

Decision 96 09 049

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

**Application for Authority for
Avery Communications, Inc., to
Acquire Control of Home Owners
Long Distance, Incorporated.**

Application 96-06-051
(Filed June 26, 1996)

O P I N I O N

1. Summary

This decision authorizes the transfer of corporate control, pursuant to Public Utilities (PU) Code § 854(a), of Home Owners Long Distance, Incorporated (HOLD). HOLD is a certificated reseller of interexchange telecommunications services in California.

2. Summary of Application

HOLD and Avery Communications, Inc. (Avery) seek approval of a transaction in which Avery will acquire ownership and control of HOLD. Stockholders of HOLD would tender all issued and outstanding shares in exchange for cash and common stock in Avery. HOLD then would merge with Avery Acquisition Sub, Inc., a wholly owned subsidiary of Avery created for the transaction. HOLD would be the surviving entity, becoming a wholly owned subsidiary of Avery. HOLD would continue operating under its name and would remain the reseller certificate holder. HOLD would continue providing services pursuant to its tariffs on file with the Commission, and management would for the most part remain unchanged.

HOLD is a Texas corporation qualified to transact business in California. It was authorized in Decision 95-04-005 to resell interLATA long distance service as well as intraLATA

service.¹ HOLD provides intrastate service in a number of other states, and it is authorized by the Federal Communications Commission (FCC) to provide domestic interstate and international services as a nondominant carrier.

Avery is a publicly traded Delaware corporation with principal offices in Grand Prairie, Texas. A holding company, it was formed in 1995 to provide residential and commercial telecommunications services. Its subsidiaries include BorderComm, Inc., which provides cross-border communications via digital microwave transmission, and American Telephone and Communications, Inc., which provides switched access 1-plus, dedicated access and calling card services in Texas. Patrick J. Haynes III, chairman of Avery, has extensive experience in telecommunications. In 1992, he founded American Communications Services, Inc., a fiber optic competitive access provider which is now publicly traded.

Applicants state that the proposed merger will serve the public interest in promoting competition among interexchange carriers by providing HOLD and Avery with greater financial resources. Applicants state:

"The proposed transaction will invigorate competition in California by enabling HOLD and [Avery] to pursue their marketing and business plans more effectively. Moreover, upon consummation of the transaction, HOLD and [Avery] expect to continue to rely on many of their existing management and operations staffs to provide service." (Application, p. 6.)

¹ California is divided into 10 Local Access and Transport Areas (LATAs) of various sizes, each containing numerous local telephone exchanges. "InterLATA" describes telecommunications originating in one LATA and terminating in another. "IntraLATA" describes communications originating and terminating within a single LATA.

Financial information attached to the application (Exhibit A) demonstrates that Avery, with total assets of \$2.5 million, has the resources to support HOLD. The application contemplates no new construction of facilities.

Applicants seek expedited approval of the transfer of control, since the planned merger is imminent. Approval by the Executive Director is warranted, pursuant to authority delegated to him to grant noncontroversial applications of this kind.

3. Further Representations

The Commission is aware that HOLD is the subject of an FCC investigation involving two informal complaints filed by consumers who alleged that their signatures had been forged on Letters of Agency (LOA) used by HOLD to implement a change in long distance carrier. In response to questions by the administrative law judge in this matter, HOLD responded that it has denied the allegations of these complaints and is working with the FCC to resolve them. HOLD states that its procedure is to mail new customers a "Welcome Package" that informs them that they have selected HOLD as their long distance carrier, that describes the company's services and rates, and that provides a toll-free telephone number through which customers can reach HOLD with any questions or to decline a switch of their long distance service. HOLD states that it waits at least 14 days after mailing a Welcome Package before initiating a change in long distance carrier through the local exchange carrier. HOLD states that this procedure was followed as to the two complainants. HOLD states:

"Although the Company does not feel that its actions...were unreasonable, it nevertheless is anxious to improve its procedures in order to ensure that all customers who are provided with service from HOLD are fully satisfied....The Company therefore is beginning to implement certain changes suggested by the FCC, including a program to verify, telephonically, twenty percent of the LOAs received by the Company, such LOAs to be chosen randomly. Additionally, HOLD has recently added to the Welcome Package

that is sent out to new customers a postage pre-paid, pre-addressed postcard, which the customer can complete and mail back to HOLD, if it does not want to switch its service...."²

4. Discussion

This application is filed pursuant to PU Code § 854(a), which requires Commission approval of a transfer of control of a public utility. No change in operation of HOLD is planned. Current tariffs will remain in place. Subscriber agreements will continue unchanged. Since the application involves only a change in the underlying corporate structure, there is no possibility that the transaction will have a significant impact on the environment. Applicants have shown that Avery has the financial and managerial abilities to operate a telecommunications subsidiary successfully. HOLD will continue to operate as the certificated telecommunications provider, using its existing certificate number pursuant to tariffs now on file. HOLD has provided information responding to informal FCC complaints pending against the company, and it has described steps it has taken to further assure that customers are not involuntarily switched to an unwanted long distance carrier.

Since the application is noncontroversial, and no protests have been filed, it is proper for the Executive Director to issue an order approving the proposed transfer. (See D.86-08-057, 21 CPUC2d 549 (1986), as modified by D.87-10-035, 25 CPUC2d 459 (1987).)

Findings of Fact

1. Notice of the filing of this application appeared in the Commission's Daily Calendar on July 2, 1996, and applicants have

² Letter dated July 25, 1996, from Swidler & Berlin, counsel for Home Owners Long Distance, Incorporated.

served copies of the application on 135 other telecommunications companies in California. No protests have been received.

2. HOLD was authorized to provide intraLATA as well as interLATA telephone services pursuant to D.95-04-005.

3. HOLD is a Texas corporation qualified to transact business in California.

4. HOLD will become a wholly owned subsidiary of Avery, a Delaware corporation, pursuant to terms of a proposed merger.

5. Terms and conditions of services offered to subscribers of HOLD would be unaffected by the proposed transfer of control.

6. The transfer of control will make additional financial and technical resources available to the telecommunications service.

7. Avery has the financial and managerial abilities to operate a telecommunications subsidiary successfully.

8. Granting the application is not adverse to the public interest.

9. The Executive Director is authorized under previous decisions of the Commission to issue orders granting noncontested applications of nondominant interexchange carriers to transfer control under PU Code § 854.

10. There is no known opposition to the proposed transfer of control.

Conclusions of Law

1. The application should be granted, subject to the conditions set forth in the ordering paragraphs.

2. No public hearing is necessary.

3. It can be seen with certainty that the granting of this application will have no significant adverse effect on the environment.

4. The following order should be effective immediately so that the contemplated transfer can take place promptly.

O R D E R

IT IS ORDERED that:

1. On or after the effective date of this order, Home Owners Long Distance Incorporated (HOLD) is authorized to transfer control of its California telecommunications services operation, identified by its corporate identification number U-5464-C, to Avery Communications, Inc., a Delaware corporation, under the provisions of Public Utilities Code § 854(a), in accordance with the terms and conditions set forth in Application (A.) 96-06-051.

2. Applicants shall notify the Director of the Commission's Telecommunications Division in writing of the actual date of transfer of control, as authorized herein, within 10 days after completion of the transfer. A true copy of the instruments of transfer shall be attached to the notification.

3. Applicants shall notify all customers affected by the transfer of control and advise them that terms, conditions, and rates for service are unchanged.

4. Applicants shall make all books and records available for review and inspection upon Commission staff request.

5. The corporate identification number assigned to HOLD (U-5464-C) shall be included in the caption of all original filings with this Commission, and shall be included in the title of other pleadings filed in existing cases.

6. The authority granted in this order shall expire if not exercised within 12 months after the effective date of this order.

7. A.96-06-051 is closed.

This order is effective today.

Dated SEP 11 1996, at San Francisco, California.


WESLEY M. FRANKLIN
Executive Director