corporation. No transfer of ownership or control is to take place and the public utility RTU operations of MUSA will continue unchanged after the transfer of assets to MOD.

Further, after completion of the proposed plan of reorganization and liquidation, the books of MUSA will be kept in accordance with the Uniform System of Accounts applicable to RTUs. However, for income tax purposes, the successor RTU, MOD, will use a carryover basis as the tax basis of its assets.

Applicants represent that the sole and exclusive purpose of their plan of reorganization and liquidation is to obtain tax benefits afforded by Internal Revenue (IR) Code § 332 et seq, and the election of Subchapter "S" status. They hope thereby to reduce federal taxes on earnings and generate additional cash flow to improve the quality of their operations.

According to applicants, their plan of reorganization and liquidation must, because of the Tax Reform Act of 1986, occur on or before December 31, 1986 to obtain the tax benefits of Subchapter S status.

In January 1987 the assigned administrative law judge requested additional information from applicants. Subsequently, by letter of September 17, 1987, applicants supplemented their application. Applicants represent that an application for approval of this proposal was also filed with the Federal Communications Commission (FCC). However, FCC authority was received early December 1986; and the merger took place on December 27, 1986.

This application was filed on December 23, 1986, which was too late for Commission action prior to year end 1986. Applicant stated that it believed that the proposed transaction involved no transfer of control subject to the provisions of PU Code § 854. Applicants represent that they filed the application when they became aware that it is the Commission's "custom and practice of approving even corporate reorganizations which have no impact on control."

CORRECTION

THIS DOCUMENT HAS

BEEN REPHOTOGRAPHED

TO ASSURE

LEGIBILITY

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Decision 87 11 046 NOV 25 1987

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of Metrocall of Delaware, Inc., a Delaware corporation; and Metrocall/USA, Inc. (U-2079-C), a Virginia corporation, pursuant to a plan of reorganization and liquidation.	Application 86-12-052 (Filed December 23, 1986)

OPINION

Applicants, Metrocall of Delaware, Inc. (MOD), a Delaware corporation qualified to do business in California, and Metrocall/USA, Inc. (MUSA), a Virginia corporation qualified to do business in California, request authority to dissolve MUSA and to distribute its assets to MOD, pursuant to Public Utilities (PU) Code Section 851 et seq.

Copies of the application were served on 26 entities with which MUSA competes, Exhibit G to the application.

Notice of this application appeared on the Commission's Daily Calendar of December 30, 1986. No protests to the application were received; therefore, a public hearing is not necessary.

MUSA, a certificated radiotelephone utility (RTU) providing one-way paging and two-way mobile radiotelephone service throughout the Los Angeles Area, is wholly owned by MOD, a non-utility corporation.

Applicants propose to dissolve MUSA and to distribute its assets, approximately $833,000 as of September 30, 1986, to MOD. Included in MUSA's assets is a RTU certificate of public convenience and necessity (CPC&N) authorizing MUSA to operate seven base stations throughout California. After the completion of the proposed plan of reorganization, MOD is to be the sole surviving corporation. No transfer of ownership or control is to take place and the public utility RTU operations of MUSA will continue unchanged after the transfer of assets to MOD.

Further, after completion of the proposed plan of reorganization and liquidation, the books of MUSA will be kept in accordance with the Uniform System of Accounts applicable to RTUs. However, for income tax purposes, the successor RTU, MOD, will use a carryover basis as the tax basis of its assets.

Applicants represent that the sole and exclusive purpose of their plan of reorganization and liquidation is to obtain tax benefits afforded by Internal Revenue (IR) Code § 332 et seq, and the election of Subchapter "S" status. They hope thereby to reduce federal taxes on earnings and generate additional cash flow to improve the quality of their operations.

According to applicants, their plan of reorganization and liquidation must, because of the Tax Reform Act of 1986, occur on or before December 31, 1986 to obtain the tax benefits of Subchapter S status.

In January 1987 the assigned administrative law judge requested additional information from applicants. Subsequently, by letter of September 17, 1987, applicants supplemented their application. Applicants represent that an application for approval of this proposal was also filed with the Federal Communications Commission (FCC). However, FCC authority was received early December 1986; and the merger took place on December 27, 1986.

This application was filed on December 23, 1986, which was too late for Commission action prior to year end 1986. Applicant stated that it believed that the proposed transaction involved no transfer of control subject to the provisions of PU Code § 854. Applicants represent that they filed the application when they became aware that it is the Commission's "custom and practice of approving even corporate reorganizations which have no impact on control."

Applicants request that the Commission either authorize the reorganization and liquidation of MUSA to MOD, or issue a finding that PU Code §§ 851 through 854 are not relevant to transactions where there are no changes of ownership or control.

This is another application in which a RTU seeks after-the-fact authority for a transaction which has already taken place. This application was filed only 4 days before the reorganization and liquidation took place and 8 days before the IRS deadline to complete the transaction.

A prerequisite to the grant of a CPC&N is a demonstration by the applicant that it has the requisite fitness to operate lawfully. However, recent RTU activities, such as this eleventh hour application, raise serious concerns that an appreciable number of RTUs are lax in meeting their public utility responsibilities; if the situation does not improve, we may explore the need for additional requirements to ensure compliance with our rules and relevant statutes.

Reluctantly, this application should be approved because it is in the public interest. However, our decision granting authority for reorganization and liquidation shall be effective today, and not be retroactive to December 31, 1986.

Since applicants have not substantiated that the transaction for which it seeks approval is not subject to PU Code §§ 851 through 854 no such finding should be made.

In granting the requisite authority to reorganize and liquidate MUSA, MOD is placed on notice that future violations will not be tolerated and any such violation may subject MOD to fines or penalties under PU Code 2107.

Findings of Fact

1. MOD is a Delaware corporation qualified to do business in California.

2. MUSA is a Virginia corporation qualified to do business in California.

3. No protests to the application were received.

4. MUSA is a RTU certified to provide one-way paging and two-way mobile radiotelephone service throughout the Los Angeles Area.

5. Applicants propose to dissolve MUSA and to distribute its assets to MOD.

6. MOD is to be the sole surviving corporation.

7. No transfer of ownership or control is to take place.

8. The public utility operations of MUSA will continue unchanged.

9. The books of MUSA will be kept in accordance with the Uniform System of Accounts applicable to RTUs.

10. Applicants supplemented this application by letter of September 17, 1987.

11. FCC authority for the proposed transaction was received in early December 1986.

12. The proposed merger took place on December 27, 1986.

13. It can be seen with certainty that there is no possibility that a granting of this application may have a significant effect on the environment.

14. The proposed reorganization and liquidation are not adverse to the public interest.

Conclusions of Law

1. The application should be granted to the extent provided in the following order.

2. Because the RTU operations will continue unchanged, this order should be effective today.

3. MOD should be placed on notice that future violations of Commission rules and procedures will not be tolerated and any such violation may subject MOD to fines or penalties under PU Code § 2107.

Only the amount paid to the State for operative rights may be used in rate fixing. The State may grant any number of rights and may cancel or modify the monopoly feature of these rights at any time.

O R D E R

IT IS ORDERED that:

1. Within 12 months after the effective date of this order, Metrocall of Delaware, Inc. (MOD) is authorized to acquire the assets of Metrocall/USA, Inc. (MUSA) in accordance with the terms set forth in the plan of dissolution attached to the application as Exhibit C.

2. MOD is authorized to file, after the effective date of this order, tariffs applicable to the service authorized containing rates, rules, and charges otherwise applicable to its radiotelephone services. The offerings, rates, and charges shall be the same as the offerings, rates, and charges MUSA presently has on file with the Commission for its public utility one-way and two-way radiotelephone services. This filing shall comply with General Order 96-A. The tariffs shall become effective upon filing.

3. MOD shall notify the Commission's Evaluation and Compliance Division Director in writing of the date service is rendered to the public as authorized herein, within 5 days after service begins.

4. MOD shall record the reorganization of the public utility one-way and two-way radiotelephone system at original cost and shall keep its book and records in accordance with the Uniform System of Accounts for Radiotelephone Utilities prescribed by this Commission.

5. The authority granted in Ordering Paragraph 1 is conditioned upon applicant demonstrating in writing to the Commission's Evaluation and Compliance Division Director that MOD

is qualified to do business in California and has complied with Ordering Paragraph 4.

6. MOD shall file an annual report, in compliance with General Order 104-A, on a calendar-year basis using CPUC Annual Report Form L and prepared according to the instructions included in the form.

7. MOD is placed on notice that future violations of Commission rules and procedures will not be tolerated and any such violation may subject MOD to fines or penalties under Public Utilities Code § 2107.

8. The corporate identification number assigned to Metrocall of Delaware, Inc. is U-2079-C which should be included in the caption of all original filings with this Commission, and in the titles of other pleadings filed in existing cases.

9. The application is granted as set forth above.

This order is effective today.

Dated NOV 25 1987, at San Francisco, California.

STANLEY W. HULETT
President
DONALD VIAL
FREDERICK R. DUDA
G. MITCHELL WILK
JOHN B. OHANIAN
Commissioners

I CERTIFY THAT THIS DECISION WAS APPROVED BY THE ABOVE COMMISSIONERS TODAY.

Victor Weisser

Victor Weisser, Executive Director