

Decision 88 04 006 APR 13 1988

ORIGINAL

APR 13 1988

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of ROBERT F. BENTON to)
transfer, and CHICO TELECOM, LTD.,)
(U-5081-C) and AA/SIERRA TEL-COMM)
(U-5071-C) to acquire control of)
EXECULINE OF SACRAMENTO, INC.)
(U-5008-C).)

Application 88-01-024
(Filed January 20, 1988)

OPINION

This is an application in which Chico Telecom, Ltd. (Chico) and AA/Sierra Tel-Comm (AA/Sierra) seek authority to acquire control and operating authority of Execuline of Sacramento, Inc. (Execuline) by purchasing all of Chico's outstanding shares of common stock from Robert F. Benton (Benton).

Notice of filing of the application appeared in the Commission's Daily Calendar on January 26, 1988. On February 24, 1988, Pacific Bell (PacBell) filed a protest to the application. On March 2, 1988, the Commission received a letter from PacBell which withdrew the protest on the basis that it had received assurances from the applicants that each company would refrain from holding out to the public the provision of intraLATA service.

The Commission makes the following findings and conclusions.

Findings of Fact

1. A public hearing is not necessary in this matter.
2. Execuline (U-5008-C) is a California corporation. It received authority to provide intrastate long distance services pursuant to Decision (D.) 84-02-012, dated February 1, 1984. Benton is the sole shareholder of all outstanding Execuline stock.
3. Chico (U-5081-C) is a California limited partnership. It received authority to provide intrastate long distance services pursuant to D.85-04-007, dated April 3, 1985.

4. AA/Sierra (U-5071-C) is a partnership whose principal place of business is in Newcastle, California. AA/Sierra has three partners: Mr. Lynn F. Seeley, Mr. Michael L. Spink, and Mr. Robert Spink.

5. On November 30, 1987, Chico, Benton, and Execuline entered into an agreement in which Benton agreed to sell all of the outstanding shares of Execuline to Chico for \$687,680. The purchase price was to be evidenced by a promissory note to be secured by the transferred shares. The parties purport to have carried out this transaction. The agreement also provided for a subsequent transfer by Chico of 50% of the Execuline stock to AA/Sierra if the transaction did not diminish Benton's security. A copy of the agreement is attached to the application as part of Exhibit 1.

6. On January 8, 1988, Chico, Benton, Execuline, and AA/Sierra entered into an addendum to the November 30, 1987 agreement in which Chico agreed to sell 50% of the Execuline shares to AA/Sierra for one-half of the stated purchase price. The parties purport to have carried out the terms of the addendum. A copy of the addendum is attached to the application as part of Exhibit 1.

7. Chico had assets, less depreciation, of \$268,329 on May 31, 1987. Its operating income for the five months ending May 31, 1987 was \$63,034.

8. AA/Sierra had assets, less depreciation, of \$194,191 on December 31, 1986. Its operating income for the year ending December 31, 1986 was \$218,596.

9. The proposed acquisition of control will not change the general nature of Execuline's operations.

10. Chico and AA/Sierra have the ability, including financial ability, to acquire control and continue the operations of Execuline.

11. If the parties ratify or reexecute the agreement dated November 30, 1987 and the addendum dated January 8, 1988, the proposed acquisition of control of Execuline by Chico and AA/Sierra would not be adverse to the public interest.

12. Execuline, Chico, and AA/Sierra are telephone corporations which are nondominant telecommunications carriers.

13. Ordering Paragraph 1 of D.85-01-008 in Application 85-03-092 dated January 3, 1985, provides that:

"1. On and after the effective date of this order, public utility resellers of telecommunications services are exempted from the requirements of PU Code §§ 816-830."

14. Ordering Paragraph 7 of D.87-04-017, dated April 8, 1987, provides in part that:

"...in noncontroversial applications for authority to transfer assets or control under PU Code §§ 851-855, such authority may be granted by the Commission's Executive Director as specified in D.86-08-057."

15. Since the ensuing order primarily affects the parties to this application, it should be made effective on the date of issuance.

Conclusions of Law

1. The requested authority should not be granted nunc pro tunc. The parties should be required to ratify or reexecute the agreement of November 30, 1987 and the addendum dated January 8, 1988.

2. If the parties ratify or reexecute the agreement and addendum, the application should be granted.

3. The issuance of a long-term promissory note contemplated by the application is exempt from the requirements of PU Code §§ 816-830.

ORDER

IT IS ORDERED that:

1. On or after the effective date of this order:
 - a. Chico Telecom, Ltd. (Chico), Execuline of Sacramento, Inc. (Execuline), and Robert F. Benton (Benton) may ratify or reexecute the agreement executed by them on November 30, 1987. A copy of the document ratifying or reexecuting the transaction shall be forwarded to the Commission Advisory and Compliance Division (CACD) within 10 days after execution.
 - b. Chico, Benton, Execuline, and AA/Sierra Tel-Comm (AA/Sierra) may ratify or reexecute the addendum executed by them on January 8, 1988. A copy of the document ratifying or reexecuting the transaction shall be forwarded to the CACD within 10 days after execution.

2. If the parties comply with the provisions of Ordering Paragraph 1, Chico and AA/Sierra are authorized to acquire control of Execuline by the purchase of all of Execuline's outstanding stock from Benton in accordance with the terms set forth in Exhibit 1 attached to the application. Execuline shall file written notice of the acquisition of control with the CACD within 15 days after it has occurred.

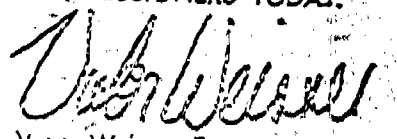
3. The authority granted in Ordering Paragraph 2 shall expire unless it is exercised before December 31, 1988.

This order is effective today.

Dated APR 13 1988, at San Francisco, California.


VICTOR WEISSNER
Executive Director

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


Victor Weissner, Executive Director