

Decision 88 10 042 OCT 21 1988

**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of )	
Call America for Authorization of )	Application 88-06-038
Acquisition and Control of SLO )	(Filed June 24, 1988) Mailed
Telecom Ltd. (U-5055-C). )	

OCT 24 1988

OPINION

This is an application in which Call America (applicant) seeks authority to acquire control of SLO Telecom Ltd. (SLO).

Notice of the filing of the application appeared in the Commission's Daily Calendar on June 28, 1988. There are no protests.

The Commission makes the following findings and conclusion.

Findings of Fact

1. A public hearing is not necessary in this matter.
2. Applicant is a California joint venture, which consists of Call America Business Communications Corporation (CABCC), a California corporation, and F. Scott Hindes, a California resident. CABCC is applicant's managing agent.
3. On or about August 10, 1984, SLO Telecom Ltd. filed an Application and Request for Interim Authority to provide interLATA telecommunications services in California. That application (A.84-08-048) identified the applicant therein as "SLO Telecom Ltd....a California limited partnership, the general partner of which is COM-VEST Telecommunications Inc. (COM-VEST)." Applicant has ascertained that these statements in A.84-08-048 were incorrect. The correct legal name of the applicant in A.84-08-048 was "San Luis Obispo Telecom, Ltd.," a California joint venture. COM-VEST was not a partner in the limited partnership. Also, the correct legal name of "SLO Telecom Ltd." was "SLO Telecom, Ltd."

(i.e., with a comma); the general partner in SLO Telecom, Ltd., was SLO Telecom, Inc., a California corporation, which owned 20% of the limited partnership. Applicant alleges, that the mistake regarding the correct legal identity of the applicant in A.84-08-048 was inadvertent and the result of confusion between the name of the joint venture and the name of the limited partnership.

4. By mid-1985, San Luis Obispo Telecom, Ltd., faced serious financial difficulties. To prevent a collapse of the venture and the termination of service to its customers, on or about July 1, 1985, Hinds and Jerry A. Linthicum, a California resident, purported to purchase the entire interest of the limited partnership, SLO Telecom, Ltd., in the joint venture. Hinds already owned 25% of the joint venture, and Linthicum, already owned 5% of it. Neither Hinds nor Linthicum was aware of the need for, and consequently did not apply for, authority from this Commission for such acquisition. Applicant acknowledges that acquisition and control of the public utility by Hinds and Linthicum occurred without the prior authority of this Commission. It alleges that no party to the transaction was aware of the need for or significance of such authorization from this Commission and that if the parties had realized the need to apply for such authority, an application would have been filed. Immediately after the transaction, Hinds invested substantial funds in the utility to maintain its solvency and prevent its collapse.

5. After the July 1, 1985 transaction, SLO Telecom, Ltd. ceased operating as that entity, although it was not formally dissolved. Hinds and Linthicum acting as a joint venture pursuant to an oral agreement continued operating the utility and retained the name San Luis Obispo Telecom, Ltd. This continued until approximately May 5, 1986.

6. On or about May 5, 1986, CABCC was incorporated as a California corporation. It replaced Linthicum in the joint venture with Hinds to form a new joint venture, Call America, the

applicant herein. Applicant acknowledges that this transaction occurred without the prior approval of this Commission. The purpose of this transaction was to provide for the proper capitalization of the utility. No party to the transaction was aware of the need for approval from this Commission. If any party to the transaction had understood the need for Commission approval, the proper application would have been filed.

7. On or about March 23, 1987, the General Manager of CABCC advised the Commission's Advisory and Compliance Division staff (CACD, then known as Evaluation and Compliance Division) that San Luis Obispo Telecom Ltd. had converted from a partnership to a corporation, CABCC, on May 5, 1986. CABCC assumed use of the CIS number U-5055-C following this notice to the Commission. CABCC was not advised by CACD that it was required to file any other document with the Commission.

8. A.84-08-048 stated that the assets of SLO Telecom Ltd., as of June 30, 1984, were \$283,940. The agreed purchase price by which Hindes and Linthicum purported to acquire the interest of SLO Telecom Ltd. in the joint venture San Luis Obispo Telecom Ltd. was "60% of 3 x monthly gross revenues plus (+) book value of San Luis Telecom Ltd." or approximately \$71,000. No cash changed hands upon CABCC's admission into the joint venture with Hindes.

9. As of June 15, 1988, applicant had total assets of \$854,492.

10. Applicant has the ability including financial ability to acquire control of SLO and continue its operations.

11. The proposed acquisition and control of SLO by applicant is not adverse to the public interest.

12. Applicant proposes to adopt the rates, rules, and regulations presently governing the operations of SLO.

13. Applicant and SLO are telephone corporations which are nondominant telecommunications carriers.

14. This is a noncontroversial application.

15. Ordering Paragraph 1 of D.85-01-008 in A.84-03-92 dated January 3, 1985, provides that:

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

16. 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."

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

Conclusion of Law

The application should be granted, but the parties should be required to ratify or reexecute the transactions entered into on or about July 1, 1985 and May 5, 1986.

ORDER

IT IS ORDERED that:

1. Call America (applicant) is authorized to acquire Control of SLO Telecom Ltd. (SLO) in accordance with the terms set forth in the application.
2. The parties shall ratify or reexecute the transactions which occurred on or about July 1, 1985 and May 5, 1986 for those transactions to be valid.
3. Applicant shall file written notice of the acquisition of Control with the Telecommunications Branch within 15 days after the transactions authorized herein have been validly consummated.

4. The corporate identification number U-5055-C assigned to the utility shall be retained by applicant.

5. The authority granted in Ordering Paragraph 1 shall expire unless it is exercised by October 31, 1989.

This order is effective today.

Dated OCT 21 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

AS