

Decision 97, 11, 091

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of WorldCom, Inc.
and Brooks Fiber Properties, Inc. for Approval of
Agreement and Plan of Merger.

Application 97-10-030
(Filed October 10, 1997)

O P I N I O N

ORIGINAL

Summary

This decision approves, pursuant to Public Utilities (PU) Code Sections 851 to 854, the transfer of control of Brooks Fiber Properties, Inc. (Brooks) to WorldCom, Inc. (WorldCom).

Discussion

On October 10, 1997, Brooks and WorldCom filed an application seeking Commission authorization to transfer control of Brooks to WorldCom. Both of the applicants are authorized to provide a variety of telecommunications services within the State of California. Attachments A and B of the application set out the details of each applicant's authorizations.

The proposed transfer of control will be a tax free exchange for federal income tax purposes and will be accomplished through a transaction whereby a wholly-owned subsidiary of WorldCom (BV Acquisition, Inc.) will merge with and into Brooks, at which time, Brooks will become a wholly-owned subsidiary of WorldCom. After the transaction has been completed, the existing Brooks corporate structure will not change and each current Brooks customer will continue to receive service from the Brooks subsidiary providing services to the customer prior to the merger. Each subsidiary will continue to maintain tariffs currently on file with the Commission and, after the merger, Brooks customers will continue to receive their telecommunications services at the same rates, terms, and conditions set forth in those tariffs, as modified from time to time.

No protests or requests for hearing have been filed.

Description of the Parties**A. *Brooks Fiber Properties, Inc.***

Brooks is a Delaware corporation with its principal offices located in St. Louis, Missouri. As set out in Attachment A, Brooks' California subsidiaries have been authorized by this Commission to provide switched interexchange service, dedicated interexchange service, facilities-based competitive local exchange service, and resold competitive local exchange service.

B. *WorldCom, Inc.*

WorldCom is a Georgia corporation with its principal offices located in Jackson, Mississippi. As set out in Attachment B, WorldCom's California subsidiaries are authorized to provide resold intra- and inter- exchange service, facilities-based interexchange service, intraLocal Access and Transport Areas (intraLATA) private line and high speed digital transmission services, and facilities-based and resold competitive local exchange service.

C. *Description of the Agreement*

The proposed transfer of control will be accomplished through a transaction whereby a wholly-owned subsidiary of WorldCom (BV Acquisition, Inc.) will merge with and into Brooks, at which time, Brooks will become a wholly-owned subsidiary of WorldCom. After the transaction has been completed, the existing Brooks corporate structure will not change and each current Brooks customer will continue to receive service from the Brooks subsidiary providing services to the customer prior to the merger. Each subsidiary will continue to maintain tariffs currently on file with the Commission and, after the merger, Brooks customers will continue to receive their telecommunications services at the same rates, terms, and conditions set forth in those tariffs, as modified from time to time.

Discussion

This application is made pursuant to PU Code Sections 851-854, which requires that a public utility obtain Commission approval of a transfer of assets or of control.¹

WorldCom has submitted its Securities and Exchange Commission Form 10-Q for the quarterly period ending June 30, 1997, which shows that they are financially capable of providing the proposed service. Brooks will be managed by a team of managers comprised of Brooks personnel and personnel from WorldCom, all of which are experienced in the telecommunications industry.

Applicants state that the merger will enhance both WorldCom's and Brooks' ability to compete in the California telecommunications market and provide consumers a cost effective, high quality competitive alternative to the incumbent local exchange carriers through improved service and lower rates. The application states that neither party to the transaction has gross annual California operating revenues exceeding \$500 million, the threshold that can trigger an in-depth Commission review under PU Code Section 854.

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 Brooks to WorldCom.

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 Decision 86-08-057, 21 CPUC 2d 549 (1986).²

¹ Section 854(b) requires that the Commission make additional findings where either utility has gross annual California revenues of \$500 million or more. The application contains a representation that neither have revenues in excess of that amount.

² In Decision 94-05-051, the Commission established an advice letter process for consideration of transactions under P.U. Code § 851-854 for nondominant interexchange carriers. But for the fact that Brooks and WorldCom are also certificated providers of competitive local exchange services, they would have been able to use the simpler advice letter process.

Findings of Fact

1. Notice of the filing of this application appeared in the Commission's Daily Calendar on October 15, 1997. No protests have been received.
2. Brooks is authorized by this Commission to provide switched interexchange service, dedicated interexchange service, facilities-based competitive local exchange service, and resold competitive local exchange service.
3. WorldCom's California subsidiaries are authorized to provide resold intra- and inter- exchange service, facilities-based interexchange service, intraLATA private line and high speed digital transmission services, and facilities-based and resold competitive local exchange service.
4. Pursuant to the terms of the proposed acquisition, Brooks will merge with a wholly-owned subsidiary of WorldCom.
5. Terms and conditions of services offered to subscribers of Brooks would be unaffected by the proposed agreement.
6. The proposed agreement will make additional financial and technical resources available to telecommunications service.
7. Granting the application is not adverse to the public interest.
8. 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.
9. 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, Brooks Fiber Properties, Inc., is authorized to transfer assets and control of its California telecommunications services operation, identified by its corporate identification numbers U-5419-C, U-5420-C, U-5544-C, U-5545-C, U-5546-C, U-5421-C, U-5587-C, U-5333-C, and U-5146-C to WorldCom, Inc, U-5378-C, under the provisions of Public Utilities Code Sections 851-854, in accordance with the terms and conditions set forth in Application 97-10-030.

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 ten 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.

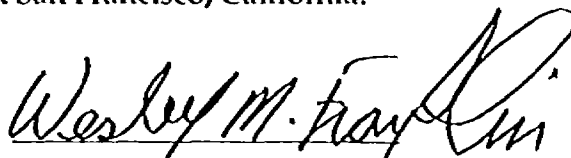
4. Applicants shall make all books and records available for review and inspection upon Commission staff request.

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

6. Application 97-10-030 is closed.

This order is effective today.

Dated NOV 21 1997, at San Francisco, California.



WESLEY M. FRANKLIN
Executive Director