ALJ/BWM/wav

Decision 97-08-085

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of Dial & Save of California, Inc. and Telco Holdings, Inc. d/b/a Dial & Save for Approval of *Pro Forma* Assignment of License and Related Activities.	Application 97-06-023 (Filed June 2, 1997)

OPINION

Dial & Save of California, Inc. (Dial & Save) and Telco Holdings, Inc. d/b/a Dial & Save (Telco Holdings; together applicants) seek Commission authority to merge Dial & Save into Telco Holdings, and assign Dial & Save's certificate of public convenience and necessity (CPCN) to Telco Holdings. In addition, to the extent necessary, applicants seek Commission approval of related financial transactions. Applicants request expedited treatment to permit completion of the reorganization no later than June 30, 1997.

Applicants state that Dial & Save, along with its sister Dial & Save Corporations in other states, will be merged into Telco Holdings as part of the reorganization of Dial & Save's parent, Telco Communications Group, Inc. (Telco). As a result, Dial & Save will cease to exist. Applicants therefore seek Commission approval to assign the CPCN of Dial & Save to Telco Holdings.

Dial & Save and Telco Holdings are both Delaware corporations qualified to do business in California. Dial & Save and Telco Holdings are both wholly-owned subsidiaries of Telco, a publicly traded Delaware corporation. Dial & Save is authorized to provide resold local and long distance telecommunications services in California.[1]

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[1] Decision (D.) 95-10-009 granted a CPCN to Dial & Save as a nondominant interexchange reseller. D.96-02-072 approved Dial & Save's petition for authority to operate has a competitive local carrier to resell the local exchange services of Pacific Bell and GTE California Incorporated.

Dial & Save affiliates are authorized to provide resold long distance telecommunications services in every state, except Alaska and Hawaii.

According to applicants, the reorganization involves no change in ultimate ownership or control of either Dial & Save's license or operations. The management team and ultimate ownership of the proposed licensee (Telco Holdings) following the reorganization will be the same as that of Dial & Save. With the same management team as that of Dial & Save, applicants assert that Telco Holdings will have the same technical and managerial resources.

The application shows the financial resources of Dial & Save and Telco Holdings in the consolidated results of their parent, Telco. Telco had net revenue in 1996 of more than $428 million, and net income of more than $22 million. Telco's year end 1996 total assets exceeded $210 million, with cash and cash equivalent assets exceeding $25 million.

Applicants state that the first step in the reorganization was the creation of Teleco Holdings as a wholly-owned first-tier subsidiary of Telco. Telco Holdings was interposed between Telco and the operating carriers, including Dial & Save. As a result, Dial & Save became a second-tier subsidiary of Telco, and Telco Holdings became Dial & Save's direct parent. The Commission was advised of this by letter dated December 20, 1996, according to applicants.

The second step of the reorganization will consist of merging the Dial & Save subsidiaries, including Dial & Save of California, into Telco Holdings. Thus, upon the granting of this application and the completion of the reorganization, Dial & Save of California will cease to exist, and Telco Holdings will be certified to provide telecommunications services throughout the continental United States.

According to applicants, the creation of Telco Holdings, and the transfer of the CPCN from Dial & Save to Telco Holdings, will be made in a seamless fashion that will be transparent to consumers, and will not in any way inconvenience or have any negative effect on the services provided to Dial & Save's customers. Applicants say that the officers and directors of Telco will not change. To avoid customer confusion, applicants report that Telco Holdings will provide service to the public using the d/b/a of Dial & Save. Applicants assert customers will be able to purchase the same high quality services from Telco Holdings that they currently purchase from Dial & Save. In addition, upon consummation of the reorganization, applicants say Telco Holdings will maintain a tariff that duplicates the existing service offerings, rates, terms and conditions as those in Dial & Save's filed tariff. The reorganization is simply a paper transaction that will be virtually transparent to customers, according to applicants.

In related financial activities, applicants assert that Telco anticipates it may desire to raise capital to make investments in equipment (such as fiber optic capacity and switches), or acquire other carriers, to maintain its competitive position in today's dynamic marketplace. Because Telco plans to continue its growth, applicants seek approval, to the extent required, for Telco to obtain additional capital through either stock issuances or credit facility agreements. If Telco enters into credit facility agreements, applicants say Telco may pledge the stock of its subsidiaries, including Dial & Save and Telco Holdings. It is also possible, according to applicants, that any or all of the Telco subsidiaries, including applicants, may be borrowers under the agreements.

In conclusion, applicants assert that Telco's reorganization will reduce operating expenses, and increase operational and management efficiencies. Applicants say the reorganization will provide Telco greater efficiency in obtaining financing for its continuing expansion, and will secure Telco's competitive position in the telecommunications marketplace. Allowing Telco access to future capital will also further the public interest by providing consumers with an increased number of competitive options, according to applicants. Consequently, applicants say granting this application is consistent with the public interest by promoting competition among telecommunications carriers in California.

Discussion

The Commission has established two major criteria for determining whether a CPCN should be granted. An applicant who is a switchless reseller[2] must demonstrate that it has a minimum of $25,000 of cash or cash equivalent (as described in D.91-10-041, 41 CPUC2d 505 at 520 (1991)), reasonably liquid and readily available to meet the firm's start-up expenses. Such applicants shall also document any deposits required by local exchange carriers or interexchange carriers and demonstrate that they have additional resources to cover all such deposits. (D.93-05-010, 49 CPUC2d 197 at 208 (1993).) In addition, an applicant is required to make a reasonable showing of technical expertise in telecommunications or a related business.

Dial & Save met these major tests, and other tests, and was awarded a CPCN in D.95-10-009. The financial resources, management and technical expertise of Telco Holdings will be the same as Dial & Save. Therefore, Telco Holdings also meets these major tests. Similarly, Telco Holdings meets the Commission's other tests, as did Dial & Save (e.g., qualification to do business in California as a foreign corporation, proposed operation will not have a significant effect on the environment).

D.86-08-057 (21 CPUC2d 549) authorizes approval by the Executive Director of noncontroversial applications by nondominant telecommunications carriers for authority to transfer assets or control under Public Utilities (PU) Code Sections 851-855, as long as no protests are filed, or filed protests are withdrawn or compromised by the parties. (21 CPUC2d 549, 554.) No protests were filed in this application. Therefore, under this delegated authority, the Executive Director can authorize the merger of

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[2] D.93-05-010 defines a switchless reseller as a nondominant interexchange carrier (NDIEC) with the following characteristics: it uses the switch of another carrier; it usually, but not always, uses access circuits that the underlying carrier purchases from a local exchange carrier (LEC), it provides service in its own name, and its customers view it as their telephone company for interLATA and interstate calls. D.92-06-069 noted that it is possible to control, operate, or manage telephone lines without owning them. The decision also notes that resellers which do not own or directly operate their own telephone wires may still have plant which is owned, controlled, operated, and/or managed in order to facilitate communication by telephone.

Dial & Save into Telco Holdings and the assignment of the CPCN from Dial & Save to Telco Holdings.[3]

Telco is not a regulated corporation under the Commission's jurisdiction. Therefore, Telco need not inform the Commission, nor obtain the Commission's approval, before securing additional capital through stock issuances or credit facilities agreements.

Dial & Save is exempted from the provisions of PU Code Sections 816-830, dealing with stock and securities transactions. Upon the assignment of the CPCN, Telco Holdings is similarly exempted. Therefore, applicants need not inform the Commission, nor obtain the Commission's approval, of stock issuances or credit facility agreements.

It should be noted, however, that the assigned CPCN is for a switchless reseller. (See D.95-10-009.) Telco Holdings must obtain additional authority if it seeks to operate as a facilities-based carrier.

Moreover, under the first step of the reorganization, Telco Network Services, Inc. (TNSI) is an affiliate of Dial & Save. After the reorganization, TNSI is a subsidiary of Telco Holdings. TNSI owns telephone facilities and sells capacity. However relaxed may be the Commission's current state of regulation of NDIECs, the Commission does not contemplate that an NDIEC obtain authority as a reseller without facilities only to obtain the facilities through a non-certified affiliate or subsidiary. Rather, the Commission expects that switchless resellers purchase wholesale telephone capacity from certified facilities-based carriers, and then resell these services at retail to customers.

To the extent TNSI operates as a carrier and telephone corporation in California, it must obtain authorization to do so. TNSI may consider the registration process

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[3] Applicants' gross annual California revenues are less than $500 million. Therefore, applicants do not have the burden under PU Code Section 854(e) of proving the requirements of PU Code Section 854(b) and (c), nor must the Commission make the findings in PU Code Sections 854(b) and (c).

recently authorized in D.97-06-107. Alternatively, Telco Holdings may consider seeking authority as a facilities-based reseller.

Findings of Fact

1. A notice of the filing of the application appeared in the Daily Calendar on June 19, 1997.

2. No protests have been filed.

3. A hearing is not required.

4. Dial & Save will be merged into Telco Holdings, and will cease to exist as a separate entity, upon completion of the reorganization of Dial & Save's parent, Telco.

5. Telco Holdings is a Delaware corporation qualified to do business in California.

6. Dial & Save is authorized to provide resold local and long distance telecommunications services in California as a result of the CPCN awarded in D.95-10-009, and the approval of Dial & Save's petition to operate as a competitive local carrier granted in D.96-02-072.

7. The reorganization involves no change in the ultimate ownership, control, management team, technical expertise or financial resources of applicants.

8. By D.97-06-107, all interexchange carrier and competitive local carrier applicants are exempt from Rule 18(b) of the Commission's Rules of Practice and Procedure regarding service of their application on competitors, cities and counties.

Conclusions of Law

1. Telco Holdings has the financial ability and technical expertise to provide the proposed service.

2. Public convenience and necessity require that the requests to merge and transfer the CPCN from Dial & Save to Telco Holdings be authorized.

3. Telco Holdings' authorization should be subject to the same terms, conditions and limitations as that granted Dial & Save.

4. Telco Holdings is subject to:

   a. The current 3.2% surcharge applicable to all intrastate services except for those excluded by D.94-09-065, as modified by D.95-02-050, to fund the Universal

Lifeline Telephone Service PU Code § 879; Resolution T-15799, November 21, 1995);

b. The current 0.36% surcharge applicable to all intrastate services except for those excluded by D.94-09-065, as modified by D.95-02-050, to fund the California Relay Service and Communications Devices Fund (PU Code § 2881; Resolution T-16017, April 9, 1997);

c. The user fee provided in PU Code §§ 431-435, which is 0.11% of gross intrastate revenue for the 1997-1998 fiscal year (Resolution M-4786);

d. The current surcharge applicable to all intrastate services except for those excluded by D.94-09-065, as modified by D.95-02-050, to fund the California High Cost Fund-A (PU Code § 739.30; D.96-10-066, pp. 3-4, App. B, Rule 1.C; set by Resolution T-15987 at 0.0% for 1997, effective February 1, 1997);

e. The current 2.87% surcharge applicable to all intrastate services except for those excluded by D.94-09-065, as modified by D.95-02-050, to fund the California High Cost Fund-B (D.96-10-066, p. 191, App. B, Rule 6.F.); and

f. The current 0.41% surcharge applicable to all intrastate services except for those excluded by D.94-09-065, as modified by D.95-02-050, to fund the California Teleconnect Fund (D.96-10-066, p. 88, App. B, Rule 8.G.).

5. Applicant is exempt from Rule 18(b).

6. Applicant should be exempted from PU Code §§ 816-830, as was Dial & Save.

7. Applicant should be exempted from PU Code § 851 when the transfer or encumbrance serves to secure debt, as are other resellers.

8. The application should be granted to the extent set forth below.

9. Because of the public interest in competitive interLocal Access and Transport Area and intraLocal Access and Transport Area services, the following order should be effective immediately.

ORDER

IT IS ORDERED that:

1. The application of Dial & Save of California, Inc. (Dial & Save) and Telco Holdings Inc. d/b/a/ Dial & Save (Telco Holdings) to merge Dial & Save into Telco Holdings, and assign Dial & Save's certificate of public convenience and necessity (CPCN) to Telco Holdings, is granted.

2. The CPCN assigned from Dial & Save to Telco Holdings authorizes Telco Holdings to operate as a reseller of interLocal Access and Transport Area (interLATA) services and, to the extent authorized by Decision (D.) 94-09-065, intraLocal Access and Transport Area (intraLATA) services offered by communication common carriers in California.

3. Dial & Save and Telco Holdings shall jointly file a written acceptance of the authorization to merge and assignment of Dial & Save's CPCN to Telco Holdings.

4. Telco Holdings is authorized to file with this Commission tariff schedules for the provision of telecommunications services which are the same as the filed tariff schedules for Dial & Save. Telco Holdings may not offer service until its tariffs are on file. Telco Holdings' filing shall be made in accordance with General Order (GO) 96-A, excluding Sections IV, V, and VI, and shall be effective not less than one day after filing. Telco Holdings shall comply with the provisions in its tariffs.

5. Telco Holdings shall file as part of its initial tariff, after the effective date of this order and consistent with Ordering Paragraph 3, a service area map.

6. Telco Holdings shall notify this Commission in writing of the date interLATA service is first rendered to the public within five days after service begins and again within five days of when intraLATA service begins.

7. The CPCN assigned to Telco Holdings is subject to the same terms, conditions and limitations as that of Dial & Save, such as, but not limited to, the effective dates for tariff revisions; deviation from provisions of General Order 96-A; the keeping of its books and records in accordance with the Uniform System of Accounts specified in Title 47, Code of Federal Regulations, Part 32; the production of its books and records at the Commission's offices, or the reimbursement of reasonable costs incurred for Commission staff to travel to Telco Holding's offices, in the event the books and records of Telco Holdings are required for inspection by the Commission or its staff; the filing of an annual report on a calendar year basis in the form attached to D.95-10-009; the assurance that employees comply with the provisions of Public Utilities (PU) Code Section 2889.5 regarding solicitation of customers; the exemption from the provisions of

PU Code Section 816-830 regarding stock and security transactions; and compliance with PU Code Section 708 regarding Employee Identification Cards.

8. Prior to initiating service, Telco Holdings shall in writing provide the Commission's Consumer Services Division with the name of Telco Holdings' designated contact person(s) for purposes of resolving consumer complaints and the corresponding telephone number(s). This information shall be updated if the name(s) or telephone number(s) change(s), but no less often than annually.

9. The authority to merge, assignment of the CPCN, and authority of Telco Holdings to render service under the rates, charges and rules authorized herein shall expire if not exercised within 12 months after the effective date of this order.

10. The corporate identification number assigned to Dial & Save shall in turn be assigned to Telco Holdings. That number is U-5526-C, and it shall be included in the caption of all original filings with this Commission, and in the titles of other pleadings filed in existing cases.

11. Telco Holdings is exempted from PU Code § 851 for the transfer or encumbrance of property, whenever such transfer or encumbrance serves to secure debt.

12. If Telco Holdings is 90 days or more late in filing an annual report or in remitting the fees listed in Conclusion of Law 4, Telecommunications Division shall prepare for Commission consideration a resolution that revokes Telco Holdings' CPCN, unless Telco Holdings has received the written permission of Telecommunications Division to file or remit late.

13. The application is granted, as set forth above.

14. Application 97-06-023 is closed.

This order is effective today.

Dated AUG 26 1997, at San Francisco, California.

Wesley M. Franklin

WESLEY M. FRANKLIN
Executive Director