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Decision 88 04 003 APR 13 1988

APR 13 1988

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of International Business Machines Corporation to transfer and Contel Tenant Services Inc. to acquire all the outstanding stock of RealCom Communications Corporation (U-5091-C) and of RealCom Communications Corporation to merge into Contel Tenant Services, Inc.

Application 88-03-014  
(Filed March 4, 1988)

OPINION GRANTING TRANSFER

Background

Contel Tenant Services, Inc. (Contel), International Business Machines Corporation (IBM) and RealCom Communications Corporation (U-5091-C) (RealCom), have jointly filed an application to transfer control and operating authority of RealCom from IBM to Contel.

IBM, owner of RealCom and the "seller" herein, a New York Corporation, with its principal place of business at Armonk, New York, is a manufacturer of computers, business machines, computer peripheral products, telecommunications products, and other high technology products and services.

RealCom, the utility-"reseller" herein, is a Delaware corporation with its principal place of business at 8280 Greensboro Drive, Suite 500, McLean, Virginia. RealCom is a small turnkey provider of tenant telecommunications services, including interLATA, intrastate telecommunications services to tenants of five office buildings in San Francisco and Los Angeles Counties of California. RealCom stock is owned (100%) by IBM and its financial statements and operating results are included in IBM's consolidated financial statements.

RealCom was initially granted its operating authority to resell interLATA telecommunications services, provided by others, within the State of California by Decision (D.) 85-07-083, dated July 24, 1985 in Application (A.) 85-04-107.

RealCom subsequently was acquired by IBM and became a wholly owned subsidiary of IBM through two further implementing orders, D.85-10-055 issued October 17, 1985 and D.85-12-100 issued December 20, 1985.

Contel, the "buyer" herein is a Delaware corporation with its principal place of business at 12935 North Forty Drive, Suite 105, St. Louis, Missouri. Contel's corporate parent is Contel Corporation, which owns and operates local exchange telephone companies (LECs) throughout the United States, including Continental Telephone Company of California. Contel is an experienced operator of tenant telecommunications services in various states, but not California, at the present time. The authorization of the purchase requested herein would permit Contel to expand its tenant telecommunications services to California.

Facts Advanced in Support of Transfer

Contel the buyer and successor in this transfer, if approved, is an experienced provider of tenant telecommunications services, and will pay an undisclosed cash amount for all outstanding (100%) stock in RealCom now wholly owned and held by IBM. Contel proposes to continue the provision of tenant telecommunications services at the locations presently served by RealCom and does not intend to extend or commence tenant services in areas with LEC and intraLATA telecommunications services provided by Continental Telephone Company of California.

Contel plans to merge RealCom into Contel immediately after the transfer is authorized.

Currently, the operations of RealCom represent a very small part of the overall business of IBM, whose gross income exceeded \$51 billion in 1986. Therefore, it was not possible to

extract its separate financial statistics from IBM's consolidated financial reports. Upon inquiry of the assigned ALJ, Counsel for Contel, by letter dated March 30, 1988, supplied the following 1987 operational data for RealCom's California intrastate interLATA telecommunications services:

Gross Revenue	\$300,207
Investment in Equipment	Less than \$100,000
No. of \$1 par value shares of common stock outstanding. <sup>1</sup>	100

The application states that the parties to this application anticipate closing the proposed transaction and transfer by April 1, 1988, and, therefore, would appreciate prompt action on this matter by the Commission. The parties further request that this application be further expedited by use of the procedure adopted in D.86-08-057 which authorized the Commission's Executive Director to grant non-controversial transfers of certificates of public convenience and necessity for non-dominant interexchange carriers of telecommunications services in California.

The application contained an environmental assessment stating that this transaction involves only a change in the ownership of RealCom, and, as such, will not have a significant impact on the environment.

In support of this application, the parties have also submitted the following documents as exhibits appended to the application:

- o Articles of Incorporation of Contel Tenant Services, Inc. (a Delaware corporation).

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<sup>1</sup> This stock is wholly owned by IBM and has not been publicly traded.

- o Contel Corporation's (parent of Contel) consolidated financial statements for quarter ended September 30, 1987.
- o International Business Machines, Corporation - Annual Report for 1986.
- o International Business Machines - Certificate of Incorporation.
- o RealCom - Articles of Incorporation.
- o Stock Purchase Agreement for the sale of RealCom to Contel Tenant Services, Inc. and Contel Corporation.

Discussion

Contel has confirmed its commitment to carry on the business of RealCom. Contel has the financial strength and technical ability to purchase RealCom and effectively provide safe, reliable and continuous tenant telecommunications service to its existing and future customers. With this transfer, Contel will continue to provide the same service, with no change in rates, for RealCom's subscribers.

Contel is a Delaware corporation and, as the buyer of RealCom, has not shown that it is a corporation in good standing qualified to do business in California.

Contel and Contel Corporation (parent) should also be aware that the acquisition price paid for RealCom provides no basis for a finding of value of the properties or rights being acquired.

In authorizing this transfer, we will require Contel to assume the telecommunications reseller obligations of the seller, including but not limited to the preparation and filing of tariff schedules, maintenance of necessary business records and payment of the fee set forth in PU Code §§ 401 et seq.

In addition, since a name change is contemplated, from RealCom to Contel, we will require Contel to refile, the existing tariff schedules of RealCom under its corporate name, with the name

tariff schedules of RealCom under its corporate name, with the name of the appropriate corporate representative and the address of the corporation set forth therein before this Commission within 30 days after the transfer authorized herein occurs. Contel should continue to use the current corporate identification number (U-5091-C) in the caption of all original filings with the Commission and in titles of other pleadings filed in existing cases.

This application appeared on the Commission's Calendar of March 10, 1988, and no timely protests/or requests for hearings were received. The application should be granted. A hearing is not necessary.

Findings of Fact

1. RealCom Communications Corporation (RealCom) is a Delaware corporation authorized to do business in California and currently provides intrastate long distance (interLATA) telecommunications service to the tenants of a number of office buildings in San Francisco and Los Angeles Counties.

2. Contel Tenant Services, Inc. (Contel), International Business Machines Corporation (IBM) and RealCom have jointly applied for authority to transfer ownership and control of RealCom from IBM to Contel.

3. Contel, is a Delaware corporation, and has not shown that it is a corporation in good standing qualified to do business in California.

4. Notice of this filing appeared on the Commission's Daily Calendar of March 10, 1988.

5. No timely protests and/or requests for hearings were received.

6. Contel seeks authority to purchase all of the outstanding shares of common stock and acquire the assets and the operating authority of RealCom, under the terms of a "Stock Purchase

Agreement" dated February 5, 1988, pursuant to Public Utilities Code § 851 et seq.

7. Contel will continue to operate the facilities and provide the California telecommunications services of RealCom at present rates and conditions of service, under its name and ownership.

8. It will be necessary for Contel to refile the existing tariff schedules of RealCom under its corporate name because of the change in corporate ownership authorized herein.

9. No authority has been requested to expand the offering of telecommunications services now provided by RealCom to tenants or customers outside the Counties of San Francisco and Los Angeles, under the ownership of Contel.

10. Contel will continue to use corporate identification number U-5091-C in all formal matters filed before this Commission.

11. A public hearing is not necessary.

12. The transfer of a reseller's certificate, such as this, may be approved by our Executive Director as authorized by D.86-08-057 dated August 18, 1986.

13. This decision should be effective today to allow orderly transfer of ownership without further delay.

Conclusions of Law

1. The application should be granted as provided for in the following order.

2. This transfer authorization is not a finding of the value of the rights and properties to be transferred. Only the amount paid to the state for operative rights may be used for rate fixing. The state may grant any number of operative rights and may cancel or modify the monopoly feature of these rights at any time.

3. No authority has been requested for expansion of the offering of RealCom telecommunications services to tenants or customers outside the Counties of San Francisco and Los Angeles under Contel's ownership and none should be granted herein.

O R D E R

IT IS ORDERED that:

1. Contel Tenant Services, Inc. (Contel) is authorized to acquire control of RealCom Communications Corporation (RealCom) in accordance with the terms set forth in the application.

2. Contel shall file written notice of the consummation of this acquisition of control of RealCom with the Director of the Commission Advisory and Compliance Division within 10 days after its completion and include in that compliance filing proof that it is authorized to do business in California.

3. RealCom's tariff schedules for interLATA telecommunications services on file with this Commission, to continue to be effective, shall be refiled within 30 days of the date of transfer since a change in the utility's name is contemplated under Contel's ownership.

4. Contel is authorized to deviate on an ongoing basis from the requirements of GO 96-A in the following manner: (a) to deviate from the pagination requirements set forth in paragraph II.C(1)(b) which requires consecutive sheet numbering and prohibits the reuse of sheet numbers, and (b) to deviate from the requirements set forth in paragraph II.C(4) that "a separate sheet or series of sheets should be used for each rule." Tariff filings incorporating these deviations shall be subject to the approval of the Commission Advisory and Compliance Division's Telecommunications Branch. Tariff filings shall reflect the 4% interim surcharge noted in Ordering Paragraph 5 below.

5. Contel is subject to the 4% surcharge applicable to the gross revenues of intrastate interLATA services outlined in D.87-07-090 in Order Instituting Investigation 83-11-05 dated July 29, 1987, and D.87-10-088 dated October 28, 1987.

6. RealCom's corporate identification number U-5091-C shall continue to be included in the caption of all original filings with


the Commission and in the titles of other pleadings filed in existing cases by Contel under its ownership.

7. The change in ownership authorized herein shall not be construed as a grant to Contel Tenant Services, Inc. to expand existing telecommunications services to tenants of buildings located outside San Francisco or Los Angeles Counties, or to provide intraLATA telecommunications services.

8. The authority granted in Ordering Paragraph 1 shall expire unless it is exercised before July 15, 1988.

This order is effective today.

Dated APR 13 1988, at San Francisco, California.



VICTOR WEISSER

Executive Director

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



Victor Weisser, Executive Director

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