

Decision 92-07-093 July 31, 1992

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
 American National Telecommunications,)
 Inc. (U-5132-C) to Transfer Its)
 Certificate of Public Convenience and)
 Necessity Along With Certain Utility)
 Property to Tencom Communications,)
 Inc. and to Transfer Its Customer Base)
 to American Sharecom, Inc. for the)
 Benefit of Execuline of Sacramento,)
 Inc. (U-5008-C).)

Application 92-05-022
(Filed May 12, 1992)

OPINION

1. Summary

As part of a bankruptcy plan of reorganization, American National Telecommunications, Inc. (American National) seeks authority to transfer its operating authority to a new corporation that will proceed as a facilities-based carrier, and to transfer its customer base for the benefit of Execuline of Sacramento, Inc. (Execuline). The transfers are intended to provide a maximum return for unsecured creditors in the bankruptcy proceeding, to end litigation between the companies, to permit American National to develop its restructured line of business, and to provide continued service to American National's customer base. The application is approved.

2. Background

American National seeks authority, pursuant to Public Utilities (PU) Code § 851, to transfer its certificate of public convenience and necessity, along with certain utility property, to a newly formed company, Tencom Communications, Inc. (Tencom), and to transfer its customer base to American Sharecom, Inc. (Sharecom) for the benefit of Execuline, a wholly owned subsidiary of Sharecom.

The proposed transactions are part of a plan of reorganization submitted to the United States Bankruptcy Court, Central District of California, on April 3, 1992, and confirmed by that court on May 26, 1992.¹ American National is the debtor. The court's confirmation of the plan of reorganization is conditioned on, among other things, the Commission's approval of the proposed transactions falling under its jurisdiction.

American National is a California corporation operating from offices in Van Nuys. It conducts business as a telephone corporation, pursuant to authority granted in Decision (D.) 87-10-066 and D.90-09-083. It is a nondominant interexchange carrier and is authorized to provide interLATA telecommunications services and intraLATA 1.544 Mbps high speed digital private line service in California.²

Tencom is a California corporation under common control with American National, operating from the same offices in Van Nuys. It was organized as a means to continue operating American National's restructured business while permitting maximum distribution to American National's creditors.

Sharecom is a Minnesota corporation operating from offices in Minneapolis. It is qualified to transact intrastate business in California. Sharecom also conducts business as a nondominant interexchange carrier, directly and through wholly owned subsidiaries, in various parts of the United States.

1 Case No. LA 90-32172-SB, Chapter 11.

2 California is divided into 10 Local Access and Transport Areas (LATAs) of various sizes, each containing numerous local telephone exchanges. "InterLATA" describes services, revenues, and functions that relate to telecommunications originating in one LATA and terminating in another. "IntraLATA" describes services, revenues, and functions that relate to telecommunications originating and terminating within a single LATA.

Sharecom acquired control of Execuline in 1991 following authorization in D.91-09-044.

Execuline is a California corporation operating from offices in Sacramento. It is a nondominant interexchange carrier operating under authority granted in D.84-02-012 and D.88-12-075.

3. Transactions Proposed

Under the plan of reorganization, American National will transfer its certificate of public convenience and necessity to Tencom, along with office equipment, billing software, and cash resources of approximately \$945,000. In exchange, Tencom will assume liability for American National's switch space lease and other long-term liabilities.

In addition, the plan provides that unsecured creditors of American National may share in Tencom's income through payments to be made after the 18th month of Tencom's operation, and continuing for a period of 40 months thereafter.

American National also will transfer its existing customer base to Sharecom for the benefit of Execuline, which will provide service to the transferred customers. In exchange, Sharecom will pay American National between \$1.1 million and \$1.3 million and will finance certain accounts receivable under terms expected to yield American National another \$650,000 at closing.

Execuline will release its unsecured claim against the bankruptcy estate in the amount of approximately \$600,000 and will agree to settle pending litigation between the parties.

4. Reasons for the Transactions

Applicant states that the proposed transactions are key components in the bankruptcy plan. It states that the plan was developed following detailed review of American National's financial condition, its business plan, and alternatives for rehabilitation.

Sharecom, joining in the application, represents that the transactions will enable it to end the uncertainties of the

bankruptcy filing and of the litigation between American National and Execuline. By acquiring American National's customer base for Execuline, Sharecom hopes to expand Execuline's business, spread costs over a larger customer population, and improve efficiency. In the long run, Sharecom states, this "will inure to the benefit of California ratepayers in the form of lower prices and higher quality service."

Applicant states that the transfer of its certificate to Tencom will enable the company to continue operations without "the burdens of improvident growth" experienced by American National in its early years. Applicant states that American National's operation, which has been undergoing a restructuring from that of a pure reseller to that of a small facilities-based carrier, is essentially sound and can compete against larger carriers in niche markets. Tencom initially will adopt American National's current tariff rates, terms, and conditions of service.

As part of these transactions, Tencom will agree not to compete with Execuline for the customer base or business transferred to Sharecom. Instead, Tencom will provide its services to other long distance carriers (as a carrier's carrier), to large end-user businesses with projected monthly billings in excess of \$3,000, and to users of shared tenant switch facilities.

Tencom's operations will be managed by Alan Insul, now chairman and president of American National, and Eric Sorensen, now chief financial officer of American National. Both joined the utility in 1988. Insul has sought to restructure the company into a facilities-based carrier. Sorensen has been responsible for financial and computer programming functions of the company.

5. Notification to Customers

Execuline will notify all affected customers of the transfer of American National's customer base and will advise them

of Execuline's terms, conditions, and rates for service.³ As of the closing, American National will remit to Sharecom an amount equal to all refundable customer deposits, prepayments, and advances, and will assume responsibility for handling such deposits, prepayments, and advances in accordance with agreements with affected customers.

6. Request for Expedited Relief

Applicant seeks expedited, ex parte relief, pursuant to D.86-08-057, which authorizes the Executive Director to grant noncontroversial applications by nondominant telecommunications carriers for authority to transfer assets or control under §§ 851-854 of the PU Code.

Findings of Fact

1. Notice of the filing of the application appeared in the Daily Calendar on May 19, 1992. No protests have been filed.
2. American National's transfer of operating authority to Tencom and transfer of customer base to Sharecom/Execuline are part of a plan of reorganization confirmed by the United States Bankruptcy Court.
3. Execuline is financially and technically able to continue to serve American National's customer base.
4. Tencom is financially and technically able to continue to restructure American National's operation from a pure reseller to a small facilities-based carrier.
5. Pursuant to D.86-08-057, the Executive Director is authorized to grant noncontroversial applications by nondominant telecommunications carriers for authority to transfer assets or control under PU Code §§ 851-854.

³ Counsel for American National represents that those customers who elect not to continue their service with Execuline will be free to terminate their American National agreements and seek service from another interexchange carrier.

6. American National is a nondominant telecommunications carrier.

Conclusions of Law

1. A public hearing is not necessary.
2. The application should be granted by order of the Executive Director.
3. Since this matter is not controversial, the following order should be effective immediately.
4. Within 10 days of the effective date of transfer of assets to Tencom and within 10 days of the effective date of transfer of customer base to Sharecom/Execuline, American National should write to the Telecommunications Branch of the Commission Advisory and Compliance Division and advise them of the completion of the respective transactions.

O R D E R

IT IS ORDERED that:

1. American National Telecommunications, Inc. (American National) may transfer its certificate of public convenience and necessity to Tencom Communications, Inc. (Tencom), in accordance with the terms of the Second Amended Plan of Reorganization (the plan of reorganization) confirmed by the United States Bankruptcy Court, Central District of California, in Case No. LA 90-32172-SB.
2. American National may transfer its customer base and certain additional assets to American Sharecom, Inc., for the benefit of Execuline of Sacramento, Inc., in accordance with the terms of the plan of reorganization and of an Asset Purchase Agreement, a copy of which is attached to the application as Exhibit B.
3. Within 10 days after the close of each of the transactions described in Ordering Paragraphs 1 and 2, American National shall write to the Telecommunications Branch of the

Commission Advisory and Compliance Division stating the closing date of the transaction.

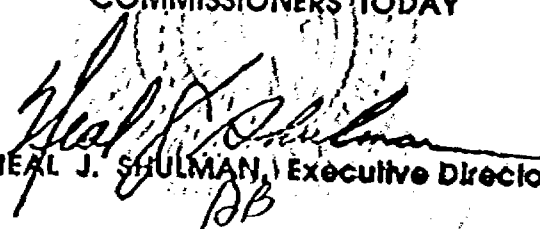
4. Until further order of the Commission, Tencom shall continue to apply the rates and rules set forth in American National tariffs filed with the Commission.

This order is effective today.

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

/s/ NEAL J. SHULMAN
NEAL J. SHULMAN
Executive Director

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

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NEAL J. SHULMAN, Executive Director
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