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Decision 92-01-058 January 28, 1992

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application)
 for approval of the merger of WTG -)
 West, Inc. (CPUC No. U-5192-C) and)
 WTG of California, Inc. (CPUC No.)
 U-5124-C) into WilTel, Inc.; for)
 approval of the transfer of the)
 Certificate of Public Convenience)
 and Necessity for WTG - West, Inc.)
 to WilTel; for emergency, interim)
 authority; and for waiver of USOA)
 requirements.)

ORIGINAL

Application 91-12-002
(Filed December 3, 1991)

INTERIM OPINION

By application dated November 14, 1991 and filed December 3, 1991, WilTel, Inc. (WilTel), WTG-West, Inc. (WTG-West) (U-5192-C), and WTG of California, Inc. (WTG of California) (U-5124-C) seek approval of the merger of WTG-West and WTG of California into WilTel, approval of the transfer of the Certificate of Public Convenience and Necessity (CPCN) currently held by WTG-West to WilTel, and waiver of the application to WilTel of the Uniform System of Accounts (USOA) requirements imposed upon WTG-West. In addition, WilTel requests that the Commission grant WilTel emergency, temporary authority to enable WilTel to provide certain telecommunication services to the customers of Telesphere Network, Inc. (TNI) and Telesphere Limited, Inc. (TLI), both wholly owned subsidiaries of Telesphere Communications, Inc. (TCI). In this interim order, the parent company, TCI, and its wholly owned subsidiaries, TNI and TLI, are sometimes referred to collectively as Telesphere.

In a supplement to its application dated and filed December 20, 1991, WilTel requests that the Commission grant WTG-West or WTG of California, rather than WilTel, temporary authority to provide to customers of TNI and TLI certain

telecommunication services authorized TNI and TLI under CPCNs issued by this Commission.

Notice of filing of the application appeared in the Commission's Daily Calendar on December 5, 1991. No protests have been received.

This Interim Order Involves the Request for
Emergency, Temporary Authority Only

As part of its broader application referred to and described above, WilTel seeks emergency, temporary authority for WTG-West or WTG of California to serve TNI and TLI's customers that are subject to executory contracts for the provision of "1+" services. We will consider the request with respect to WTG-West only. TNI and TLI's executory contracts will be transferred to WilTel in accordance with approvals previously granted by the United States Bankruptcy Court for the Northern District of Illinois, Eastern Division (the Bankruptcy Court), which has jurisdiction over TCI, TNI, and TLI by virtue of bankruptcy proceedings involving those companies having been filed.

The Parties

Telesphere Communications, Inc. (TCI), a Delaware corporation with principal offices at Two Mid America Plaza, Suite 500, Oak Brook Terrace, IL 60181, is a holding company formed in 1979 under the name Telesphere International, Inc. (TII), which name was changed in 1989. In 1982, Telesphere Network, Inc. (TNI), a wholly owned subsidiary of TCI (then TII), began providing a variety of long distance telecommunication services. Pursuant to Decision (D.) 84-01-037 (Application (A.) 83-06-26) issued January 5, 1984, TNI was authorized to provide intrastate telecommunication services in California. In D.89-06-062 (A.89-03-014) issued June 30, 1989, the Commission authorized F G Ventures, Inc., Guilderland Center, New York, to purchase \$15 million worth of convertible debentures in TNI and authorized transfer of control of TNI to F G Ventures, Inc. (F G Ventures).

Thereafter, according to Eugene Ruiz, of the Galesi Group, P. O. Box 98, Guilderland Center, New York 12085, the parent of F G Ventures, F G Ventures, Inc., purchased the debentures but never exercised its conversion rights; thus, control of TNI was never transferred to F G Ventures and F G Ventures' interest in TNI was limited to that of a creditor.

Pursuant to D.88-06-025 (A.87-12-043) issued June 8, 1988, National Telephone Services, Inc. (NTS) was authorized to provide resold intrastate telecommunication services within the State of California. By D.90-06-037 (A.90-04-015) issued June 15, 1990, as extended by D.90-09-091 issued September 28, 1990, transfer of control of NTS to TCI was authorized by this Commission. Subsequent to the transfer of control of NTS to TCI, NTS was renamed Telesphere Limited, Inc. (TLI). The Commission was notified of the name change by tariff filing dated September 23, 1990.

TNI and TLI currently provide a variety of long distance services, including 1+, MTS, switched and special access WATS, and operator services. TNI and TLI are authorized by the Federal Communications Commission (FCC) to offer domestic interstate and international services in all 50 states and the District of Columbia as a nondominant carrier. TNI and TLI also individually are authorized, pursuant to certification, registration, tariff requirements, or on an unregulated basis, to provide intrastate service in a number of other states.

TCI, TNI, and TLI are currently in bankruptcy before the Bankruptcy Court, Hon. Eugene R. Wedoff, under case numbers 91 B 17581, 91 B 19188, and 91 B 19189, respectively.

Ronald J. Haan has served as the chief operating officer of several companies in the telecommunications industry. In 1977, he founded and served as chief executive officer of TELIC Corporation, a designer of specialized, complex telephone software programs. In 1978, Haan acquired control of NTS, where he served

as president, chief executive officer, and chairman of the board. In furtherance of the Court-approved agreements and understanding between all parties in the bankruptcy proceedings regarding the disposal of TCI, TNI, and TLI's estates, Haan purchased eight million shares of International Telecharge, Inc. (ITI) and became the largest shareholder and chairman of the board of ITI.

Wiltel, WTG-West, and WTG of California are each Delaware corporations authorized to do business in the State of California, and have their principal offices at One Williams Center, Tulsa, Oklahoma 74121. All three companies are wholly owned subsidiaries of Williams Telecommunications Group, Inc. (WTG), One Williams Center, Tulsa, Oklahoma 74121, which in turn is a wholly owned subsidiary of The Williams Companies, Inc., a Delaware corporation authorized to do business in California, which has its principal place of business at One Williams Center, Tulsa, Oklahoma 74121.

Pursuant to D.90-07-058 (A.89-05-026) issued July 18, 1990, WTG-West was granted a CPCN by this Commission for the construction and operation of a public utility fiber optic telecommunications system and to provide interLATA telecommunication services subject to the following conditions:

- (a) the services could be offered and provided only on an interLATA basis;
- (b) WTG-West could not provide intraLATA services;
- (c) WTG-West could not hold out to the public that it has authority to provide, or that it does provide, intraLATA services; and
- (d) WTG-West could not advise its subscribers that they could place their intraLATA calls over the facilities of the local exchange company.

The Transaction

As noted above, TCI, TNI, and TLI are under the jurisdiction of the Bankruptcy Court.

On or about October 11, 1991, TCI, TNI, and TLI individually and collectively entered into an agreement with R. Haan Ventures, Inc. (Haan Ventures) (Exhibit L to Wiltel's

application) under the terms of which TCI, TNI, and TLI would, subject to the approval of the Bankruptcy Court, sell and transfer substantially all of their assets to Haan Ventures, as nominee for Ronald J. Haan, for a total purchase price of \$17 million.

By order dated October 22, 1991, and entered October 23, 1991, Hon. Eugene R. Wedoff, United States Bankruptcy Judge, United States Bankruptcy Court for the Northern District of Illinois, Eastern Division, authorized the sale of assets of TCI, TNI, and TLI, free and clear of liens, claims, and interests, to Ronald J. Haan, or his nominees (Exhibit L to WilTel's application). Haan Ventures, in turn, reached an agreement with WilTel regarding the actual distribution of Telesphere's assets. Under its agreement with Haan Ventures, WilTel will acquire substantially all of Telesphere's executory contracts for the provision of "1+" services and certain associated network equipment. WilTel will not acquire rights to Telesphere's contracts for 900 services or operator services. A copy of the agreement between WilTel and Haan Ventures is attached as Exhibit M to WilTel's application.

This is a companion application to A.91-11-065 filed November 14, 1991 on behalf of ITI to acquire certain assets of TCI, TNI, and TLI. That application is being considered separately by the Commission.

It is intended by all parties to these transactions that following the completion of all necessary procedural steps, ITI will have obtained certain of TCI's assets, all of TNI and TLI's "0+" service assets and related equipment, and WTG-West will have received certain of TCI's assets, all of TNI and TLI's "1+" service assets and related equipment, as is more fully set forth in the Bankruptcy Court's Order of October 23, 1991, and the agreement for sale of the assets referred to in said Order.

Temporary Tariff Authority

WilTel requests that if emergency, temporary authority is granted for WTG-West to provide telecommunication services for the

customers of TNI and TLI, the Commission approve the adoption by WTG-West of TNI and TLI's current tariff(s) for application to the services provided to affected customers.

Because the service to be provided by WTG-West to the customers of TNI and TLI will be of limited duration only, and in view of the fact that considerable time may be consumed in preparing appropriate independent tariffs, we believe the request should be granted.

Findings of Fact

1. TCI, a Delaware corporation authorized to do business in California, is the parent of TNI and TLI.
2. TCI does not hold a CPCN issued by this Commission.
3. TNI is the holder of a CPCN issued by this Commission to provide intrastate telecommunication services within California.
4. TLI is the holder of a CPCN issued by this Commission to provide intrastate telecommunication services within California.
5. TNI and TLI provide a variety of long distance services, including "1+" MTS, switched and special access WATS, and operator services.
6. TNI and TLI are each authorized by the FCC to offer domestic interstate and international services in all 50 states and the District of Columbia as a nondominant carrier.
7. TCI, TNI, and TLI are each in bankruptcy under the jurisdiction of the United States Bankruptcy Court for the Northern District of Illinois, Eastern Division under case numbers 91 B 17581, 91 B 19188, and 91 B 19189, respectively.
8. By Order entered October 23, 1991, Hon. Eugene R. Wedoff, Bankruptcy Judge, United States Bankruptcy Court for the Northern District of Illinois, Eastern Division, approved the sale of certain assets of TCI, TNI, and TLI, free and clear of liens, claims, and interests, to Haan Ventures with the understanding that certain assets of TCI, as well as certain service assets of TNI and TLI, and certain service equipment related thereto, would be

transferred to Haan Ventures or its designees, including ITI and WilTel.

9. There is evidence in the record to indicate that unless the transfer of service and other assets is approved, customers of TCI, TNI, and TLI will be deprived of essential telecommunication services.

Conclusions of Law

1. Transfer of certain assets of TCI, TNI, and TLI to WilTel is in the best interest of the public and should be allowed.

2. Pending final action on WilTel's application to acquire assets of TCI, TNI, and TLI as specified in the Order of the Bankruptcy Court entered October 23, 1991, emergency, temporary authority to enable WilTel's wholly owned subsidiary, WTG-West, to provide telecommunication services to the customers of TNI and TLI, as limited by the terms of their respective CPCNs, as part of the distribution of their estates in bankruptcy, should be granted.

INTERIM ORDER

Pursuant to the authority delegated in Decision (D.) 86-08-057 as affirmed by D.87-04-017 (Ordering Paragraph 7), IT IS HEREBY ORDERED that:

1. WTG-West, Inc. (WTG-West) is hereby granted emergency, temporary authority to provide telecommunications services to the customers of Telesphere Network, Inc. (TNI) and Telesphere Limited, Inc. (TLI), as limited by the terms of TNI and TLI's respective certificates of public convenience, as part of the distribution of their estates in bankruptcy.

2. The authority granted hereby is on an emergency, temporary basis only and may be revised, amended, or revoked at any time by further order of the Commission.

3. The adoption by WTG-West of TNI and TLI's existing tariff(s) for the service temporarily authorized to be afforded customers of TNI and TLI by WTG-West pursuant to this interim order is approved. This authority to temporarily adopt TNI and TLI's

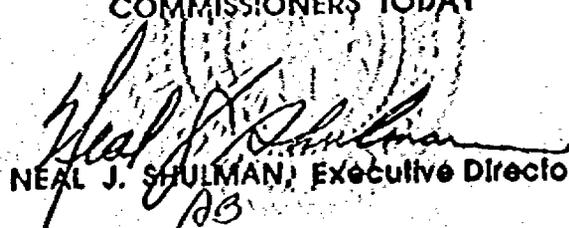
tariff(s) may be rescinded or modified by the Commission at any time.

This order is effective today.

Dated January 28, 1992, at San Francisco, California.

/s/ WESLEY FRANKLIN for
NEAL J. SHULMAN
Executive Director

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


NEAL J. SHULMAN, Executive Director