standard, Staff's analysis of the Applicants' position, and Staff's recommendation regarding whether the Transaction meets the standard.

(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.

Applicants' Response:

Applicants state the Transaction purchase price was less than the net book value of the assets and liabilities as of the transaction date³² and accounted for accumulated earnings and taxes recorded on Emmmental's books and an adjustment for goodwill. Applicants state Emmmental is in a stronger financial position after the Transaction, providing added stability for ratepayers and consumers.³³ The Company's financial stability is further supported by Moundridge accepting federal Alternative Connect America Cost Model (A-CAM) support, thereby providing additional assurances Moundridge will not seek KUSF support as a result of the Transaction.³⁴

Staff Response:

Staff agrees with the Applicants' statements regarding this Merger Standard. Moundridge will remain in an equal or be in a better financial position than prior to the Transaction. The purchase price was less than the net book value of the assets after consideration of the value of the acquired assets and liabilities, tax consequences related to the Transaction and goodwill at the time of the Transaction.³⁵ As of December 31, 2015, Moundridge had \$5.9 million in total net assets, \$0.58 million of liabilities, \$8.6 million of retained earnings, and \$2.6 million of investments.³⁶ These amounts have remained relatively steady since the June 2016 purchase, with Moundridge having \$5.6 million of total net assets, \$0.27 million of liabilities, \$8.6 million of retained earnings, and \$2.0 million of investments as of December 31, 2016.³⁷

Moundridge's acceptance of A-CAM support will help maintain the Company's financial stability while also providing the availability of advanced services to customers.³⁸ Historically, Moundridge has received Federal Universal Service Fund (FUSF) support, comprised of High-Cost Loop (HCL) and Interstate Common Line Support (ICLS). Such support reflected the Company's recorded costs, resulting in an annual fluctuation in the FUSF support. For the past three years, Moundridge received the following FUSF support:

³² Application, ¶ 2, ¶6; confidential response to Staff DR 2(c).

³³ Ibid., ¶ 6.

³⁴ Id.

³⁵ Application, ¶ 6; response to Staff DRs 1- 2; Staff discussions with Company personnel during a March 13, 2017 on-site visit to the Company's accountant's offices in Salina, Kansas.

³⁶ Annual Report of Moundridge Telephone Company for the Year Ending December 31, 2015.

³⁷ Annual Report of Moundridge Telephone Company for the Year Ending December 31, 2016.

³⁸ Response to Staff DR 3.

Federal Universal Service Support³⁹

Mechanism	HCL	ICLS	Total
2014	\$ 535,881	\$ 608,136	\$ 1,144,017
2015	595,205	624,384	1,219,589
2016	399,702	561,530	961,232

To encourage broadband deployment within rural LEC areas, the FCC determined rural LECs could elect to receive FUSF support based on the forward-looking, efficient A-CAM model.⁴⁰ A rural LEC will receive A-CAM support for ten years in exchange for maintaining its existing voice and broadband services and offering broadband at predefined speeds depending upon the population density of its service area.

Moundridge will receive \$1,002,330 annually in A-CAM support over the next ten years, providing additional financial stability for the Company while also allowing the Company's customers to have more advanced services available to them. Approximately 88% of Moundridge's census blocks have broadband service of 10/1 Megabits per second (Mbps)⁴¹ and Moundridge will build out 4/1 Mbps service to 142 partially funded locations, 10/1 Mbps service to 383 locations, and 25/1 Mbps service to 383 fully-funded locations by the end of the ten year term.

(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.

Applicants' Response:

Applicants state the purchase price included consideration of the book value of the assets, liabilities assumed, profits, tax-related costs, and goodwill, with the purchase price being less than the net book value of assets.⁴² Moundridge states it is a financially stronger utility as a result of the Transaction and is better able to provide stability to its consumers and communities it serves. The Transaction did not include an acquisition premium and, therefore, the Company will not seek any recovery from ratepayers or the KUSF.⁴³

Staff's Response:

Applicants claim the Transaction purchase price is confidential for several reasons, including that Emmmental is privately-owned and, therefore, the purchase price is not included in Staff's Report. Staff reviewed the purchase price and confirms: (1) it did not include an acquisition premium; (2) the purchase price reflected the book value of the assets, liabilities assumed, profits, tax-related costs, and goodwill; and (3) the purchase price was less than the net book value of the purchased assets. Additionally, Applicants did not specifically identify any savings

³⁹ Id.

⁴⁰ *In the Matter of Connect America Fund*, WC 10-90 et al., Report and Order, Order and Order on Reconsideration, and Further Notice of Proposed Rulemaking, rel. March 30, 2016 (A-CAM Order).

⁴¹ A-CAM version 2.3.1, Report 7-2; response to Staff DR 3.

⁴² Application, ¶6.

⁴³ Id.

arising from the Transaction; however, Staff believes this Standard has been met. The Transaction price does not cause concerns given that the price was less than the net book value of the assets and considered the recorded liabilities and profits, as well as tax-related costs and goodwill. The fact that there was no acquisition premium is a benefit since no issue of recovery from ratepayers or the KUSF exists. Ratepayers will not experience any rate increases as a result of the Transaction and Moundridge is in an equal or better financial position as a result of the Transaction.

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

Applicants' Response:

The Applicants state that as a result of the Transaction, its consumers and the public generally “gain the benefit of a utility service provider with a stronger overall financial position, providing additional stability without burden to ratepayers.”⁴⁴ Applicants further state that since there is no acquisition premium and Moundridge accepted A-CAM support, the Company will not seek KUSF support or additional recovery from its ratepayers as a result of the Transaction.⁴⁵ The Transaction also benefits ratepayers through the continuity of regulated services due to the retention of operating and management personnel.⁴⁶

Staff's Response:

The benefits from the Transaction include monetary and non-monetary benefits; ones that cannot be readily quantified. Ratepayers have benefitted from the Transaction even absent quantifiable benefits. Moundridge does not receive KUSF support⁴⁷ and Moundridge does not intend to seek KUSF support or raise local rates as a result of the Transaction.⁴⁸ An acquisition premium was not paid; therefore, recovery of such is not at issue.

Moundridge's consumers, the communities it serves, and the State in general will benefit by Moundridge's acceptance of A-CAM support and the related commitment to deploy advanced services. Prior to the Transaction, Moundridge offered four broadband speed options via Digital Subscriber Line technology, with the lowest speed offered at 768 kilobits per second and at the highest speed being 4/1 Mbps. This means only one of the Company's plans met the FCC's minimum broadband speed of 4/1 Mbps.⁴⁹ Post-Transaction, Moundridge has deployed 1 Gigabytes per second (GBps) service to 124 homes and, by the end of 2017, plans to offer comparable service by overbuilding in the town of Goessel.⁵⁰

⁴⁴ Id.

⁴⁵ Id.

⁴⁶ Ibid., ¶ 7-8.

⁴⁷ April 27, 2015 Order, Docket No. 15-MRGT-097-KSF.

⁴⁸ Application, ¶ 6.

⁴⁹ Hansen, Teri L., “Moundridge fights for better Internet.” McPherson Sentinel, 13 February 2015. (Sentinel): <http://www.mcphersonsentinel.com/article/20150213/NEWS/150219602>.

⁵⁰ Response to DR 3.

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

Applicants' Response:

The Applicants did not pay an acquisition premium.⁵¹

Staff's Response:

Staff does not expect this Transaction to create any specific quantifiable operational synergies; however, as discussed earlier, the Transaction did not include an acquisition premium. Staff suggests the Transaction promotes the public interest even with the lack of readily quantifiable synergies given that the Transaction did not include the costs or risks associated with a premium.

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

Applicants' Response:

Applicants did not directly address this Merger Standard, but state the Transaction allows for continuity of service as it retained the same operational and management personnel.⁵² The Transaction did not change the services provided by Moundridge; it only changed the shareholder ownership of Emmmental.⁵³

Staff's Response:

Staff believes this Standard is met and has no concerns about a detrimental effect on competition within Moundridge's study area as a result of the Transaction since it only resulted in a change of ownership for Emmmental, Moundridge, and MTI. The Transaction does not impact the Commission's jurisdiction over Moundridge, MTI, or any other competitive provider offering, now or in the future, service in Moundridge's study area.

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

Applicants' Response:

Applicants state the Transaction did not impact Kansas' energy resources.⁵⁴ Applicants also state the Commission's audit of Moundridge did not suggest or identify any environmental, cost, or energy related issues. The Transaction results in the continuity of operations and does not change any energy or other environmental matters.

Staff's response:

Staff notes that the Commission's KUSF audits do not review energy-related issues; however, this Merger Standard plays a minor role in evaluating the public interest of telecommunications

⁵¹ Application, ¶ 6-7.

⁵² Ibid., ¶ 17.

⁵³ Ibid., ¶ 12.

⁵⁴ Ibid., ¶ 13.

mergers as this is not an industry subject to environmental regulation to the degree that natural gas and electric utilities are.

(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.

Applicants' Response:

Applicants state the Transaction did not result in any employment dislocations or loss of employment,⁵⁵ benefiting its consumers and the communities it serves through the continuity of management and operational personnel and labor, as well as telecommunications services. The Transaction also provided cost-avoidance and inconvenience for the public generally via the continued ability to communicate with Moundridge's customers.

Staff's Response:

This Merger Standard looks beyond the costs and benefits of Moundridge's customers; it looks at the communities in which Moundridge operates in an attempt to evaluate whether the communities benefit from the Transaction. A Company's presence in the communities serves as one measure of the public interest test, including the availability of services, the level of investment, and company donations to a community. Prior to the Transaction, Moundridge offered four broadband speed plans, of which only one met the FCC's minimum broadband speed of 4/1 Mbps.⁵⁶ Moundridge accepted A-CAM support and, as a result, is committed to deploying predefined advanced services to a defined number of locations within the next ten years. Thus, Staff believes the new owners of Emmmental are committed to providing new and advanced services to Moundridge's consumers and the communities it serves.

(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.

Applicants' Response:

Applicants state Moundridge is a rural LEC pursuant to K.S.A. 66-1,187(l) and a telecommunications public utility pursuant to K.S.A. 66-1,187(n). Moundridge holds a COC to transact business in the State and the Transaction did not change the Commission's jurisdictional authority to audit or in any way regulate Moundridge.⁵⁷

⁵⁵ Ibid., ¶ 7-9.

⁵⁶ Sentinel.

⁵⁷ Application, ¶ 2, 10.

Staff's Response:

Staff agrees with the Applicants' assessment. Moundridge is a rate-of-return regulated LEC and the Transaction has no impact on the Commission's jurisdictional authority over Moundridge or MTI. Both entities will continue to operate under their current COCs and tariffs; be required to file Annual Reports/Interrogatories with the Commission; and remain subject to statutory KUSF obligations. Moundridge will continue to be subject to local rate and intrastate access rate regulations pursuant to K.S.A. 66-2005 and remain the carrier of last resort pursuant to K.S.A. 66-2009. Moundridge remains obligated to notify the Commission of any changes in its structure or operations and pay Commission assessments.

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

Applicants' Response:

Applicants explain that the Transaction resulted in Mr. Weelborg, J. Sommer Smith, and Troy Smith acquiring 100% of Emmmental's common stock from the Krehbiel Trust. No public shareholders were affected since Emmmental was solely owned by private shareholders prior to the Transaction and remains solely-owned by private shareholders after the Transaction. Moundridge is a wholly-owned subsidiary of Emmmental.⁵⁸

Staff's Response:

Staff agrees with the Applicants that the only shareholders affected were the Krehbiel Trust, Mr. Weelborg, J. Sommer Smith, and Troy Smith. From this Merger Standard perspective, the Transaction is in the public interest as Moundridge's shareholders are the shareholders of a regulated utility that is in an equal, or better, financial position than prior to the Transaction.

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

Applicants' Response:

Applicants state the Transaction did not impact Kansas' energy resources and it has not resulted in any energy-related changes.⁵⁹ The Transaction maintains pre-transaction operations and, therefore, no adverse environmental impacts have arisen as a result of the Transaction.⁶⁰

Staff's Response:

This Merger Standard plays a minor role in evaluating the public interest of a telecommunications merger or acquisition since the industry is not subject to environmental regulation to the degree that natural gas and electric utilities are. This Standard does not provide useful evidence regarding the "public interest" in light of this Transaction; however, Staff believes the Transaction meets this Merger Standard as it has not resulted in any environmental impacts.

⁵⁸ Ibid., ¶ 3, 12.

⁵⁹ Ibid., ¶ 13.

⁶⁰ Ibid., ¶ 10.

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

Applicants' Response:

Applicants state the Transaction resulted in the change of Emmmental's ownership and that Emmmental is a privately-held company; no public shareholders were affected.⁶¹ Applicants further state that the purchase price, less than the net book value of the assets, was a benefit to the Company, its consumers, and the communities it serves. Furthermore, no economic waste by Moundridge has been identified.⁶²

Staff's Response:

Staff suggests that this Merger Standard Staff is not as relevant in determining the public interest of a telecommunications merger or acquisition since the industry is not subject to environmental regulation to the degree that natural gas and electric utilities are. Staff does not have any concerns regarding economic waste as a result of the Transaction since the purchase price was less than the net book value of the assets and the Transaction did not include an acquisition premium.

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

Applicants' Response:

Applicants state the Transaction has no negative effect on public safety since all communications service, including emergency communications, remains the same after the Transaction.⁶³

Staff's Response:

The Transaction involved the purchase of stock and has not changed Moundridge's interaction with the Public Safety Answering Points (PSAPs) within its study area. The Transaction has no direct impact on Moundridge's requirements to meet its Quality of Service Standards and, therefore, Staff has no concerns with regards to Moundridge's continued ability to meet all required public safety standards.

RECOMMENDATION

Staff's review of the Transaction supports that it promotes the public interest. Moundridge, under new ownership, is at least an equally, if not more, financially stable company than it was prior to the Transaction. Moundridge has retained the same management and operational personnel, with no employment dislocations occurring as a result of the Transaction. Moundridge has deployed advanced services within portions of its service area and has committed, through acceptance of A-CAM support, to deploy advanced broadband services within its study area within the next ten years. Staff recommends the Commission approve the Transaction.

⁶¹ Ibid., ¶ 3, 12.

⁶² Ibid., ¶10, 12 - 14.

⁶³ Ibid., ¶ 15.

CERTIFICATE OF SERVICE

17-MRGT-368-ACQ

I, the undersigned, certify that a true and correct copy of the above and foregoing Notice of Filing of Staff's Report and Recommendation was served via electronic service this 19th day of May, 2017, to the following:

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