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Decision 96-09-085 September 20, 1996

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the matter of the joint application)
by CALPAGE (U-5266-C) and (U-2128-C))
formerly Pac-West Telecomm, Inc.) Application 96-06-038
for authority to transfer its) (Filed June 21, 1996)
assets and operating authority)
to a new corporation known as)
Pac-West Telecomm, Inc.)

URGENT

O P I N I O N

On June 21, 1996, CALPAGE, a California corporation formerly known as PacWest Telecomm, Inc. (U-5266-C) and U-2128-C and Pac-West Telecomm, Inc., a California corporation (Pac-West), a wholly-owned subsidiary of CALPAGE, jointly submitted an application for ex parte approval for CALPAGE to transfer its non-paging telecommunications assets, liabilities, and operating authority to Pac-West. Pac-West's majority shareholder will be Bay Alarm, Inc., a California corporation (BAC), which joined in the application pursuant to an amendment filed August 15, 1996. CALPAGE and its shareholders have agreed to merge CALPAGE with and into ProNet Inc. for the purpose of transferring its one-way paging business to ProNet Inc. on a tax-free basis. The merger agreement provides for the ownership of Pac-West to be vested in CALPAGE's existing shareholders in exchange for the outstanding shares of CALPAGE. The relative proportion of ownership of the shareholders in Pac-West would differ from their respective proportions in CALPAGE, effectively resulting in change in control of CALPAGE as a public utility.

CALPAGE, the utility to be acquired, is authorized to operate as a competitive local carrier (CLC), pursuant to

¹ Currently, John K. La Rue is the controlling shareholder of CALPAGE. Following the proposed transaction, Pac-West would be controlled by BAC, which is a minority shareholder of CALPAGE currently.

Decision (D.) 95-12-057 and a nondominant interexchange carrier (NDIEC) pursuant to D.93-04-063.

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 re Viacom Communications Inc. (D.96-07-053).) Although pursuant to D.95-10-032, a transfer of assets or ownership of a commercial mobile radio service is exempt from the application unless the Commission determines otherwise, applicants request approval of transfer of that authority, as well as

The financial statements submitted in connection with the application were made the subject of a protective order by the administrative law judge assigned to the law and motion calendar. We have examined the information under seal, which shows the financial position of CALPAGE excluding the paging business (which would be the financial position of Pac-West) and we are satisfied that it meets our criteria for financial viability for an NDIEC and CLC.

No change in the senior management responsible for Pac-West will occur from that responsible for CALPAGE as a result of the proposed transaction.

Applicants represent that the shareholder of CALPAGE that will acquire control of Pac-West is BAC whose voting stock is held by trusts established by or for the benefit of Bruce Westphal, Roger A. Westphal, and their respective families. Applicants further represent that none of BAC's officers or directors has held any interest in any California

telecommunications utility that has sought protection under the federal bankruptcy laws or has abandoned service

Findings of Fact

1. Notice of the filing of this application appeared in the Commission's Daily Calendar on June 28, 1996.
2. No protests were filed.
3. CALPAGE is a CLC, NDIEC, telephone corporation, and a public utility.
4. BAC is a minority shareholder of CALPAGE, but would be the majority shareholder of Pac-West.
5. Upon consummation of the proposed transactions, BAC will indirectly control Pac-West. BAC has represented that CALPAGE is authorized to make this application on behalf of BAC.
6. Pac-West will have sufficient financial resources to qualify independently as a CLC.
7. No changes in the management or technical staff of Pac-West are expected to occur as a direct result of the indirect acquisition of Pac-West by BAC.

Conclusions of Law

1. Permitting the acquisition of the public utility assets of CALPAGE by Pac-West is not adverse to the public interest.
2. Permitting the acquisition of control of Pac-West by BAC is not adverse to the public interest.
3. The application should be granted.
4. A public hearing is not necessary.
5. The following order should be effective immediately.

O R D E R

IT IS ORDERED that Pac-West Telecomm, Inc. (Pac-West) is authorized to acquire the public utility assets and operating authority of CALPAGE (U-5266-C and U-2128-C) and Bay Alarm, Inc.

is authorized to indirectly acquire CALPAGE through its majority ownership of PacWest.

This order is effective today, and this proceeding is closed.

Dated September 20, 1976, at San Francisco, California.

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

- 1. Permitting the acquisition of the public utility assets of CALPAGE by PacWest is not adverse to the public interest.
2. Permitting the acquisition of control of PacWest by PAC is not adverse to the public interest.
3. The application should be granted.
4. A public hearing is not necessary.
5. The following order should be effective immediately.

O R D E R

IT IS ORDERED that Pac-West Telecomm, Inc. (Pac-West) is authorized to acquire the public utility assets and operating authority of CALPAGE (U-5266-C and U-5188-C) and Bay Alarm, Inc.