

Decision 89 06 024 JUN 7 1989

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Steven D. Diebert, )  
Trustee for CTI Investments, Ltd., )  
to sell and transfer and TMC )  
Communications, Inc. (U-5147-C) )  
to acquire certain assets of CTI )  
Investments, Inc. )

**ORIGINAL**  
Application 89-02-038  
(Filed February 17, 1989)

OPINION

This is an application in which Steven D. Diebert, Trustee (Trustee) for CTI Investments, Ltd. (CTI), seeks authority to sell and transfer CTI's assets to TMC Communications, Inc. (TMC).

Notice of the filing of the application appeared in the Commission's Daily Calendar on February 23, 1989. There are no protests.

The Commission makes the following findings and conclusions.

Findings of Fact

1. A public hearing is not necessary in this matter.
2. CTI is a defunct telephone corporation which operated as an interexchange telecommunications carrier. It filed for bankruptcy in 1986 in the U.S. Bankruptcy Court, Eastern District of California (No. 186-01952-B-11). Trustee was appointed as such for CTI by the court on March 18, 1988.
3. CTI was one of several partners in Golden Empire Communications, Ltd. which dissolved on May 29, 1986 and transferred all assets to CTI. Additionally, there were three other limited partnership companies (all in bankruptcy) from which CTI acquired assets. It is not clear how these transfers were effected, but by 1988 CTI had ~~de facto~~ control of the telephone lines and customer bases of:

Creative Telecommunications, Inc.  
(U-5007-C) U.S. Bankruptcy Court,  
Eastern District of California  
Case No. 185-00905-A);

Comvest Long Lines of California  
(U-5065-C) U.S. Bankruptcy Court,  
Eastern District of California  
Case No. 185-01024-A); and

Comvest Telecommunications, Inc.  
(U-5006-C) U.S. Bankruptcy Court,  
Eastern District of California  
Case No. 185-00132-A).

The Bankruptcy Court issued an order on December 12, 1988 declaring that all interests of the three companies named above in Pacific Bell Telephone leased lines and the customer bases served by those lines be transferred to CTI.

4. TMC (U-5147-C) is a California corporation. It is authorized to provide intrastate telecommunications service pursuant to Decision (D.) 88-03-056 in Application (A.) 88-01-009. TMC operates as an interexchange carrier in the Fresno area. TMC Communications, L.P. (TMC LP) is a limited partnership of which TMC is the general and controlling partner. In A.88-08-016, now pending, TMC is seeking Commission approval of the reorganization of several existing limited and general partnerships into one single limited partnership.

5. The final liquidation of CTI was accomplished by a publicly noticed Bankruptcy Court sale of CTI's remaining assets to TMC LP on December 5, 1988 for \$110,000. These assets include customer premise dialing equipment, billing information, and data base information.

6. TMC proposes to serve the customer base to be acquired in its present service area.

7. TMC and related companies had assets, less depreciation, of \$7,559,000 as of May 31, 1988. They had operating revenues of \$22,698,000 for the year ending May 31, 1988.

8. TMC has the ability, including financial ability, to acquire the assets of CTI.

9. The proposed acquisition of the assets of CTI by TMC is not adverse to the public interest.

10. Sections 851 and 853 of the Public Utilities Code (PU Code) provide in part as follows:

"851. No public utility...shall, sell, lease, assign, mortgage, or otherwise dispose of or encumber the whole or any part of its...line, plant, system, or other property necessary or useful in the performance of its duties to the public, or any franchise or permit or any right thereunder, nor by any means whatsoever, directly or indirectly, merge or consolidate its...line, plant, system, or other property, or franchises or permits or any part thereof, with any other public utility, without first having secured from the commission an order authorizing it so to do. Every such sale, lease, assignment, mortgage, disposition, encumbrance, merger, or consolidation made other than in accordance with the order of the commission authorizing it is void. . . ."

"853. . . . (b) The Commission may from time to time by order or rule, and subject to such terms and conditions as may be prescribed therein, exempt any public utility or class of public utility from this article if it finds that the application thereof with respect to the public utility or class of public utility is not necessary in the public interest. The commission may establish rules or impose requirements deemed necessary to protect the interest of the customers or subscribers of the public utility or class of public utility."

11. Under the peculiar facts in this proceeding, it is reasonable to exempt the transactions in which CTI acquired the telephone lines and customer bases of Creative Telecommunications, Inc., Comvest Long Lines of California, and Comvest Telecommunications, Inc. from the provisions of PU Code § 851 and approve their acquisition by CTI.

12. CTI and TMC are telephone corporations which are nondominant telecommunications carriers.

13. This is a noncontroversial application.

14. 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."

15. 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."

16. 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 acquisition by CTI of the telephone lines and customer bases of Creative Telecommunications, Inc., Comvest Long Lines of California, and Comvest Telecommunications, Inc. should be exempted from the provisions of PU code § 851.

2. The application should be granted.

This authorization is not a finding of the value of the assets to be transferred.

ORDER

IT IS ORDERED that:

1. The acquisition by CTI Investments, Ltd. (CTI) of the telephone lines and customer bases of Creative Telecommunications, Inc., Comvest Long Lines of California, and Comvest Telecommunications, Inc. is exempted from the provisions of PU Code § 851.

2. TMC Communications, Inc. (TMC) is authorized to acquire the assets of CTI in accordance with the terms of the application and the order of the United States Bankruptcy Court, Eastern District of California, dated December 12, 1988 (Case No. 186-01952-B-11).

3. TMC shall file written notice of the acquisition of assets with the Commission Advisory and Compliance Division's Telecommunications Branch within 15 days after the assets have been acquired.

4. The corporate identification numbers of Creative Telecommunications, Inc. (U-5007-C), Comvest Long Lines of California (U-5065-C), and Comvest Telecommunications, Inc. (U-5006-C) are revoked. TMC shall continue to use Corporate Identification No. U-5147-C.

5. The authority granted in Ordering Paragraph 2 shall expire unless it is exercised by December 31, 1989.

This order is effective today.

Dated JUN 7 1989, at San Francisco, California.



VICTOR WEISSER  
Executive Director

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

  
Victor Weiss, Executive Director