

ALJ/MFG/tcg

Decision 92 03 058

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of
Fibrecom Investments, Ltd.,

Transferor,

and

USC Fibercom Partners,

Transferee

For authority to transfer a
majority of the stock of
US FiberCom Network, Inc. (U-5181-C)

ORIGINAL

Application 91-12-040
(Filed December 30, 1991)

O P I N I O N

By this application Fibrecom Investments, Ltd. (FIL) seeks authority to sell and USC FiberCom Partners (USC) seeks authority to acquire ninety percent of the outstanding shares of US FiberCom Network, Inc. (US FiberCom).

Notice of this application appeared in the Commission's Daily Calendar of January 6, 1992. No protests were received; therefore, a public hearing is not necessary.

US FiberCom, a Delaware corporation qualified to do business in California, was granted a certificate of public convenience and necessity to operate as a reseller of interLATA intrastate telephone service in California on July 6, 1989 by Decision (D.) 89-07-002. It also provides resale interexchange services on an interstate basis.

Upon consummation of the transfer of shares of stock, US FiberCom will continue to provide a variety of resale telecommunications services. Any changes in US FiberCom's rates or service offerings will be handled through the filing of revisions to its tariff.

FIL, an Isle of Man corporation, is a holding company which currently owns ninety percent of the outstanding shares of US FiberCom. USC, a New Jersey partnership, was created to purchase the stock of US FiberCom. USC wants to acquire a controlling interest in US FiberCom to enable it to enter the competitive interexchange telecommunications market in California and elsewhere. USC represents that it has the ability to infuse additional capital into US FiberCom to enable US FiberCom to expand its operations and its services.

Applicants' proposal to consummate the stock transfer on or about January 8, 1992 was not attainable. The application was not filed until December 30, 1991, and notice of this application did not appear on the Commission's Daily Calendar until January 6, 1992. Rule 8.3 of the Commission's Rules of Practice and Procedure provides for a 30-day time period after notice appears in the Daily Calendar to receive protests. Under Rule 44.2, the 30-day time period did not end until February 5, 1992. No protest was filed within the 30-day period, and in the interest of enhancing competition within the intrastate interLATA telecommunications service, we expedited our processing of this application.

It can be seen with certainty that the proposed transfer will not have an adverse impact on the environment because the proposed transfer involves only the transfer of outstanding shares of stock.

Applicants deleted portions of the stock purchase agreement and omitted certain financial information from the application available for public review. Such data, considered by applicants to be sensitive and proprietary information, were tendered under seal.

Applicants represent that if the proprietary information is disclosed, substantial injury to the competitive position of US FiberCom in the California telecommunications market would occur. Further, it would provide competitors with unwarranted

insight into the operations of the company and its available capital.

Rule 35 prescribes the content of applications to sell, lease or encumber utility property or rights, to merge or consolidate facilities, to acquire stock of another utility or acquire control of a utility. To seek such authority from the Commission requires disclosure in the application of materials required under the Commission's Rules. The materials submitted with such applications are a part of the public record so that the application can be subject to scrutiny of the Commission staff, competitors, and the public.

Although applicants contend that disclosure of the stock purchase agreement and financial information is proprietary, there is no merit to this contention. Such information has been required to be part of the public record since 1912.¹ Consistent with Article 2.5 of the Commission's Rules of Practice and Procedure members of the public, including competitors, have the right to protest applications for transfer of control. Stock purchase information and financial data are elements which may be considered by a potential protestant in determining whether to file a protest.

Rule 87 does permit deviation from the rules for good cause shown. However, in the instance of the transfer of control of a public utility, a public utility is subject to a higher level of scrutiny than the transfer of control of a non-regulated entity.

Applicants have not shown that good cause exists to grant the motion to seal portions of stock purchase agreement and financial data. Therefore, their request to seal such data should be denied.

Pursuant to Ordering Paragraph 1 of D.87-10-035, this application should be approved by the Executive Director on an

¹ Southern California Mountain Water Co. (1912) 1 CRC 520.

expedited basis because this application is noncontroversial and because US FiberCom is a nondominant telecommunications carrier. The ordering paragraph provides in part that:

"...the Executive Director [may] grant noncontroversial applications by nondominant telecommunications carriers and radiotelephone utilities for authority to transfer assets or control under §§ 851-855 of the PU Code."

Findings of Fact

1. FIL proposes to sell and USC proposes to acquire ninety percent of the outstanding shares of US FiberCom, a nondominant interexchange carrier.

2. No protests to the application have been filed.

3. It can be seen with certainty that the proposed transfer will not have an adverse impact on the environment.

4. Public convenience and necessity require the granting of this application, to be effective on the date signed.

5. Applicants request that data they consider to be sensitive and proprietary be placed under seal.

6. The Executive Director may grant noncontroversial applications by nondominant telecommunications carriers for authority to transfer control under §§ 851-855 of the Public Utilities Code.

Conclusions of Law

1. The application for transfer of control should be granted.

2. The request to place under seal data and information considered by applicants to be sensitive and proprietary should be denied.

This authority is not a finding of the value of the rights and property to be transferred.

O R D E R

IT IS ORDERED that:

1. On or after the effective date of this order, Fibrecom Investments, Ltd. may sell and USC FiberCom Partners may acquire ninety percent of the outstanding shares of US FiberCom Network, Inc.'s outstanding stock in accordance with the terms described in the application.

2. US FiberCom Network, Inc. shall use its existing corporate identification No. U-5181-C in the caption of all original pleadings and in the titles of pleading filed in existing cases with the Commission.

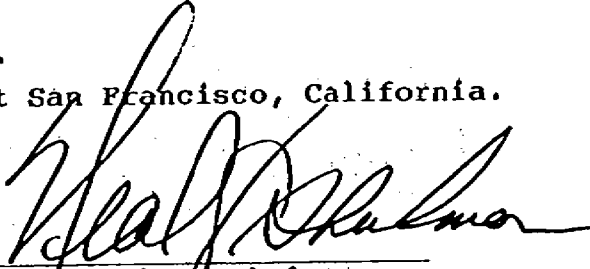
3. US FiberCom Network, Inc. shall file with the Commission's Docket Office for inclusion in the formal file of Application 91-12-040 written notice that the authorized change in control has been completed, within 30 days after the change in control has taken place.

4. Sensitive and proprietary data filed under seal in this proceeding shall be placed in the formal file as part of the public record.

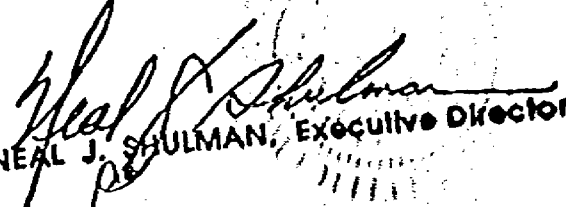
5. The authority granted in Ordering Paragraph 1 shall expire if not exercised within 12 months after the effective date of this order.

This order is effective today.

Dated MAR 16 1992, at San Francisco, California.


Neal J. Shulman
Executive Director

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


NEAL J. SHULMAN, Executive Director