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Decision 88 06 032 JUN 17 1988

JUN 20 1988

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application for Allstate)	
Communications, Inc. (U-5020-C),)	
Advanced Communications Software,)	
Inc. (U-5079-C), and Amptelco, Inc.)	Application 87-07-042
(U-5022-C) to transfer and FiberNet)	(Filed July 28, 1987)
Corporation to acquire control and)	
operating authority.)	

Thomas J. MacBride, Jr., Attorney at Law, for
FiberNet Corporation, applicant.
John H. Booker, Attorney at Law, for the State
of California, Department of Corporations,
protestant.
David Discher, Attorney at Law, for Pacific Bell,
interested party.

O P I N I O N

This is an application in which FiberNet Corporation (FiberNet) seeks authority to acquire control of Allstate Communications, Inc. (Allstate), Advanced Communications Software, Inc. (ACSI), and Amptelco, Inc. (Amptelco).

A duly noticed public hearing was held in this matter before Administrative Law Judge (ALJ) Donald B. Jarvis in San Francisco on May 11, 1988. The proposed decision of ALJ Jarvis was filed on May 31, 1988. All parties to the proceeding have stipulated that the Commission may enter its order in less than 30 days (Public Utilities Code § 311(d)).

Pacific Bell filed an appearance at the hearing but indicated it did not intend to produce any evidence. The attorney for the California Department of Corporations, which had protested the granting of the application, stated that "on May 5th the Department of Corporations filed a civil lawsuit against Fibernet alleging violations of the qualification provisions of the

California Corporate Securities law and a stipulation without admitting or denying any of the allegations of the complaint has been entered into between Fibernet and the Department of Corporations, People of the State of California, stipulating to an injunction against future violations of the California Corporate Securities law and to certain costs and penalties and, based on that, the Department believes that the interests of the people under the California Corporate Securities law is adequately taken care of and yesterday filed withdrawal of its protest in this matter."

In the light of the withdrawal of the protest and that none of the parties desired to present additional evidence, the presiding ALJ submitted the matter on the record.

The Commission makes the following findings and conclusion.

Findings of Fact

1. Allstate is a California corporation. It received a certificate of public convenience and necessity to provide interLATA intrastate telecommunication services in California by Decision (D.) 84-03-058 (March 21, 1984) in Application (A.) 84-03-54.

2. ACSI is a California corporation. It received a certificate of public convenience and necessity to provide intrastate interLATA telecommunication services by D.85-03-059 (March 20, 1985) in A.84-12-044.

3. Amptelco is a California corporation. It received a certificate of public convenience and necessity to provide intrastate interLATA telecommunication services by D.84-05-008 (May 2, 1984) in A.84-02-17.

4. FiberNet is a Utah corporation which is qualified to do business in California. It has also applied to qualify to do business in New Jersey and Oregon. As of June 25, 1987, FiberNet

had assets of \$2,254,692 of which \$1,951,000 were classified as investments.

5. In February 1987, Allstate entered into a purported transaction with FiberNet in which Allstate sold and transferred all of its 1,728,581 outstanding shares of common stock to FiberNet for one newly issued restricted share of FiberNet for each 4.2 shares of Allstate.

6. In February 1987, ACSI entered into a purported transaction with FiberNet in which ACSI sold and transferred all of its 1,227,578.91 outstanding shares of common stock and outstanding options for 1,174,462 shares to FiberNet for 1.710684 newly issued restricted shares of FiberNet for each share of ACSI stock and one newly issued restricted share of FiberNet for every 100 option warrants of ACSI.

7. In May 1987, ACSI, which owned all of the outstanding 100,000 shares of Amptelco, entered into a purported agreement with FiberNet in which ACSI transferred the 100,000 shares to FiberNet to discharge a debt of \$250,000 which ACSI owed to FiberNet.

8. Amptelco, ACSI, and Allstate have had growing subscriber bases since receiving certification from this Commission. The economics attendant to operating as smaller interexchange carriers have placed financial strains on their operations. The consolidation with FiberNet provides an opportunity to ameliorate this situation. Granting of the application will be in the best interests of the entities involved and will benefit their subscribers.

9. The proposed acquisition and control of Allstate, ACSI, and Amptelco by FiberNet is not adverse to the public interest.

10. Since the order only affects the parties to it, it should be made effective on the date of issuance.

Conclusion of Law

The application should be granted, but Allstate, ACSI, and Amptelco should be required to ratify or reexecute the February

and May 1987 transactions entered into with FiberNet, which purported to transfer the various shares of capital stock to FiberNet.

ORDER

IT IS ORDERED that:

1. FiberNet Corporation (FiberNet) is authorized to acquire control of Allstate Communications, Inc. (Allstate), Advanced Communications Software, Inc. (ACSI), and Amptelco, Inc. (Amptelco) in accordance with the terms set forth in the application.
2. Allstate, ACSI, and Amptelco shall ratify or reexecute the transactions for the sale and transfer of their capital stock to FiberNet which occurred prior to the effective date of this order in February and May 1987, for those transaction to be valid.
3. FiberNet shall file written notice of the acquisitions of control with the Telecommunications Branch within 15 days after the transactions authorized herein have been validly consummated.
4. The authority granted in Ordering Paragraph 1 shall expire unless it is exercised before December 31, 1988.

This order is effective today.

Dated JUN 17 1988, 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 Weisskopf
Victor Weisskopf, Executive Director

Decision _____

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Corporations, People of the State of California, stipulating to an injunction against future violations of the California Corporate Securities law and to certain costs and penalties and, based on that, the Department believes that the interests of the people under the California Corporate Securities law is adequately taken care of and yesterday filed withdrawal of its protest in this matter."

In the light of the withdrawal of the protest and that none of the parties desired to present additional evidence, the presiding ALJ submitted the matter on the record.

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Dated _____, at San Francisco, California.