

Decision 90 01 063 JAN 31 1990

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Com Systems, Inc.)
 to Transfer and of Omnicorp)
 International B.V. to Acquire)
 Certain Shares of Com Systems, Inc.)
 and Control of Com Systems Network)
 Service, Inc., a subsidiary of)
 Com Systems, Inc.)

ORIGINAL

Application 89-10-037
(Filed October 23, 1989)

O P I N I O N

This is an application in which Omnicorp International B.V. (Omnicorp) seeks authority to acquire control of Com Systems Network Services, Inc. (CSNS) through the purchase of stock from CSNS' parent corporation Com Systems, Inc. (Com Systems).

Notice of the filing of the application appeared in the Commission's Daily Calendar on October 31, 1989. 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. Com Systems is a California corporation.
3. CSNS is a California corporation. It is a wholly owned subsidiary of Com Systems. CSNS was authorized to provide intrastate long-distance services in Decision (D.) 85-04-064, dated April 17, 1985. Pursuant to that authority, it provides intrastate long-distance services to commercial and residential customers on a statewide basis. CSNS provides service by reselling capacity from underlying facilities-based carriers, such as AT&T, MCI, and US Sprint.

4. Omnicorp is a corporation organized under the laws of the Netherlands and is a wholly owned subsidiary of Omni Holding, A.G. (Holding) a Swiss corporation. Omnicorp'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 and indirectly owned by Holding and for unaffiliated companies. Omnicorp engages in various investment activities in the United States through several wholly and partially owned subsidiary companies. The Commission takes official notice of the record in Application (A.) 89-10-018, which indicates that Omnicorp is qualified to do business in California. Omnicorp has held, through its wholly owned subsidiary Omnicorp Holdings, Inc., a minority interest in Com Systems since December 1988 and currently holds approximately a 34.5% interest. Omnicorp's financial participation in Com Systems has been an important ingredient in the success of Com Systems' intrastate long-distance operations. Omnicorp is also qualified to participate in Com Systems' operations and management and is well acquainted with the highly competitive long-distance service market in which Com Systems operates.

5. Com Systems and Omnicorp propose to consummate an agreement pursuant to which Com Systems will issue and sell 4,500,000 shares of Com Systems Series C cumulative convertible voting preferred stock to Omnicorp at a purchase price of approximately \$9,000,000. As a result of the stock transaction, Omnicorp and its affiliate will own in the aggregate, on a fully diluted basis, at least approximately 52.52%, and subsequently 60.22%, of Com Systems assuming the conversion of certain convertible interests in common stock. As partial consideration for the transaction, Omnicorp will designate a majority of the directors on Com Systems' board of directors. Thus, Omnicorp will assume effective control of CSNS' intrastate authority granted by

the Commission. Other than effecting a change in the underlying ownership of Com Systems, the stock purchase transaction will not affect customers or result in any change in CSNS' intrastate long-distance services. CSNS will continue to provide statewide intrastate long-distance service on a resale basis in accordance with the policies of the Commission and pursuant to the rates, terms, and conditions set forth in CSNS' California Intrastate InterLATA Interexchange Telephone Communications Tariff on file with the Commission.

6. The parties anticipate that the sale of additional shares to Omnicorp will permit Com Systems' subsidiary CSNS to better serve its customers and compete more effectively in the intrastate long-distance market. Com Systems and CSNS have experienced a negative cash flow since late 1988. The proposed transaction will provide Com Systems with critical funding essential for Com Systems and CSNS to maintain a healthy financial condition. The proposed stock sale will not adversely affect CSNS' existing service. It will provide Com Systems and CSNS with the financial resources necessary to secure CSNS' competitive position as a long-distance reseller. The added resources will support CSNS' existing operations and its anticipated expansion of its California customer base in the near future. By funding CSNS' existing operations and making new growth possible, the stock transaction will enable Com Systems' subsidiary CSNS to better serve its existing customer base and attract new customers.

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

8. Omnicorp has the ability, including financial ability, to acquire control of CSNS through the purchase of Com Systems stock and continue the operations of CSNS.

9. The proposed acquisition of control of CSNS is not adverse to the public interest.

10. Omnicorp, CSNS, and Com Systems are telephone corporations which are nondominant telecommunications carrier with respect to the matters presented in this application.

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

12. 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."

Conclusion of Law

The application should be granted.

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

O R D E R

IT IS ORDERED that:

1. On or after the effective date of this order, Omnicorp International B.V. (Omnicorp) may acquire control of Com Systems Network Services, Inc. (CNSS) through the purchase of stock from Com Systems, Inc. in accordance with the terms of the application.

2. Within 10 days after acquisition of control, Omnicorp 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 number previously assigned to CSNS should be retained by it 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 JAN 31 1990, at San Francisco, California.

Wesley Franklin
WESLEY FRANKLIN
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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