

Mailed

Decision 91-10-007 October 11, 1991

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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)	
PTI Harbor Bay, Inc. and Bay Area)	Application 91-06-015
Teleport Inc. to Acquire Control of)	(Filed June 10, 1991)
Bay Area Teleport, U 5109C.)	

OPINION

PTI Harbor Bay, Inc. and Bay Area Teleport, Inc. (applicants) seek authority to acquire the assets and control of Bay Area Teleport (BAT). In addition, they seek approval for the transfer to a Delaware corporation of all of BAT's earth station assets. The request for authority was made pursuant to Public Utilities Code §§ 852 and 854. PTI Harbor Bay, Inc. is a Washington corporation. BAT, Inc., a wholly-owned subsidiary of PTI Harbor Bay, Inc., is a Delaware corporation. Both are duly qualified to do business in California. Their principal place of business is Alameda. BAT is a non-dominant interexchange carrier.

Applicants are wholly-owned subsidiaries of Pacific Telecom, Inc. (PTI), a Washington corporation which provides a wide range of telecommunications services. The majority shareholder of PTI is Inner Pacific Corp, a publicly held Oregon corporation doing business in California as Pacific Power & Light Company (PP&LC). PP&LC is a public utility offering electric service in certain areas of northern California.

Procedural Background

On June 10, 1990, concurrent with their application for authority to acquire the assets and control of BAT, applicants filed a Motion For Authority to Submit Exhibits Under Seal (Motion). They sought to submit under seal the financial exhibits supporting the application, Exhibits E through H. In addition, they requested leave to submit only the original of these exhibits,

rather than the original plus 12 copies, because of their voluminous nature. On July 26, 1991, the assigned Administrative Law Judge (ALJ) denied the request, ruling that the Motion lacked supporting authority, sought to seal public documents, and unduly sought to burden the Commission with applicants' reproduction costs. On July 30, applicants filed a renewed motion, with authority, to submit Exhibits E, F, H and two parts of G¹ under seal, and submitted 12 copies of each exhibit.

Applicants contended that the information that they sought to submit under seal would subject BAT to direct harm and unfair competitive disadvantage if it were freely available for public inspection. Michael Rosenquist, the executive vice president of applicants, filed a declaration in support of the renewed motion. He maintained that the information contained in the exhibits reflects BAT's years of experience in constructing and operating its regional network for telecommunications transmission services, and in competing against its market rivals. Rosenquist stated that BAT does not disclose this information to Dun & Bradstreet or its vendors, and submits it under seal when filing its Annual Report with the Commission. He contended that such information is viewed in the "alternative access" industry as "a valuable, and genuine, trade secret."

Applicants asserted that from the information contained in the exhibits, a potential competitor could readily ascertain or infer the economic condition of the company, the amount of investment in its facilities, its means of financing, its

1 Exhibit E shows the book cost and original cost of BAT's assets; Exhibits F and H show the terms of an agreement between Doric Development, Inc. (Doric) and PTI Harbor Bay, Inc. in which PTI Harbor Bay, Inc. will acquire all of Doric's interest in the assets and liabilities of BAT; the relevant parts of Exhibit G consist of the Balance Sheet and the Income Statement.

historical performance, its estimates of revenues, and its prospective marketing strategies. Finally, public disclosure, they stated, would enable a potential competitor to glean all of BAT's work, investment, market studies and network planning.

On August 15, the ALJ granted applicants' renewed motion, ruling that the highly competitive market in which BAT operates, the assertion that the revelation of the information contained in the exhibits will compromise trade secrets and marketing strategies and particularly, the fact that no protests were filed, constituted good cause permitting deviation from the requirements of Rule 35.

Description of the Transaction

In 1984, PTI Harbor Bay, Inc. and Doric, a California corporation, formed a general partnership for the provision of inter- and intrastate telecommunications services. This partnership, with each holding a 50% interest, is BAT. The Commission granted BAT operating authority to provide inter- and intraLATA high speed private line services in California in Decision (D.) 86-06-027 (June 4, 1986) and D.87-02-022 (February 11, 1987).

Applicants propose to acquire control of BAT through three transactions. First, PTI Harbor Bay, Inc. and Doric will dissolve their partnership in BAT. Then, the assets and liabilities of BAT will be equally divided between PTI Harbor Bay, Inc. and Doric. Second, PTI Harbor Bay, Inc. will acquire all of Doric's interest in the assets and liabilities of BAT. Doric will transfer its interest in BAT to PTI Harbor Bay, Inc. in exchange for all of PTI Harbor Bay, Inc.'s interest in a non-regulated shared tenant services provider. At this juncture, PTI Harbor Bay, Inc. will hold 100% of the assets and liabilities of BAT. Finally, PTI Harbor Bay, Inc. will divide BAT's assets and liabilities and distribute them to BAT, Inc. and a Delaware corporation, Niles Canyon Earth Station Complex, Inc. (NCESC), in exchange for all the stock of the two companies.

BAT, Inc. in this distribution, will acquire all of the assets and liabilities of BAT, including the certificates and operative rights granted in D.86-06-027 and D.87-02-022, and all the equipment and facilities, that are currently used to provide BAT's regulated high speed private line services. NCEC will acquire all the assets and liabilities that pertain to the earth station complex that BAT operates at Niles Canyon, California. These assets primarily consist of real estate leases and equipment maintenance contracts. NCEC will not provide any telecommunications services itself.

In support of their request, applicants submit that they seek authority to acquire control of BAT because its business and operations fit more naturally within the scope of PTI's business and operations. PTI and Doric contend that the proposed division and assignment of assets is in the public interest, as well as their own, since it will result in both BAT and the non-regulated shared tenant service provider having corporate parents whose business, resources, and expertise are closely suited to their current and future operations. Applicants propose to make no changes in the nature of BAT's services, in its name or in its tariff.

On August 18, 1986, the Commission issued D.86-08-057, which authorized and directed the Executive Director to grant non-controversial applications for the transfer of control or assets of non-dominant carriers. In accordance with this decision, applicants request that the instant application be granted by an order of the Executive Director.

Findings of Fact

1. Notice of the filing of the application appeared in the Commission's Daily Calendar on June 13, 1991. No protests have been filed. A public hearing is not necessary.

2. The proposed transfer does not involve the sale of assets or operating authority.

3. The change of corporate control will not be adverse to the public interest.

4. No change in the operation of the regulated company will take place as a result of the change of corporate control. Neither tariff changes nor changes in the form of service provided to the existing customers will occur because of the change in control.

5. The new corporate owners are technically and financially able to support the service now provided by the regulated company.

Conclusions of Law

1. Exhibits E, F, H, and the Balance Sheet and Income Statement within Exhibit G accompanying the application should be held under seal.

2. The application should be granted.

3. D.86-08-057 authorized and directed the Executive Director to grant non-controversial applications for the transfer of control or assets of non-dominant carriers.

4. Since the application is not controversial, the following order should be effective immediately.

O R D E R

IT IS ORDERED that:

1. PTI Harbor Bay, Inc. and Bay Area Teleport, Inc. (BAT, Inc.) may acquire the assets and control of Bay Area Teleport (BAT) pursuant to the proposed transaction described in the application.

2. PTI Harbor Bay, Inc. may transfer to Niles Canyon Earth Station Complex, Inc. all the assets and liabilities that pertain to the earth station complex that BAT operates at Niles Canyon, California.

3. PTI Harbor Bay, Inc. and BAT, Inc. shall submit written notice of the acquisition to the Commission Advisory and Compliance Division within 15 days after the acquisition is consummated.

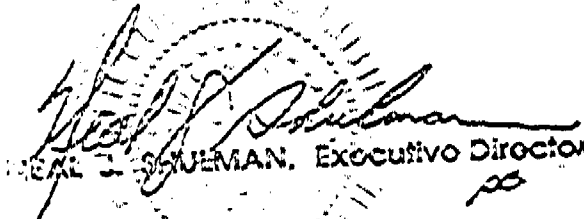
This order is effective today.

Dated October 11, 1991, at San Francisco, California.

JOHN B. OHANIAN
DANIEL Wm. FESSLER
NORMAN D. SHUMWAY
Commissioners

Commissioner Patricia M. Eckert,
being necessarily absent, did not
participate.

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


GERALD J. SHULMAN, Executive Director