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Decision 97-01-051 January 27, 1997

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Joint Application of NEXTLINK COMMUNICATIONS, L.L.C., NEXTLINK OF CALIFORNIA, L.L.C. (U-5553-C) and LINKATEL PACIFIC, L.P. (U-5307-C) for authority to transfer assets, including certificates of public convenience and necessity, from Linkatel to NEXTLINK of California.

Application 96-10-030
(Filed October 16, 1996)

ORIGINAL

OPINION

Summary

This decision approves, pursuant to Public Utilities (PU) Code Sections 851 to 854, the transfer of substantially all assets, including operating authority, from Linkatel to NEXTLINK Communications, and then to its subsidiary, NEXTLINK of California.

Background

On October 16, 1996, Linkatel Pacific, L.P. (Linkatel), NEXTLINK Communications, L.L.C. (NEXTLINK), and NEXTLINK of California filed an application seeking Commission authorization to transfer substantially all of Linkatel's assets and operating authority to NEXTLINK and subsequently to NEXTLINK of California.

No protests or requests for hearing have been filed.

Description of the Parties

A. Linkatel Pacific, L.P.

Linkatel is a California limited partnership owned by Linkatel Communications, Inc., a California corporation (10.14%), Colony /LINKATEL Networks, Inc., a California corporation, (44.93%) and Fibcom Incorporated, a Delaware corporation, dba National Fibcom Incorporated (44.93%).

The Commission has granted Linkatel authorization to provide both interLATA and intraLATA high capacity private line services as well as interLATA switched toll services. (Decision (D.) 89-11-020, D.93-01-001). Linkatel is also authorized to provide facilities-based local exchange service, D.95-12-057, resold local exchange service, D.96-02-072, and intraLATA switched toll service, D.96-05-014.

B. NEXTLINK Communications, L.L.C.

NEXTLINK Communications is a Washington limited liability company, which is majority owned and controlled by Eagle River Investments, L.L.C., which in turn is owned and controlled by Craig O. McCaw.

C. NEXTLINK of California, L.L.C.

NEXTLINK of California is a Washington limited liability company with a certificate of qualification to do business in California. NEXTLINK owns 99% of NEXTLINK of California, with the remaining 1% owned by company wholly owned by Craig O. McCaw.

The Commission has authorized NEXTLINK of California to provide both facilities-based, D.95-12-057, and resold competitive local exchange service, D.96-02-072, in California.

Description of the Agreement

Pursuant to a September 30, 1996, agreement, Linkatel agreed to sell and NEXTLINK agreed to purchase substantially all the assets constituting Linkatel's telecommunications network and operations in California, subject to Commission approval. The parties submitted the agreement, as well as financial information, with a motion for a limited protective order, which was granted by the Law and Motion Administrative Law Judge on November 27, 1996.

Discussion

This application is made pursuant to PU Code Sections 851-854, which require that a public utility obtain Commission approval of a transfer of assets or of control.¹ Linkatel seeks authorization to transfer its assets to NEXTLINK. NEXTLINK also seeks authority to then transfer the assets to its corporate affiliate, NEXTLINK of California, and to offer intraLATA and interLATA switched toll and private line telecommunications services throughout California. Current tariffs will remain in place. Subscriber agreements will continue unchanged.

¹ Section 854(b) requires that the Commission make additional findings where either utility has gross annual California revenues of \$500 million or more. Counsel for NEXTLINK of California has represented on behalf of both NEXTLINK and Linkatel that neither have revenues that meet that threshold.

NEXTLINK of California has submitted a balance sheet and income statement showing that they are financially capable of providing the proposed service. NEXTLINK of California also submitted biographies of its managers which show that they have the needed technical experience to operate the system. In addition, some current employees of Linkatel may be retained by the new owners.

Applicants state the proposed acquisition of Linkatel by NEXTLINK will "foster the growth of NEXTLINK of California's network and expedite its provision of telecommunications services in California." (Application at 5.)

Since the application involves only a change in the underlying ownership of the facilities, there is no possibility that the transaction will have a significant impact on the environment.

We approve the transfer from Linkatel to NEXTLINK of California aware that as a matter of the commercial transaction, NEXTLINK will initially hold title to the Linkatel assets. We approve NEXTLINK's acquisition of the Linkatel assets for the sole purpose of NEXTLINK transferring the assets to its affiliate, NEXTLINK of California. NEXTLINK does not have authority to transact any telecommunications business in California.

Since the application is noncontroversial, and no protests have been filed, it is proper for the Executive Director to issue an order approving the transfer. (See D.86-08-057, 21 CPUC 2d 549 (1986).)

Findings of Fact

1. Notice of the filing of this application appeared in the Commission's Daily Calendar on October 24, 1996, and applicants have served copies of the application on 376 other telecommunications companies in California. No protests have been received.

2. Linkatel is authorized to provide interLATA and intraLATA high capacity private line service, interLATA toll service, facilities-based local exchange service, resold local exchange service, and intraLATA switched toll service.

3. Pursuant to the terms of the proposed acquisition, substantially all of Linkatel's assets will be transferred to NEXTLINK, and then to NEXTLINK of California.

4. Terms and conditions of services offered to subscribers of Linkatel would be unaffected by the proposed agreement.

5. The proposed agreement will make additional financial and technical resources available to telecommunications service.

6. Granting the application is not adverse to the public interest.
7. The Executive Director is authorized under previous decisions of the Commission to issue orders granting noncontested applications of nondominant interexchange carriers to transfer assets and control under PU Code Sections 851-854.
8. There is no known opposition to the proposed transfer of assets and 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. Granting this application will have no significant impact 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, Linkatel Pacific L.P., is authorized to transfer assets and control of its California telecommunications services operation, identified by its corporate identification number U-5307-C, to NEXTLINK Communications, L.L.C., for the sole purpose of transferring the assets and control to NEXTLINK of California, U-5553-C, under the provisions of Public Utilities (PU) Code Sections 851-854, in accordance with the terms and conditions set forth in Application 96-10-030.
2. Applicants shall notify the Director of the Commission's Telecommunications Division in writing of the actual date of the transfer of control, as authorized herein, within 10 days of completion of the transfer.
3. Applicants shall notify all customers affected by the transfer 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. Upon compliance with all the conditions of this order, including the payment of all fees due under PU Code Section 431, and any other fees, Linkatel Pacific,

L.P. shall stand relieved of its public utility obligation. At that time, Linkatel Pacific's corporate identification number, U-5307-C, shall terminate.

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

7. Application 96-10-030 is closed.

This order is effective today.

Dated January 27, 1997, at San Francisco, California.

/s/ WESLEY M. FRANKLIN
WESLEY M. FRANKLIN
Executive Director