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Decision 96-07-053 July 17, 1996

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the matter of the Application of)
 Viacom Communications Inc. (U-5555-C),)
 Viacom Inc., and TCI Communications,)
 Inc. for authority for TCI) (Filed May 17, 1996)
 Communications, Inc. to acquire control)
 of Viacom Communications, Inc.)

ORIGINALO P I N I O N

On May 17, 1996, Viacom Communications, Inc., a California corporation (U-5555-C) (VCI), Viacom Inc., a Delaware corporation duly qualified to transact intrastate business in California, and TCI Communications, Inc., a Delaware corporation duly qualified to transact intrastate business in California (TCIC), jointly submitted an application for ex parte approval for TCIC to acquire control of VCI through the pending acquisition by TCIC of Viacom International Inc.¹, Viacom Inc.'s subsidiary, which is the parent of Tele-Vue Sytems, Inc. (TVS), which is the parent of VCI.

VCI, the utility to be acquired, is authorized to operate as a competitive local carrier (CLC) in a defined service territory in northern California, pursuant to Decision (D.) 95-12-057. Viacom Inc., the ultimate parent of VCI, is a diversified entertainment and publishing company that owns and operates locally franchised cable television systems under the name "Viacom Cable." TCIC (the entity that will acquire indirect control of VCI through acquisition of all of the outstanding common stock of VCI's corporate grandparent, Viacom International Inc.) is a direct majority-owned subsidiary of Tele-Communications, Inc. (TCI), which is the nation's largest owner of locally franchised cable television systems.

¹ Which will thereafter be renamed "TCI Pacific Communications, Inc."

Applicants represent that the acquisition of control of VCI by TCIC (and, indirectly, by TCI) is incidental to a broader plan of Viacom Inc. to shift its focus to development of programming and of TCIC to expand the geographic scope of its cable operations. VCI represents that it expects to pursue its present course of implementing its CLC authority both before and after it becomes subject to the control of TCIC.

The transaction by which TCIC will acquire Viacom International Inc. is through an exchange offer, pursuant to which Viacom Inc. is offering to exchange up to 6,257,961 shares of Class A Common Stock of Viacom International Inc. in return for shares of Common Stock of Viacom Inc. at an exchange ratio not greater than 0.47 nor less than 0.4075 for each share of Common Stock of Viacom Inc. until July 22, 1996, unless the exchange offer is extended. The Class A Common Stock of Viacom International Inc. will automatically convert to 5% Class A Senior Cumulative Exchangeable Preferred Stock. In a related transaction, TCIC will acquire all of the outstanding shares of Class B Common Stock of Viacom International Inc. and will, therefore, become the sole shareholder of the voting shares of Viacom International Inc.

Applicants requested that the Executive Director approve the application pursuant to the authority delegated to him by D.86-08-057, which permits change in control applications involving non-dominant interexchange carriers (NDIECs) that are deemed "non-controversial" to be handled in this manner. The scope of authority granted there does not, however, encompass CLCs.

In determining whether a transfer of control of a utility under our jurisdiction is in the public interest we consider many factors, including whether the acquiror has the financial and technical resources to render the public utility

service being acquired and if the acquiror has previously provided telecommunications public utility services in a manner contrary to law, such as engaging in a pattern of persistent and widespread disregard of consumer instructions for changes in services, such as "slamming."

Few of the concerns that we have with a new entrant are present in the situation of the type of change in control transaction before us in this application. VCI itself we have already found qualified to provide public utility service. VCI is one among many business units in the vast media empire of Viacom Inc.² and will make up a comparably small fraction of TCIC's and TCI's enterprises. In light of the representation made that VCI intends to continue with its plans to exercise its authority as a CLC independent of the change in control transaction there is little reason to believe that the acquisition of its corporate grandparent by TCIC will have any effect on the ability of the utility to discharge its public calling. This is not the type of transaction in which we expect to see immediate and adverse changes in the direct operation and management of the subject utility. We have no reason to doubt that the existing management and technical staff will be unaffected by the acquisition for the immediate future.

By the same token, there can be little doubt that TCIC has sufficient financial resources to qualify independently as a CLC.³

Finally, TCI has confirmed to the Commission that TCIC is a direct majority-owned subsidiary of TCI and, accordingly,

² All of the cable television operations of Viacom Inc. that are the subject of the overall transaction account for approximately 4% of its consolidated revenues and 7% of its operating income during 1995, respectively, and 4% of its consolidated total assets as of December 31, 1995. (Amendment No. 5 to Form S-4 Registration Statement under the Securities Act of 1993 of Viacom International Inc. (June 24, 1996) <http://www.sec.gov/Archives/edgar/data/814135/0000950130-96-002331.txt>.)

³ Viacom International Inc. will have closed a loan in the amount of \$1.7 billion immediately prior to its acquisition by TCIC. (Id.)

upon consummation of the proposed transactions, TCI will, through its existing control of TCIC, indirectly control VCI and that TCI has the authority to file the application and to enter into and consummate the transactions described in the application.

Findings of Fact

1. Notice of the filing of this application appeared in the Commission's Daily Calendar on May 24, 1996.
2. No protests were filed.
3. VCI is a CLC, telephone corporation, and a public utility.
4. TCIC and, indirectly, its parent TCI and its control persons, will indirectly acquire VCI through TCIC's acquisition of all of the common stock of Viacom International Inc.
5. VCI represents that it expects to pursue its present course of implementing its CLC authority both before and after it becomes subject to the control of TCIC.
6. TCI has confirmed to the Commission that TCIC is a direct majority-owned subsidiary of TCI and, accordingly, upon consummation of the proposed transactions, TCI will, through its existing control of TCIC, indirectly control VCI and that TCI has the authority to file the application and to enter into and consummate the transactions described in the application. TCIC has represented that it is authorized to make this application on behalf of its controlling affiliates, as well as itself.
7. TCIC has sufficient financial resources to qualify independently as a CLC.
8. No changes in the management or technical staff of VCI are expected to occur as a direct result of the indirect acquisition of VCI by TCIC.

Conclusions of Law

1. Permitting the indirect acquisition of control of VCI by TCIC and its controlling affiliates is not adverse to the public interest.
2. The application should be granted.
3. A public hearing is not necessary.
4. The following order should be effective immediately.

O R D E R

IT IS ORDERED that TCI Communications, Inc. on behalf of itself and Tele-Communications, Inc. is authorized to indirectly acquire Viacom Communications Inc. (U-5555-C) through the acquisition of the outstanding common stock of Viacom International Inc. as described in the application pursuant to the provisions of Public Utilities Code Section 854(a).

This order is effective today.

Dated July 17, 1996, at Sacramento, California.

P. GREGORY CONLON
President
DANIEL Wm. FESSLER
JESSIE J. KNIGHT, JR.
HENRY M. DUQUE
JOSIAH L. NEEPER
Commissioners