

Decision 92 10 063 OCT 26 1992

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
Donyda, Inc., a California corporation,)
for authority to acquire control of)
Call America - Palm Desert. (U-5062-C))

Application 92-08-047
(Filed August 31, 1992)

O P I N I O N

By this application Donyda, Inc. (applicant), a California corporation, seeks authority to acquire control of Call America - Palm Desert (CAPD), pursuant to Public Utilities (PU) Code § 854.

Notice of this application appeared in the Commission's Daily Calendar of September 8, 1992. No protests were received; therefore, a public hearing is not necessary.

CAPD was formed in 1984 as a partnership owned 70% by Donald C. Clem and 30% by his son, David M. Clem. CAPD provides interexchange telecommunications services on a resale basis in the Palm Desert area. Calls that originate in the Palm Desert area are terminated by other carriers throughout California and the remainder of the United States.

Effective January 1, 1990, all of the assets and liabilities of the partnership were transferred by the Clems partnership to Donyda, a California corporation doing business as CAPD. Donald C. Clem's and David M. Clem's relative shares of ownership remained exactly the same, with Donald C. Clem holding 70% and David M. Clem 30% of the corporate shares, respectively. The management, operations, service, assets, accounting, and control of the utility also remained exactly the same.

There was no purchase price, terms for payment, or any agreement memorializing this transaction. The Clems represented that the change from a partnership to a corporation was an oral

agreement to facilitate estate planning for Donald C. Clem, in particular, and the Clem family in general.

Applicant did not file an application for authority to acquire control of CAPD at the time the transfer was effective because the Clems did not believe that it was necessary. Applicant filed its application for change in control at this time in response to the Executive Director's answer to applicant's initiated inquiry of whether such an application was necessary.

Applicant does not propose any new construction. Therefore, it can be seen with certainty that the grant of this application will not have any significant impact on the environment.

Pursuant to Ordering Paragraph 1 of Decision 87-10-035, this application should be approved by the Executive Director on an expedited basis because this application is noncontroversial and because Call America - Palm Desert is a nondominant interexchange telecommunications utility. 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 §§ 851-854 of the PU Code."

Findings of Fact

1. No protests to the application have been filed.
2. Applicant is a California corporation.
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. The Executive Director may grant noncontroversial applications by nondominant telecommunications carrier for authority to transfer assets or control under §§ 851-854 of the PU Code.

Conclusion of Law

The application for authority to acquire control of CAPD should be granted.

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

ORDER

IT IS ORDERED that:

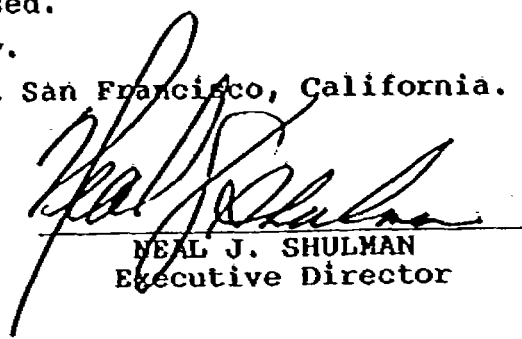
1. On or after the effective date of this order, Donyda, Inc. may acquire control of Call America - Palm Desert (U-5062-C) in accordance with the terms described in the application.
2. The corporation identification number assigned to Donyda, Inc. is U-5295-C which shall be included in the caption of all original pleadings and in the titles of pleadings filed in existing cases with the Commission.
3. Donyda, Inc. shall file with the Commission's Advisory and Compliance Division revised tariffs to reflect the change of control granted in this order.
4. Upon compliance with all of the conditions of this order, including the payment of all fees due under Public Utilities Code § 431 to the date of transfer, Call America - Palm Desert shall stand relieved of its public utility obligation for the transferred telecommunications system and its corporate identification No. U-5062-C shall be revoked.

5. The application is granted as set forth above and the authority granted shall expire if not exercised within one year of the effective date of this order.

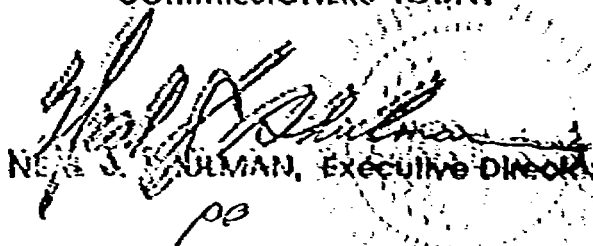
6. Application 92-08-047 is closed.

This order is effective today.

Dated OCT 26 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
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