

Decision 89 04 037 APR 12 1989

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Mailed

In the Matter of the Application of )  
EXTELCOM, INC. dba EXPRESS TEL )  
and FUTURTEK COMMUNICATIONS, INC. )  
AND AMERICAN COMMUNICATION )  
ENTERPRISES, INC. for Approval of )  
the Acquisition of the California )  
Customer Base of FUTURTEK )  
COMMUNICATIONS, INC. AND AMERICAN )  
COMMUNICATION ENTERPRISES, INC. by )  
EXTELCOM, INC. dba EXPRESS TEL. )

APR 12 1989

Application 89-02-045  
(Filed February 22, 1989)

OPINION

Futurtek Communications, Inc. and American Communication Enterprises, Inc. (both collectively referred to as Futurtek) and Extelcom, Inc. dba Express Tel (Express Tel) (all three collectively referred to as Applicants) seek approval for the acquisition of the California customer base and certain other assets of Futurtek by Express Tel (the Transaction). Applicants allege:

1. Extelcom, Inc. dba Express Tel is a Utah corporation qualified to do business in the State of California. It maintains its principal offices in San Diego, California. Its CIS is U-5047-C. It is a wholly-owned subsidiary of Transtel Communications, Inc., a Delaware corporation (Transtel). Transtel's principal place of business is in Salt Lake City, Utah.
2. Futurtek Communications, Inc. is a British Columbia corporation qualified to do business in the State of California and is the sole shareholder of American Communication Enterprises, Inc., a Nevada corporation (ACE) with principal offices in San Mateo, California. ACE operates as a reseller of telephone services in California under a certificate of public convenience and necessity issued in

Decision (D.) 86-06-049. Its CIS is U-5113-C. Both Futurtek Communications and ACE operate under the d.b.a. "Futurtek." Futurtek filed a voluntary petition (Chapter 11) under 11 U.S.C. § 101, et seq, with the Bankruptcy Court for the Northern District of California, on December 5, 1988. Futurtek is currently under the jurisdiction of the Bankruptcy Court.

3. The Transaction was approved by the Bankruptcy Court on December 22, 1988, subject to the approval of this Commission, with Transtel as purchaser under a Purchase Contract between it and Futurtek. Transtel will assign its rights to the Purchase Contract to Express Tel, its wholly-owned subsidiary.
4. Express Tel is presently operating as a reseller of telephone services offered by communications common carriers in San Diego and Los Angeles. Futurtek is presently operating as a reseller of telephone services offered by communications common carriers in San Diego, Los Angeles, Sacramento, and the greater San Francisco area as a "debtor-in-possession" as provided in the Bankruptcy Code.
5. Applicants seek the approval of this Commission for the acquisition by Express Tel of the California customer base and certain other assets of Futurtek as detailed in the Purchase Contract. The acquisition would be accomplished by notification of Futurtek customers in California that resale of interlata long distance telephone service previously furnished by Futurtek would be thereafter provided by Express Tel. The California customers of Futurtek would then have the option of maintaining their service with Express Tel or selecting another interlata long distance telephone carrier. Those customers electing to maintain their service with Express Tel would be given Express Tel access codes or converted to Express Tel for equal access for their interlata long distance telephone service.

There will be no interruption in service and no inconvenience to the present Futurtek customers.

6. As a result of the threat of imminent cutoff of telephone service to Futurtek provided by underlying carriers, Express Tel has agreed to service the customer base of Futurtek pending Commission approval pursuant to the terms and conditions of the Purchase Contract and a Management Agreement. In the event of a cutoff of service, the customer base of Futurtek would have little value, if any. The creditors of Futurtek would not realize any recovery for claims that they hold which might have otherwise been paid from the proceeds of a sale of the customer base if continuous service had been provided. In such event the customer would experience a disruption of service.
7. Transtel and Express Tel desire to enter into the proposed transaction in order to (a) enhance the profitability of their California operation; (b) enhance the quality of service provided to all of Express Tel's customers in California by enabling it to operate on a more cost-effective basis; and (c) provide continuous service to the present California customers of Futurtek without interruption.
8. Futurtek desires that the proposed transaction be approved for the reasons that (1) it would provide for continuous service to the customer base; (2) it provides creditors with a source of funds to pay, in whole or in part, their claims against Futurtek, and (3) it avoids having the customer base become a relatively valueless asset.
9. The terms and conditions for the acquisition of the customer base of Futurtek are set forth in the Purchase Contract.

10. Neither Transtel nor Express Tel will assume any liability or responsibility for the payment of any obligation, debt or liability of Futurtek incurred in connection with its business operation prior to December 28, 1988. Pursuant to the Order of the Bankruptcy Court, Express Tel will acquire the customer base free and clear of all claims, liens and encumbrances of Concord Growth Corporation, Working Capital Company and ComSystems, Inc.

In order to prevent the interruption of service and consequent inconvenience to the present customers of Futurtek and to provide protection to the creditors of Futurtek, the application should be granted. There are no protests. A public hearing is not necessary.

Findings of Fact

1. ACE operates as a reseller of telephone services in California under a CPCN issued in D.86-06-049. Its CIS is U-5113-C.
2. ACE is currently in bankruptcy and in the course of those proceedings has entered into an agreement with Transtel under which it will sell its California customer base to Transtel. The agreement will be assigned to Express Tel.
3. Prompt approval of this sale will prevent interruption in service and inconvenience to the present customers of ACE.
4. This authorization is not a finding of the value of the rights and properties to be transferred.

Conclusion of Law

The proposed transfer is in the public interest and should be authorized.

ORDER

IT IS ORDERED that:

1. On or before December 31, 1989, American Communication Enterprises, Inc. may sell and transfer its California customer base to Extelcom, Inc., as the assignee of Transtel Communications, Inc. pursuant to a purchase contract substantially in the form of Exhibit B to the application.

2. Upon completion of the sale and transfer, the certificate of public convenience and necessity granted to American Communication Enterprises, Inc. in D.86-06-049 is revoked and its CIS U-5113-C is canceled.

3. Within 60 days of the effective date of this order, Extelcom, Inc. shall comply with PU Code § 708, Employee Identification Cards, and notify, in writing, the Chief of the Telecommunications Branch of the Commission Advisory and Compliance Division of compliance.

This order is effective today.

Dated APR 12 1989, at San Francisco, California.

G. MITCHELL WILK  
President  
STANLEY W. HULETT  
JOHN B. OHANIAN  
PATRICIA M. ECKERT  
Commissioners

Commissioner Frederick R. Duda  
being necessarily absent, did  
not participate.

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

  
Victor Weissert, Executive Director