

Decision 90 05 035 MAY 4 1990

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)	
Alltel Corporation and Alltel)	
Delaware, Inc. under Sections 853)	Application 90-03-009
and 854 of the California Public)	(Filed March 12, 1990)
Utilities Code.)	

O P I N I O N

Alltel Corporation (Alltel) and its wholly owned subsidiary, Alltel Delaware, Inc. (Alltel Delaware) submit this application for approval of a proposed merger between the two companies. Neither Alltel nor Alltel Delaware is engaged in any business in California which is subject to the Commission's jurisdiction. Alltel owns CP National Corporation (CPN), which is a certificated telephone company and gas distribution company under the Commission's jurisdiction.

The application states that Alltel, an Ohio-based corporation, will merge with its wholly owned subsidiary, Alltel Delaware, a Delaware-based corporation. The merger is proposed for the sole purpose of changing the parent company's state of incorporation. The surviving corporation will change its name to Alltel Corporation.

Applicants describe the transaction which is the subject of this application as a transfer which involves no change in the capitalization, finances, operations, or personnel of either Alltel or CPN. The directors, management, and shareholders of Alltel will become the shareholders, directors, and management of Alltel Delaware. The surviving corporation would be subject to the provisions of Decision (D.)88-12-038, which approved the acquisition of CPN by Alltel. For these reasons, the proposed transfer, according to applicants, will have only a remote and indirect effect in California.

Applicants believe the transaction is not subject to Public Utilities Code § 854 because no change of control is involved within the meaning of § 854. Applicants also submit that the public interest of concern to California does not require that the Commission assert jurisdiction under § 853. The Commission could review the transaction only to the extent necessary to reach that conclusion and exempt the proposed transaction under § 853. Applicants further submit that the same review would support authorization under § 854.

Applicants request ex parte treatment of the application.

Discussion

Section 854 states in pertinent part:

"No person or corporation, whether or not organized under the laws of this state, shall...acquire or control either directly or indirectly any public utility organized and doing business in this state without first securing authorization to do so from the commission. . . ."

Section 853 states in pertinent part:

"The commission may from time to time by order or rule...exempt any public utility...from this article if it finds that the application thereof...is not necessary in the public interest. . . ."

The language of § 854 clearly states that a corporation seeking control of a California utility must receive Commission authorization for the transaction contemplated by them. CPN is a California utility. Alltel is merging with Alltel Delaware for the sole purpose of transferring its articles of incorporation from the State of Ohio to the State of Delaware. Whether the proposed transfer should be considered subject to this section depends upon whether the Commission considers Alltel's transferring its articles of incorporation from the State of Ohio to the State of Delaware to effect the equivalent of an acquisition or change in control of CPN by virtue of the creation of a new corporation. In this case, the

character of the corporation does not change, nor does its management or ownership. On that basis, it may be reasonable to find that the transfer does not affect the control of CPN or constitute the acquisition of CPN. With such a finding, the proposed transfer would be exempt from § 854. We do not need to address that question here, however.

No protest to this application has been received. We agree with applicants that the proposed transfer is likely to have little if any effect on CPN, which will continue to be a wholly owned subsidiary of a Delaware, rather than an Ohio, corporation. While we understand that Delaware General Corporation law generally is more favorable to management vis-a-vis shareholders than Ohio law, Alltel's obligations to its California ratepayers will remain unchanged. Neither the ownership nor management of the company will change. California ratepayers will not be harmed by the transfer as contemplated. Accordingly, we grant applicants' request for authority under § 854 to undertake the proposed transaction.

Findings of Fact

1. Applicant Alltel proposes to merge with applicant Alltel Delaware in order to effect a transfer in the state of incorporation from Ohio to Delaware.
2. Under the proposed transfer and merger, no change in ownership, capitalization, operations, or management is contemplated.
3. CPN is a wholly owned subsidiary of Alltel doing business in California as a regulated public utility providing telecommunications and natural gas services.
4. The proposed transfer and merger as contemplated will have little or no effect on CPN's California operations and will therefore not harm CPN's California ratepayers.
5. No protest to this application has been received.

Conclusions of Law

1. Section 854 requires that no acquisition or control of a California public utility be effected without Commission authority.
2. Applicants' request for authority to undertake the proposed transfer should be granted under § 854.
3. Applicants should be ordered to inform the Commission Advisory and Compliance Division, within five business days of the date of the transfer and merger, that the transfer and merger have been effected.

O R D E R

IT IS ORDERED that:

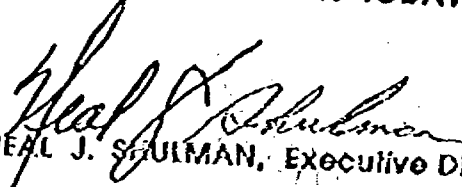
1. Applicants' request for authority to undertake the proposed transfer is granted pursuant to § 854.
2. Applicants shall inform the Commission Advisory and Compliance Division, in writing, of the transfer of the articles of incorporation from Ohio to Delaware and the merger of the applicants. The notice shall be provided within five days of the date the transfer and merger are complete.

This order is effective today.

Dated MAY 4 1990, at San Francisco, California.

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

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


NEAL J. SCHULMAN, Executive Director