

Decision 88 03 06S

MAR 23 1988

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Northwest Network, Inc. (U-5029-C) to transfer and Western Telecommunications, Inc. to acquire the assets and operating authority of Northwest Network, Inc.)
)
) Application 88-01-018
) (Filed January 20, 1988)
)
)

OPINION

By this application, Northwest Network, Inc. (Northwest) (U-5029-C) seeks to transfer its assets and authority to provide interLATA telecommunication service to Western Telecommunications, Inc. (Western) pursuant to an agreement dated September 27, 1987 and attached to the application as Exhibit I.

Northwest is a California corporation with principal offices in Redding, California. Decision (D.) 84-03-058 authorized Northwest to provide intrastate long distance services. Western is a Nevada corporation with principal offices in Denver, Colorado, and presently provides telecommunications and cable television services in Nevada.

The application states that one of Northwest's co-owners has died, and the surviving co-owner has previously taken no role in the management of Northwest and has no desire to commence any such management. The surviving partner wishes to transfer the assets and operating rights to Western and Western wishes to acquire the assets and operating rights of Northwest.

Exhibit I shows a purchase price of \$552,000 payable as follows: \$138,000 at closing with the balance carried by the seller Northwest on a five year 9% per annum note amortized and payable monthly commencing the first of the month following the date of closing.

The unaudited financial statements of Northwest, attached to the application as Exhibit II, show assets of \$322,752,

liabilities of \$238,188 and net worth of \$84,564 as of September 30, 1987. Operational income for 9 months ending September 30, 1987 was \$1,261,493 and net income for the same period was \$112,486.

Exhibit IV attached to the application shows Western's operating income for 9 months ending September 30, 1987 was \$70,927,000 and net income for the same period was \$4,351,000.

With the transfer, Western will continue to operate under the name of Northwest Network, Inc. There will be no change in service or rates for Northwest's subscribers.

The application states that Western has extensive experience in the telecommunications industry.

The application appeared in the Commission's Calendar on January 25, 1988. Pacific Bell filed a protest to the application on February 25, 1987. The protest states Pacific does not object to the transfer of ownership but requests that my change in ownership shall not be construed as grant of intraLATA authority.

Rule 8.1 of the Commission's rules of practice and procedure states,

"A protest is a formal pleading containing:
(a) an objection to the granting in whole or on part, of the authority sought in an application or petition for modification, (b) a request for a public hearing, and (c) an offer of the evidence which the protestant would sponsor or elicit at a public hearing."

In this case, Pacific Bell's protest failed to meet even the most fundamental requirement, that of an objection to the authority sought by the applicant. Northwest's CPCN, the object of this transfer application, authorizes interLATA service only. This fact is or should be known to Pacific Bell.

In D.86-08-057, we authorized and directed the Executive Director to grant non-controversial applications for the transfer of non-dominant telephone companies. We promulgated this policy to

ease regulatory burdens upon applicants and our staff under circumstances that would permit such expedited regulatory review. In this case, Pacific Bell's improper protest has frustrated this policy. We are aware of at least one other case of this nature in which Pacific Bell has made a similar protest.

We are also aware that Pacific Bell has filed similar protests to numerous applications that seek interLATA authority. We recognize that particular applications may be unclear, and require clarification to ensure that the Commission's current intraLATA policies are carried out. We have no intention of restricting or deterring legitimate protests by Pacific Bell or any other party. However, we also recognize that a protest may cause hardship upon a party in the form of additional expenses or delay in granting an otherwise uncontested application.

The due process protections that our process affords can be abused when a well-funded competitor mounts a frivolous legal challenge against a current or potential rival. In this case, we do not draw any conclusions about Pacific Bell's intent in filing this improper protest. However, we do recognize that current participants in the interLATA market are all potential competitors for Pacific Bell if and when we lift our interim ban on intraLATA competition. We will inform our Administrative Law Judges to review the basis for each such protest in the future, and we will take appropriate action if a pattern of attempted intimidation of potential competitors by improper protests develops.

Accordingly, we believe that Pacific Bell is aware of its obligation to act in good faith under our administrative process. The application should be granted. A hearing is not necessary.

Findings of Fact

1. Northwest Network, Inc., a California corporation, is presently authorized to provide intrastate long distance telecommunications services.

2. Western Telecommunications, Inc., a Nevada corporation, presently provides telecommunications and cable television services in Nevada.

3. Northwest seeks authority to transfer and Western seeks authority to acquire the assets and operating authority of Western under the terms of an agreement to purchase dated September 27, 1987 pursuant to Public Utilities Code § 851 et seq.

4. Western will continue to operate the California telecommunications services as Northwest Network, Inc.

5. The transfer of control of Northwest to Western will have no effect on the service now provided by Northwest and is not adverse to the public interest.

Conclusion of Law

The proposed transfer is in the public interest and should be authorized. A public hearing is not necessary.

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.

ORDER

IT IS ORDERED that:

1. Western Telecommunications, Inc. may acquire the property, assets, and authority to provide interLATA telecommunications service as specified in the purchase agreement attached to the application as Exhibit I.

2. Written notice of the consummation of the transaction authorized by this order shall be filed with the Commission Advisory and Compliance Division within 10 days after its completion.

3. The corporate identification number assigned to Western Telecommunications, Inc. is U-5029-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.

4. The change in ownership authorized herein shall not be construed as a grant to Western Telecommunications, Inc. to provide intraLATA telecommunication services.

This order is effective today.

Dated MAR 23 1988, at San Francisco, California.

STANLEY W. HULETT
President

DONALD VIAL
FREDERICK R. DUDA
G. MITCHELL WILK
JOHN B. O'BANIAN
Commissioners

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

Victor Weiss
Victor Weiss, Executive Director

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