

Decision 97-12-074 December 16, 1997

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of OpTex, Inc. (U-5697-C) and Claremont Technology Group, Inc, for Authority for Acquisition of OpTex by Claremont.

Application 97-08-067
(Filed August 21, 1997)

OPINION

ORIGINAL

By joint application dated August 7, 1997 and filed August 21, 1997, OpTex, Inc. (U-5697-C) (OpTex) and Claremont Technology Group, Inc., (Claremont) seek Commission approval of Claremont's acquisition of OpTex through Claremont Acquisition Corporation (Claremont Acquisition). Notice of the filing of the application appeared in the Daily Calendar on September 17, 1997. No protests or other opposition to the application have been submitted and the time for filing such opposition has expired. No hearing on the application is required.

The Parties

OpTex is an Ohio corporation authorized to do business in California, having its principal place of business at 4880 Blazer Place, Dublin, Ohio, and is the holder of a certificate of public convenience and necessity (CPCN) issued by this Commission on October 25, 1996 (Application (A.) 96-05-052, Decision (D.) 96-10-056), to operate as a switchless reseller of interLATA and intraLATA telephone service in California as a nondominant interexchange carrier.¹

Claremont is an Oregon corporation having its principal place of business at 1600 NW Compton Drive, Suite 210, Beaverton, Oregon. Claremont is a publicly held

¹ California is divided into 10 Local Access and Transport Areas (LATAs) of various sizes, each containing numerous local telephone exchanges. "InterLATA" describes telecommunications service originating in one LATA and terminating in another. "IntraLATA" describes telecommunications service originating and terminating within a single LATA.

company that provides information technology for solutions for business processes such as customer service, order processing, billing and logistics.

Claremont Acquisition is an Oregon corporation and is a wholly owned subsidiary of Claremont. Claremont Acquisition was formed specifically as the vehicle to effect the acquisition of OpTex.

Transaction

Pursuant to the terms of the Agreement and Plan of Merger (Agreement) which is attached as Exhibit C to the application, Claremont will acquire control of OpTex through the merger of Claremont Acquisition with and into OpTex. The separate corporate existence of Claremont Acquisition shall thereupon cease as a result of this merger. According to the application, this merger will constitute a tax-free reorganization.

As a result of the merger, Claremont will acquire all of the issued and outstanding capital stock of OpTex, with the consent of the OpTex board of directors and all OpTex shareholders. In consideration for the merger, OpTex shareholders will receive their agreed-upon pro rata share of \$1 million in cash and up to 240,000 shares of Claremont's common stock. One-hundred-twenty-thousand (120,000) shares of Claremont's common stock will be issued to OpTex shareholders upon consummation of the merger, and the remaining 120,000 shares of Claremont's common stock will be issued to such shareholders after the expiration of OpTex and shareholder indemnity obligations, which ensure the representations and warranties OpTex and its shareholders made as part of the Agreement, and upon reaching certain revenue and operating profit goals.

The CPCN currently held by OpTex will remain in OpTex's name, which will continue to operate as stated in its application for a CPCN filed on May 23, 1996 (A.96-05-052), and under the tariffs currently on file with the Commission. Only the underlying ownership of OpTex will change as a result of the Agreement.

Discussion

In considering an application for control of an entity which holds a CPCN issued by this Commission, the Commission applies the same criteria as it does when considering an application for the type of CPCN to be acquired. Since the CPCN held by OpTex grants authority for OpTex to act as a reseller of interLATA and intraLATA telephone services in California, the requirements for that CPCN will be applied to this application.

To act as a reseller of interLATA and intraLATA services in California, the Commission requires the applicant to demonstrate that it has \$25,000 cash or cash equivalent available to cover start-up costs and also to demonstrate that it has the technical and managerial expertise to perform the obligation undertaken. Further, the applicant must show that the grant of the CPCN would be in the public interest. We will apply those criteria to this application.

Technical/Managerial Expertise

Since the application indicates that after the merger or transfer of control of OpTex to Claremont, OpTex will continue to operate under the same conditions as it did prior to its acquisition by Claremont, and will, with the single exception of the change in the presidency of OpTex, operate with the same personnel, we are satisfied that OpTex will have the technical or managerial expertise to perform its service obligations. The change referred to will result in the president of OpTex, Michael Guilder, leaving the company, and Michael L. Johnson, previously the chairman of OpTex, assuming the position of president of OpTex.

Financial

The most recent financial statements of OpTex were submitted as Exhibit D to the application and those of Claremont as Exhibit E. A review of these exhibits indicates that Claremont has sufficient available assets to satisfy our financial requirements.

Public Interest

Since OpTex will continue to operate as it did prior to its acquisition by Claremont and will have access to the resources of Claremont in addition to its own,

O R D E R

IT IS ORDERED that the acquisition of OpTex, Inc. by Claremont Technology Group, Inc. is approved.

This order is effective today.

Dated December 16, 1997, at San Francisco, California.

P. GREGORY CONLON
President

JESSIE J. KNIGHT, JR.

HENRY M. DUQUE

JOSIAH L. NEEPER

RICHARD A. BILAS

Commissioners