

Decision 96-06-039 June 17, 1996

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Joint Application of TCG San Francisco (U-5454-C), TCG Los Angeles (U-5462-C), TCG San Diego (U-5389-C), and Teleport Communications Group Inc., for authority to transfer ownership interests in existing partnerships to Teleport Communications Group Inc.

ORIGINAL

Application 96-04-041
(Filed April 30, 1996)

OPINION

TCG San Francisco (TCG-SF) (U-5454-C), a New York general partnership, TCG Los Angeles (TCG-LA) (U-5462-C), a New York general partnership, TCG San Diego (TCG-SD) (U-5389-C), a New York general partnership, and Teleport Communications Group Inc. (TCGI), a Delaware corporation, hereby request authority for the transfer of ownership interests in TCG-SF, TCG-LA, and TCG-SD (the TCG entities). Authority is sought to transfer the ownership of the TCG entities from a complex organization of partnerships and joint ventures to umbrella ownership entirely under TCGI. This reorganization is in connection with plans by TCGI and its owners to reorganize all of their various TCG entities and seek public debt and/or equity financing.

On April 19, 1996, TCGI filed a Registration Statement with the Securities and Exchange Commission (SEC) to offer shares of Class A common stock to the public. That Registration Statement has not been acted upon at this time. The reorganization of TCG's California entities is part of a larger plan to reorganize various TCG operating companies so that they become wholly owned subsidiaries of TCGI in order to better seek public financing for the substantial costs associated with competing in the local telecommunications marketplace.

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This application is similar to one filed last year by the three TCG entities, in which they requested authority to transfer all of their ownership interests to New Telco, L.P., known as the Sprint Telecommunications Venture (STV). That application, (A) 96-05-069 was approved by the Commission in Decision (D) 95-09-083 without any controversy.

In order to better organize their operations under a single controlling party, the TCG entities now request authority similar to that permitted by D.95-09-083, but with transfer of ownership interests to TCGI. They are seeking permission for a lesser change than was sought in the case of STV. The transaction approved in D.95-09-083 involved the introduction of a new owner, STV, and the introduction of a significant new investor (Sprint) with a 40% ownership interest in the company.² The present transaction, by contrast, will result in the TCG entities remaining under the ultimate control of the same four companies that now control them, and thus represents simply an internal rearrangement of existing financial interests, with no one owner acquiring

² The transaction which the Commission approved in D.95-09-083 has not been consummated by the parties. TCGI's April 19, 1996 Registration Statement, with respect to New Telco, states as follows: "As recently as January 1996, TCI, Cox and Comcast expressed their intention to attempt to integrate the business of the Company [TCGI] with the business of Sprint Spectrum (formerly New Telco). At present, TCI, Cox and Comcast are not in any discussions with Sprint or Sprint Spectrum with respect to the Company. However, the Company cannot predict whether TCI, Cox and Comcast will attempt to achieve such an integration in the future or whether they will be successful in doing so. The Company also cannot predict the form that any such integration would take or its impact on the Company's business." Registration Statement at 16. Should any future integration require the approval of the Federal Communications Commission beyond that already received in D.95-09-083 and the application for additional authority will be filed.

ultimate control over the licensees.³ They point out that the predecessor companies of TCG-SF and TCG-LA were licensed California carriers that were wholly owned subsidiaries of TCGI and therefore the Commission has already accepted TCGI as an appropriate controlling owner of California licensees.

The parties assert that Commission approval of the proposed transaction will enhance the already strong financial capabilities and technical expertise of TCG-SF, TCG-LA, and TCG-SD, while maintaining current management and personnel. It will also place ownership of all three entities under one common control, thereby positioning the TCG entities to compete successfully in the new telecommunications environment. It will, in particular, allow them more easily to obtain debt and equity financing to support the significant costs of network construction and operation.

Applicant TCG-SF is a New York general partnership. Its current partners, and their ownership interests as of December 31, 1995, are Teleport Communications San Francisco, Inc. (20.58%), TCG Partners (14.42%), TCI Teleport of San Francisco, Inc. (37.9%), and Viacom Telecom Inc. (22.9%), and InterMedia Partners (4.2%). The current partners of TCG-SF are as follows:

Teleport Communications San Francisco, Inc. (TCSF) is the managing partner and owns 20.58% of TCG-SF. TCSF is a Delaware corporation. TCSF is 100% owned by TCGI, a Delaware corporation. TCGI is presently privately held by subsidiaries of the following corporations:

³ These four owners are Cox Communications, Inc., Telecommunications, Inc., Comcast Corporation, and Continental Cablevision, Inc.

⁴ Teleport Communications Los Angeles, Inc. and Teleport Communications San Francisco, Inc. were the predecessor licensees in those markets.

Inc. (Cox), a publicly traded Delaware corporation; Tele-communications; Inc. (TCI), a publicly traded Delaware corporation; Comcast Corporation (Comcast), a Pennsylvania corporation; and Continental Cablevision, Inc. (Continental), a Delaware limited liability corporation. TCGI is owned in the following proportions: Cox, 30.06%; TCI, 29.94%; Continental, 20%; and Comcast, 20%.

2. TCG Partners is a Delaware limited liability corporation. TCG Partners owns 14.42% of TCG-SF. TCG Partners is a New York general partnership owned by subsidiaries of Cox, Comcast, TCI, and Continental, in the same proportions that they currently own TCGI. TCI Teleport of San Francisco, Inc. is a California corporation which is a wholly owned subsidiary of TCI Development Corporation, a Colorado corporation, which is a wholly owned indirect subsidiary of TCI. TCI has agreements to acquire the interests of Viacom Telecom Inc. and InterMedia Partners, and has recently acquired the partnership interests formerly held by MicroNet, Inc. in TCG-SF.⁵

4. Viacom Telecom Inc. is a Delaware corporation which is a wholly owned subsidiary of Viacom International Inc., a Delaware corporation, which is a wholly owned subsidiary of Viacom Inc., a publicly traded Delaware corporation.

5. InterMedia Partners is a California limited liability partnership. InterMedia Partners owns 4.2% of TCG-SF. It is a California limited liability partnership.

³ These four owners are Cox Communications, Inc., Tele-communications, Inc., Comcast Corporation, and Continental Cablevision, Inc.

⁵ In February 1996, TCI Teleport of San Francisco, Inc. acquired the 7.2% interest in TCG-SF that was formerly held by MicroNet, Inc. in those markets.

B. TCG Los Angeles

Applicant TCG-LA is a New York general partnership. Its partners and their ownership interests as of December 31, 1995 are Teleport Communications Los Angeles, Inc. (13.4%), TCG Partners (21.6%), Times Mirror Access, Inc. (9.6%), TCI Teleport of Los Angeles, Inc. (12.6%), Continental Teleport, Inc. (30.4%), and Comcast Network Communications of Southern California, Inc. (12.4%)

The current partners of TCG-LA are as follows:

1. Teleport Communications Los Angeles, Inc. (TCLA)

TCLA is the managing partner and owns 13.4% of TCG-LA. TCLA is a Delaware corporation which is 100% owned by TCGI as described above.

2. TCG Partners

TCG Partners owns 21.6% of TCG-LA. The ownership of TCG Partners is described above.

3. TCI Teleport of Los Angeles, Inc.

TCI Teleport of Los Angeles, Inc. owns 12.6% of TCG-LA. It is a wholly owned subsidiary of TCI, which is described above.

4. Comcast Network Communications of Southern California, Inc.

Comcast Network Communications of Southern California, Inc. owns 12.4% of TCG-LA. It is a Delaware corporation and is a wholly owned subsidiary of Comcast described above.

5. Continental Teleport, Inc.

Continental Teleport, Inc. owns 30.4% of TCG-LA. It is a Massachusetts corporation and is a wholly owned subsidiary of Continental, described above.

6. Times Mirror Access, Inc.

Times Mirror Access, Inc. owns 9.6% of TCG-LA. It is a Delaware corporation and is a wholly owned subsidiary of Times Mirror Cable Television, Inc., a Delaware corporation which is itself a wholly owned subsidiary of Cox, described above.

C. TCG San Diego

Applicant TCG-SD is a New York general partnership. Its partners are TCG Partners (46.35%), Cox Teleport San Diego, Inc. (46.35%), and Times Mirror Access, Inc. (7.30%). The current partners of TCG-SD are as follows:

1. TCG Partners is the managing general partner and owns 46.35% of TCG-SD. The ownership of TCG Partners is described above.

2. Cox Teleport San Diego, Inc. owns 46.35% of TCG-SD. It is a wholly owned subsidiary of Cox, which is described above.

3. Times Mirror Access, Inc. owns 7.3% of TCG-SD. Times Mirror Access, Inc.'s ownership is described above.

D. Teleport Communications Group Inc.

Applicant TCGI is a Delaware corporation. It states that it is the largest and most experienced competitive provider of local telecommunications services in the nation. TCGI currently operates, directly or through affiliated companies, telecommunications networks in 48 major markets in the United States. TCGI affiliates have been authorized as local exchange providers in California, Connecticut, Florida, Illinois, Maryland, Massachusetts, Michigan, New York, Pennsylvania, Texas, Washington, and Wisconsin. The engineering, technical and operational expertise that TCGI and its affiliates have developed by constructing and operating these networks currently is available to the TCG entities in California and these capabilities will continue to be available under the transactions described in this decision.

Financial Information

As noted in footnote 11 on April 19, 1996, TCGI filed a registration statement with SEC for the issuance of securities in a public offering. That offering is pending federal regulatory

approval. The reorganization contemplated by this application is directly related to the public offering planned by TCGI. A copy of the registration statement filed with SEC is attached to the application.

At present, the TCGI local joint ventures, such as TCG-SF, TCG-LA, and TCG-SD, are owned through a complex series of joint ventures, partnerships, and holding companies, such that there is no concentration or collection of the ownership interests in any one entity. The objective of their application is to simplify this ownership structure so that they are owned by a single corporation, TCGI. This will then allow TCGI to assist in funding these companies by means of raising debt and equity financing through public or private placements.

The specifics of the transactions that are to be undertaken are alleged as follows: First, either stock of one or more of the four corporate partners that make up TCG Partners, or partnership interests in TCG Partners, will be transferred to TCGI in exchange for stock of TCGI, so that TCG Partners becomes a wholly owned subsidiary of TCGI. It is not expected that TCG Partners' partnership interests in the California entities will themselves be transferred, so TCG Partners will thus remain a partner in the licenses. Second, it is expected that either 100% of the stock of the several corporate partners in the California TCG entities or their partnership interests in the California TCG entities, will be transferred to TCGI in exchange for stock of

The TCG Partners portion of the transaction does not, in fact, result in any changes in the actual ownership of TCG Partners, since both before and after the transaction, TCG Partners continues to be owned and controlled by its four existing owners. Consequently, applicants do not seek Commission approval for this aspect of the transaction since it does not represent any change subject to the approval requirements of Sections 851-854 of the Public Utilities Code.

TCGI. There will be no change in the wholly owned TCGI subsidiaries that are partners in TCG-SF and TCG-LA. At the end of the process, the three California TCG entities will then become subsidiaries of TCGI, which itself will continue to be owned by the four current owners of TCG-SF, TCG-LA and TCG-SD.⁷

The parties allege that this transaction will substantially improve the organization and financial strength of the three TCG entities in California. It will allow them greater access to debt and equity financing, through the combined ownership and control of TCGI. Additionally, it is not expected that there will be any change in the management, personnel, operations, services, or rates of the three TCG entities as a result of this transaction and, therefore, they will continue to be able to provide all of the services authorized by this Commission.

However, by gaining greater access to sources of financing, they will be able to better support the costs associated with expanding and improving their networks.

Approval of this ownership transfer will, in the opinion of applicants, further the public interest, including the interests of the current customers of TCG-SF, TCG-LA, and TCG-SD. TCGI has a long history of participation in the telecommunications industry, has previously been approved by the Commission as a controlling owner of California licenses, and will be able to provide a strong source of financial capital and technical expertise for the

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⁷ It is expected that, as a result of the reorganization of ownership interests in the various TCG local partnerships, and assuming that a public offering of Class A common stock occurs, the interests of the four owners of TCGI will change somewhat. The precise ownership that will result cannot be exactly predicted at this time since it will be dependent on a variety of factors, including the amount of stock issued to the public. However, it is expected that the four owners will continue to have at least an 80% financial interest in TCGI, and that none of the four owners will individually have a controlling (50.1%) interest in TCGI.

existing partnerships' growing operations. Thus, these companies will be more able to make long-term capital investments to expand their existing advanced local telecommunications infrastructure.

Applicants request that the authority sought herein be granted on an ex parte basis by order of the Executive Director, consistent with the transfer procedures adopted for interexchange carriers and radiotelephone utilities pursuant to Commission orders D.86-08-057 and D.87-10-035.

This application involves only a proposed change in the ownership of existing duly licensed facilities. Applicants do not propose any new construction. Therefore, there is no possibility that the proposed transaction may have any significant impact on the environment. A true copy of the instrument was completed and filed. A true copy of the instrument shall be attached to the written notification of the proposed transaction.

Findings of Fact

1. Notice of the filing of the application appeared in the Daily Calendar on May 1, 1996. No protests have been filed. A hearing is not necessary.

2. The authority to transfer granted by D.95-09-083 expired on December 31, 1995. Applicants have stated that that authority was never exercised (see footnote 2, above) and, therefore, it is now void.

3. The proposed transaction will result in the transferee having greater resources with which to operate its public utility business.

4. The sale is in the public interest.

5. This authorization is not a finding of the value of the rights and properties to be transferred.

Conclusion of Law

The sale and transfer should be authorized.

existing partnerships, growing operations. Thus, these companies will be more able to make **ORDER** their existing advanced local telecommunications infrastructure. Applications request that this **ORDER** be effective today.

ORDER before December 31, 1996, TCG San Francisco, TCG Los Angeles, and TCG San Diego may transfer to Teleport Communications Group Inc. the ownership interests described in their application in accordance with the terms of the documents attached to the application. This application involves no public hearing.

Within 10 days of the actual transfer, Teleport Communications Group Inc. shall notify the Commission, Advisory and Compliance Division, in writing, of the date of which the transfer was completed. A true copy of the instrument effecting the transfer shall be attached to the written notification.

This order is effective today. Notice of the Commission's findings is hereby published in the Daily.

Dated June 17, 1996, at San Francisco, California.

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WESLEY M. FRANKLIN
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Executive Director

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