

MAR 31 1992

Decision 92-03-081 March 31, 1992

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pac-West Telecomm,)
 Incorporated to merge with AmeriCall)
 Corporation (U-5031-C), CalPage,)
 Incorporated, CalPage of Ukiah,)
 Incorporated and Page-U,)
 Incorporated (U-2094-C).)

ORIGINAL
 Application 92-01-055
 (Filed January 22, 1992)

O P I N I O N

Pac-West Telecomm, Incorporated (Pac-West) seeks authority to merge with (1) its wholly owned subsidiary AmeriCall Corporation (AmeriCall) as well as (2) its affiliate, CalPage, Incorporated (CalPage) and (3) two wholly owned subsidiaries of CalPage, Page-U, Incorporated (Page-U) and CalPage of Ukiah, Incorporated (Ukiah).

Pac-West is a California corporation located in Stockton, California. AmeriCall is also a California corporation located in Stockton. AmeriCall is a wholly owned subsidiary of Pac-West. Pursuant to Decision (D.) 84-05-008 in Application (A.) 84-03-043, AmeriCall was certified to provide intrastate interLATA telecommunications services. Page-U is a California corporation certified to provide one-way paging and two-way mobile radio telephone utility (RTU) services in various locations in California. (D.87-10-015 in A.87-04-006.) Page-U is also headquartered in Stockton. Ukiah is a California corporation that does not engage in any business activities that are subject to the jurisdiction of the Commission. CalPage is a California corporation. Both Page-U and Ukiah are wholly owned subsidiaries of CalPage. CalPage itself, however, does not engage in any business activities that are subject to the jurisdiction of the Commission.

Pac-West and CalPage are owned by the same four shareholders each of whom hold the same percentage of ownership in Pac-West as they hold in CalPage. Accordingly, the shareholders wish to simplify the corporate structure of their holdings by merging AmeriCall, CalPage, Page-U, and Ukiah into Pac-West. Pac-West will be the surviving corporation. AmeriCall, Page-U, CalPage, and Ukiah will be operated as divisions of Pac-West.

Applicants assert that this application arguably need not be filed since the ultimate control of the entities subject to Commission regulation, Page-U and AmeriCall, will not change; that ultimate control will continue to lie with the existing shareholders of Pac-West and CalPage. Nonetheless, out of abundance of caution, applicants chose to file.

The details of the merger will occur as described in Exhibit H to the application, the "Agreement of Merger." In essence, all the assets, liabilities, and outstanding shares of the disappearing corporations will be transferred to Pac-West. The shares of the disappearing corporations will be cancelled. The board of directors and by-laws of Pac-West, the surviving corporation will not change. No compensation of any sort will change hands.

In D.85-01-008 in A.84-03-092, the Commission exempted non-dominant interexchange carriers (NDIECs) such as AmeriCall from the provisions of Sections 816-830 of the Public Utilities Code regarding the necessity of obtaining Commission authority for debt and equity issuances. In D.85-07-081 in that same docket, the Commission extended the exemption by exempting NDIECs from the provisions of Section 851 (governing the encumbrance of utility property) when such encumbrance is necessary to obtain financing. Finally, in D.86-08-057 in that same docket, the Commission established expedited procedures for applications for transfers of assets or control of NDIECs including that:

"Concerns such as the competitive nature of the underlying business and the need for expeditious handling of applications for transfers of assets or control also justify the delegating to the Executive Director of the authority to grant non-controversial applications involving non-dominant telecommunications carriers." (D.86-08-057, p. 9.)

By D.87-10-035 in A.84-03-092, the Commission extended the exemptions and expedited procedures established in D.86-08-057 to RTUs such as Page-U. Accordingly, applicants request that this application be granted by order of the Executive Director.

Applicants state that completion of the transaction for which authority is sought will have no effect on the operations of Page-U or AmeriCall. These entities will simply be operated as divisions of Pac-West rather than as separate corporations. Each will maintain a separate set of tariffs with the Commission. Pac-West dba Page-U will maintain RTU tariffs. Pac-West dba AmeriCall will maintain tariffs for its interexchange carrier service. Responsible personnel for each will remain unchanged. For purposes of the Commission's records, the corporate identification numbers presently assigned to each should be retained.

We will approve the merger. But we believe the better procedure is to grant a new certificate to Pac-West and revoke the certificates of Page-U and AmeriCall. Pac-West will be issued new corporate identification numbers. Those numbers distinguish the service offered: numbers starting with "2" are for RTUs; numbers starting with "5" are for interexchange carriers. When Pac-West files as an RTU, it will use the new RTU identification number for RTUs; when it files as an interexchange carrier it will use the new RTU new interexchange carrier number.

Findings of Fact

1. Notice of the filing of the application appeared in the Daily Calendar on February 3, 1992. No protests have been filed. A hearing is not necessary.
2. The proposed merger is not adverse to the public interest.
3. The surviving corporation, Pac-West, has the financial ability and management experience to operate as an RTU and as an interexchange carrier.
4. A certificate of public convenience and necessity should be issued to Pac-West upon completion of the merger.
5. Pac-West should operate its RTU division using corporate identification number U-2128-C.
6. Pac-West should operate its interexchange carrier service using corporate identification number U-5266-C.

Conclusions of Law

1. The application should be granted to the extent provided in the following order.
2. The certificates of Page-U and AmeriCall should be revoked upon completion of the merger.
3. Because we are issuing a new certificate and revoking two certificates, we will issue the order rather than the Executive Director.
4. This authorization is not a finding of the value of the rights and properties to be transferred.

ORDER

IT IS ORDERED that:

1. On or before December 31, 1992, Pac-West Telecomm, Incorporated (Pac-West), may merge with AmeriCall Corporation (AmeriCall), CalPage, Incorporated (CalPage), CalPage of Ukiah Incorporated (Ukiah), and Page-U, Incorporated (Page-U).

2. As a condition of this grant of authority, Pac-West (i) shall assume the public utility obligations of AmeriCall and Page-U, (ii) shall assume liability for refunds of all existing customer deposits, and (iii) shall notify the affected customers.

3. Within 10 days after the merger, Pac-West shall write the Commission, stating the date of the merger and the date the requirements of paragraph 2 were completed.

4. Pac-West shall refile AmeriCall's and Page-U's tariffs under its own name as prescribed in General Order Series 96. Rates shall not be increased nor terms or conditions become more restrictive unless authorized by this Commission.

5. If the merger is completed and paragraphs 2 and 4 are complied with, on the effective date of Pac-West's tariffs a certificate of public convenience and necessity is granted to Pac-West Telecomm, Incorporated, a corporation, authorizing it to operate as a public utility to provide one-way paging and two-way mobile radio telephone service, and to provide interLATA telecommunications services, subject to the following conditions:

- a. Pac-West shall offer and provide its services only on an interLATA basis;
- b. Pac-West shall not provide intralATA services;
- c. Pac-West shall not hold out to the public that it has authority to provide, or that it does provide, intralATA services; and
- d. Pac-West shall advise its subscribers that they should place their intralATA calls over the facilities of the local exchange company.
- e. Pac-West shall maintain separate records for both its interexchange carrier service and its RTU operations.
- f. Pac-West shall not merge or combine its non-CPUC-regulated private radio paging operations with its CPUC-regulated public radio paging operations.

6. The certificate of public convenience and necessity granted to AmeriCall Corporation by D.84-05-008 is revoked on the effective date of Pac-West's tariff filing.

7. The certificate of public convenience and necessity granted to Page-U, Incorporated by D.87-10-015 is revoked on the effective date of Pac-West's tariff filing.

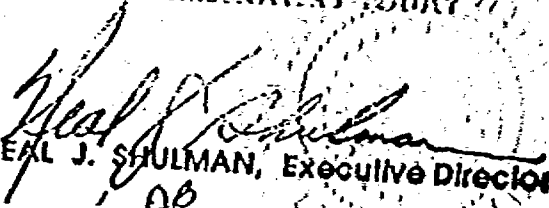
This order is effective today.

Dated March 31, 1992, at San Francisco, California.

DANIEL Wm. FESSLER
President

JOHN B. OHANIAN
PATRICIA M. ECKERT
NORMAN D. SHUMWAY
Commissioners

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


NEAL J. SHULMAN, Executive Director