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Decision 92-05-006 May 8, 1992

## BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of CRICO Communications Corporation dba Bay Area Beeper (U-2031-C) to transfer control of CRICO Communications Corporation through a public offering of stock. )  
Application 92-02-035 (Filed February 19, 1992)

O P I N I O N

Laurence E. Harris, William B. Dockser, H. William Willoughby, and Martin C. Schwartzberg (transferors), who currently own 100% of the shares in CRICO Communications Corporation (CRICO) (U-2031-C) dba Bay Area Beeper, seek authority to transfer control in CRICO to the public shareholders (transferees) of CRICO through a planned public stock offering.

CRICO is a Delaware corporation. Its principal place of business is in Maryland. CRICO is doing business in California as Bay Area Beeper. Bay Area Beeper's main office is in San Jose. CRICO was certified by this Commission to provide intrastate one-way paging and signaling, two-way mobile telephone, and point-to-point microwave radiotelephone utility (RTU) service.

By this application, transferors, who currently hold 100% of the shares in CRICO, seek authority as part of CRICO's planned public offering to transfer control in CRICO to the future shareholders. After these shares are sold to the public, it is expected that the transferors will own approximately 20% of the company's stock. They allege that by this transfer they will have relinquished control of the corporation. Transferors state that the terms and conditions of the public offering will be set forth in the Securities and Exchange Commission (SEC) registration statement now being prepared which will be filed with the SEC shortly.

Transferors allege that they are entering into the proposed transaction in an effort to improve the operating performance of CRICO, as this transfer of control by an initial public offering of securities will enable CRICO to recapitalize the company. Transferors assert that the newly raised capital most likely will be used to retire debt and make acquisitions outside of California thereby strengthening CRICO's financial condition and improving its competitive position in the marketplace. Transferors contend that the transfer of control described by the instant application will not affect the operations of the utility nor will the senior management of the utility change in any manner.

Transferors point out that the Commission has extended to RTUs an exemption from §§ 816-830 of the Public Utilities (PU) Code, which require public utilities to seek Commission authorization prior to the issuance of stock. (Decision (D.) 85-01-008 at p. 5 and D.87-10-035 at p. 6.) They believe that completion of this transaction will have minimal effect on the operations of CRICO. It will essentially operate in the same fashion except that ownership will be spread among members of the general public and the company will be financially stronger.

PU Code § 854 sets forth our authority over acquisitions and control of public utilities. In relevant part it states:

"§ 854. Acquisition or control of public utility; approval of commission

(a) 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. The commission may establish by order or rule the definitions of what constitute acquisition or control activities which are subject to this section. Any such acquisition or control without that prior authorization shall be void and of no effect.

No public utility organized and doing business under the laws of this state, and no subsidiary or affiliate of, or corporation holding a controlling interest in a public utility, shall aid or abet any violation of this section.

The statute is directed at the person acquiring control, not the person giving up control. It is concerned with persons and corporations, not the public in general. (WUI, Inc. v. Continental Telephone (1979) 1 CPUC 2d 579, 585 (D.90363).) We routinely authorize public stock offering under PU Code § 816, but we are concerned with the purchasers only when the purchaser of the public offering is able to take control of the public utility. There is no allegation that there is a person or corporation who will acquire control of applicant because of the proposed stock offering. Applicant, by its very allegations, negates any implication that control is being transferred. Applicant asserts that the sale of stock to the public "will not affect the operations of the utility nor will senior management of the utility change in any manner." This is a clear case of no change in control. The application should be dismissed.

Findings of Fact

1. Applicant proposes a sale of stock to the public in general.
2. Applicant has not alleged that any person or corporation will acquire control of applicant because of this sale.

Conclusions of Law

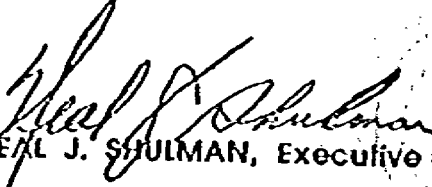
1. Section 854 is not applicable to the sale of stock contemplated by this application.
2. The application should be dismissed.

O R D E R

IT IS ORDERED that Application 92-02-035 is dismissed.  
This order is effective today.  
Dated May 8, 1992, at San Francisco, California.

DANIEL Wm. FESSLER  
President  
JOHN B. CHANIAN  
PATRICIA M. ECKERT  
NORMAN D. SHUMWAY  
Commissioners

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

  
NEAL J. SHULMAN, Executive Director  
PB