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Decision 97-11-046 November 13, 1997

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Joint Application of
SmarTalk TeleServices, Inc. (U-5563-C) and
ConQuest Operator Services Corp. (U-5294-C)
for an Order Authorizing the Acquisition by
Merger of ConQuest Operator Services Corp.
Pursuant to Cal. Pub. Util. Code §§ 851-854.

ORIGINAL

Application 97-09-013
(Filed September 9, 1997)

O P I N I O N

1. Summary

This decision authorizes the transfer of corporate control, pursuant to Public Utilities Code (PU Code) §§ 851-854, of ConQuest Operator Services Corp. (ConQuest OSC). ConQuest OSC is a certificated reseller of interexchange telecommunications services in California.

2. Summary of Application

SmarTalk TeleServices, Inc. (SmarTalk) and ConQuest OSC (collectively, applicants) seek an order authorizing the acquisition by SmarTalk of ConQuest OSC through merger. SmarTalk plans to continue ConQuest OSC's operations without substantial change, and both SmarTalk and ConQuest OSC would maintain their separate certificates of public convenience and necessity and tariffs for their respective services.

On July 30, 1997, SmarTalk, its wholly owned subsidiary SMTK Acquisition Corp. II (SMTK), and ConQuest Telecommunication Services Corp. (ConQuest Telecommunication) entered into a merger agreement. ConQuest Telecommunication is the parent company of ConQuest OSC. The merger is to become effective upon approval of all applicable regulating entities, including this Commission. On the effective date, SMTK will merge into ConQuest Telecommunication, which would be

the surviving corporation. The separate corporate existence of SMTK would cease, and ConQuest Telecommunication would become a wholly owned subsidiary of SmarTalk.

Upon consummation of the merger, each share of ConQuest Telecommunication common stock (other than shares not approving the merger and subject to appraisal under Delaware general corporate law) will be eligible for conversion into SmarTalk common stock. Both the SmarTalk and ConQuest Telecommunication boards of directors have unanimously approved the merger agreement.

SmarTalk has authority to provide interLATA resold telecommunications services pursuant to Decision (D.) 95-10-025 (February 7, 1996) and intraLATA telephone service pursuant to D.96-11-010 (May 22, 1997).¹ SmarTalk's identification number is U-5563-C. SmarTalk is a California corporation with corporate offices in Los Angeles. The majority of its revenues are generated by the sale of telephone debit cards.

ConQuest OSC, a wholly owned subsidiary of ConQuest Telecommunication, has authority to provide interLATA long distance service pursuant to D.92-10-037, 46 CPUC2d 77 (1992), and intraLATA service pursuant to D.97-08-006 (August 1, 1997). ConQuest OSC's identification number is U-5294-C. ConQuest OSC is an Ohio corporation with corporate offices in Dublin, Ohio. The majority of its revenues are generated by the sale of debit card services and 1-plus and 0-plus services.

Applicants state that the proposed merger and transfer of control will serve the public interest in promoting competition among interexchange carriers by providing SmarTalk and ConQuest OSC with greater financial and technical resources.

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.

Applicants state:

"[T]he proposed transaction will enhance the financial, managerial and operational capabilities of the Applicants, enabling the strengthened provision by SmarTalk of desirable, cost effective, and competitive telecommunications services in California." (Application, p. 1.)

Financial information attached to the application (Exhibit C) demonstrates that SmarTalk, with total assets of \$50 million, has the resources to support the ConQuest OSC operation. 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 Commission's Executive Director is warranted, pursuant to authority delegated to him to grant noncontroversial applications of this kind.

3. Discussion

This application is filed pursuant to PU Code §§ 851-854, which, among other things, require Commission approval of a transfer of control of a public utility. No change in operation of ConQuest OSC is planned. Current tariffs will remain in place. Subscriber agreements will continue unchanged. According to applicants, the proposed transfer will appear seamless to current SmarTalk and ConQuest OSC customers and will not affect the provision of such services. Nevertheless, as with similar applications in the past, our order today requires that affected customers be notified of the change in ownership.

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 SmarTalk has the financial and managerial abilities to operate a telecommunications subsidiary successfully. ConQuest OSC will continue to operate as a certificated telecommunications provider, using its existing certificate number pursuant to tariffs now on file.

We note that D.94-05-051 permits one California certificated public utility to purchase stock in another by filing an advice letter; a transfer application is no longer

required in a case like this one. Granting this application, therefore, should not be interpreted as a return to a stricter authorization procedure.

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 Daily Calendar on September 12, 1997. No protests have been received.
2. ConQuest OSC was authorized to provide interLATA and intraLATA telephone services pursuant to D.92-10-037 and D.97-08-006.
3. ConQuest OSC is an Ohio corporation qualified to transact business in California.
4. ConQuest OSC will become a wholly owned subsidiary of SmarTalk, a California corporation, pursuant to terms of a proposed merger.
5. Terms and conditions of services offered to subscribers of ConQuest OSC would be unaffected by the proposed transfer of control.
6. The transfer of control will make additional financial and technical resources available to the applicants' telecommunications services.
7. SmarTalk has the financial and managerial resources 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 decision of the Commission to issue orders granting noncontested applications of nondominant interexchange carriers to transfer control under PU Code §§ 851-854.
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. This 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, ConQuest Operator Services Corp. (ConQuest OSC) is authorized to transfer control of its operations to SmarTalk TeleServices, Inc. (SmarTalk) under the provisions of Public Utilities Code §§ 851-854, in accordance with the terms and conditions set forth in Application (A.) 97-09-013.
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 SmarTalk (U-5563-C) and to ConQuest OSC (U-5294-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.

A.97-09-013 ALJ/GEW/tcg

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

7. A.97-09-013 is closed.

This order is effective today.

Dated November 13, 1997, at San Francisco, California.

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