

Decision 89 12 059

DEC 28 1989

CONFIDENTIAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
OMNICORP HOLDINGS, INC., OMNICORP)
INTERNATIONAL B.V. AND OMNICOM)
ACQUISITION CORPORATION for the)
authorization of acquisition and)
control of TMC COMMUNICATIONS, A)
LIMITED PARTNERSHIP AND TMC)
COMMUNICATIONS, INC., GENERAL)
PARTNER.)

Application 89-10-018
(Filed October 10, 1989)

OPINION

This is an application in which OmniCorp Holdings, Inc. (Holdings), OmniCorp International, B.V. (International), and Omnicom Acquisition Corporation (Acquisition) seek authority to acquire control of TMC Communications, a limited partnership (TMC), and TMC Communications, Inc., its general partner (General Partner).

Notice of the filing of the application appeared in the Commission's Daily Calendar on October 25, 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. TMC is a Kentucky limited partnership in which General Partner, a California corporation, is the controlling and general partner. TMC was formed as a result of the merger of Marsch Communications Management, Inc. (MCM) and TMC of San Luis Obispo, Ltd., a limited partnership. TMC is authorized to provide intrastate interLATA service pursuant to Commission Decision (D.) 88-31-056.

3. MCM is a Kentucky corporation which is the managing partner of various telecommunications joint ventures. MCM's partnership interest in those joint ventures exceeds 75% in each case. MCM is the managing partner of Telemarketing Communications of San Luis Obispo and the general partner of TMC of San Luis Obispo, Ltd.

On August 8, 1988, TMC and General Partner filed Application (A.) 88-08-016 which sought the transfer to TMC of the following certificated entities:

- a. Telemarketing Communications of San Luis Obispo (San Luis Obispo) which was authorized to provide intrastate interLATA service by D.85-056-063 in A.85-03-055. San Luis Obispo is a joint venture partnership owned by MCM and TMC of San Luis Obispo, Ltd., a limited partnership. MCM is the managing partner of San Luis Obispo and the general partner of TMC of San Luis Obispo, Ltd.
- b. Telemarketing Communications of Bakersfield (Bakersfield) which was authorized to provide intrastate interLATA service pursuant to D.85-05-070 in A.85-05-057. Bakersfield is a joint venture partnership owned by TMC of Bakersfield Ltd. and MCM. MCM is the managing partner of Bakersfield.
- c. Telemarketing Communications of Ventura (Ventura) which was authorized to provide intrastate interLATA telecommunications service by D.85-05-063 in A.85-03-056. Ventura is a joint venture partnership owned by MCM and TMC of Ventura Ltd., a limited partnership. MCM is the managing partner of Ventura and the general partner of TMC of Ventura, Ltd.
- d. TMC of Stockton Limited (Stockton), a limited partnership, which was authorized to provide intrastate interLATA service pursuant to D.87-05-055 in A.87-03-024. Stockton is a limited partnership in which MCM is the managing and general partner.

- e. MCM is also the parent of Marsch Communications Management of Fresno Inc. (Fresno), a Kentucky corporation qualified to do business in California, which provides intrastate interLATA service pursuant to D.86-09-041. A minority interest in Fresno is owned by certain officers, directors, and employees of MCM and Ventura.

4. A.88-08-016 was filed by General Partner et al. seeking authority from the Commission to transfer any and all operating authority provided to each of the certificated entities described in Finding 3 to the single limited partnership, TMC, of which the general partner is General Partner. MCM already controlled direct and indirect interests in Ventura, San Luis Obispo, Bakersfield, Stockton, and Fresno in percentages ranging from 75-85%.

A.88-08-016 was granted in D.89-12-009, dated December 6, 1989.

5. International is a corporation organized under the laws of the Netherlands and is a wholly owned subsidiary of Holdings. International's principal business is merchant banking and strategic investment operations. It invests for its own account and provides merchant banking and fund management services for its own investments, for the investments of its affiliate companies that are also directly or indirectly owned by Holdings and for unaffiliated companies. International engages in various investment activities in the United States through several wholly and partially owned subsidiary companies. International is not currently doing business in California and has not yet obtained a Certificate of Qualification to Transact Intrastate Business from the California Secretary of State. The application avers that it has filed an application for such a certificate.

Holdings is a Delaware corporation. It has not qualified to do business in California. Acquisition is a recently formed California corporation.

6. On July 27, 1989 the parties entered into a plan of merger under which Acquisition would be merged into General Partner, with General Partner being the surviving entity. The plan of merger is attached to the application as Exhibit C. The value of the proposed transaction is alleged to be \$13,400,000.

The application states that prior or concurrent to the closing under the plan of merger, Holdings intends to assign its rights under the plan of merger to International, its parent. Thus, Acquisition will be merged into General Partner. As a result, General Partner will become the wholly owned subsidiary of International and Acquisition will disappear. The application also refers to an alternate plan of merger which is before the Commission in another proceeding. That matter is not before us in this proceeding and no findings are made thereon.

7. As of June 30, 1989, International had current assets of \$116,100,000 and long-term investments of \$210,200,000.

8. Holdings, International, and Acquisition have the ability, including financial ability, to acquire control of TMC and General Partner and continue their operations.

9. The proposed acquisition of control of TMC and General Partner is not adverse to the public interest.

10. Since International and Holdings have not qualified to do business in California, it is reasonable to include in the ensuing order a provision that they so qualify and indicate that they have submitted to the jurisdiction of the Commission for regulatory purposes.

11. Holdings, International, Acquisition, TMC, and General Partner are telephone corporations which are nondominant telecommunications carriers with respect to the matters presented in this application.

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

- "1. On and after the effective date of this order, public utility resellers of

telecommunication services are exempted
from the requirements of PU Code
§§ 816-830."

13. Ordering Paragraph 7 of D.87-04-017 dated April 8, 1987,
relating to telecommunications carriers, 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."

Conclusions of Law

1. The application should be granted.
2. The order should be conditioned on International and Holdings filing evidence that they have qualified to conduct business in California and submitting statements that they have submitted to the jurisdiction of the Commission for regulatory purposes.

This authorization is not a finding of the value of the rights and properties over which control is to be acquired.

ORDER

IT IS ORDERED that:

1. On or after the effective date of this order, OmniCorp Holdings, Inc. (Holdings), OmniCorp International, B.V. (International), and Omnicom Acquisition Corporation (Acquisition) may acquire control of TMC Communications, a limited partnership (TMC), and TMC Communications, Inc., its general partner (General Partner), in accordance with the terms set forth in the application. This authority shall not become effective until International and Holdings submit evidence that they are qualified to do business in California and file statements with the Commission that they have submitted to the jurisdiction of the Commission for regulatory purposes.

2. Within 10 days after acquisition of control, Holdings or International or Acquisition shall write the Commission stating date of the transfer of control. A copy of the documents effectuating the transfer of control shall be attached.

3. The corporate identification numbers previously assigned to subsidiary operating entities indirectly affected by the transaction should be retained by those companies and included in the caption of all original filings with this Commission, and in the titles of other pleadings in existing cases.

4. The authority granted in Ordering Paragraph 1 shall expire unless it is exercised before December 31, 1990.

This order is effective today.

Dated December 28, 1989, at San Francisco, California.

Leon D. Munoz

LEON D. MUNOZ
Acting Executive Director

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

Wesley Franklin

WESLEY FRANKLIN, Acting Executive Director

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