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Decision 97-12-078 December 16, 1997

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Joint Application of Microwave Services, Inc., a Delaware Corporation, (U-5648-C and U-5803-C) and Teligent, L.L.C. for an Order Pursuant to Public Utilities Code §§ 851-854 Authorizing the Transfer of Assets of Microwave Services, Inc. to Teligent, L.L.C. and for Authority for Teligent, L.L.C. to Provide Local Exchange, Private Line and IntraLATA and InterLATA Telecommunications Services.

ORIGINAL
Application 97-08-065
(Filed August 27, 1997;
amended November 19, 1997)

O P I N I O N

Summary

By application filed August 27, 1997, Microwave Services, Inc. (MSI) and Teligent, L.L.C. (Teligent, L.L.C.) jointly requested an order of the Commission authorizing the transfer of the assets of MSI, including its certificates of public convenience and necessity (CPCNs) to Teligent, L.L.C., a joint venture limited liability company in which MSI holds a 55% ownership interest, and for authority for Teligent, L.L.C. to provide the local exchange, private line, and intraLATA and interLATA telecommunications services authorized by MSI's CPCNs.

On November 19, 1997, MSI, Teligent, L.L.C., and Teligent, Inc. (Teligent, Inc.) jointly filed an amendment to the application filed by MSI and Teligent, L.L.C., seeking to transfer the assets of MSI, including its CPCNs to Teligent, Inc., rather than Teligent, L.L.C. as previously sought.

The Parties

MSI (U-5648-C)(U-5803-C) is a Delaware corporation authorized to do business in California, and is the holder of a certificate of public convenience and necessity (CPCN) authorizing it to provide resold intraLATA and interLATA telecommunications services within California (Decision (D.) 96-08-010), and a CPCN authorizing it to operate as a facilities-based competitive local carrier, and to offer resale

local exchange service within the territories of Pacific Bell and GTE California Incorporated, and intrastate, interLATA, and intraLATA telecommunications services (D.97-06-100). MSI's principal place of business is located at 3 Bala Cynwyd Plaza East, Suite 502, Bala Cynwyd, Pennsylvania 19004.

Teligent, L.L.C. (formerly known as DMT L.L.C. and Associated Communications L.L.C.) is a joint venture Delaware limited liability company authorized to do business in California and having its principal place of business at 11 Canal Center Plaza, Suite 300, Alexandria, Virginia 22314.

Notice of the filing of the application appeared in the Daily Calendar on September 9, 1997, and no protests or other opposition to the application have been submitted and the time for submitting the same has expired. Notice of the amendment to the application appeared in the Daily Calendar on November 25, 1997. By Ruling issued November 21, 1997, the assigned Administrative Law Judge shortened the protest period to 10 days from the date of filing of the amendment. No protests were received, and no hearing on the original or amended application is necessary.

Teligent, Inc. is a Delaware corporation authorized to do business in California, having its principal place of business located at 8065 Leesburg Pike, Suite 400, Vienna, VA 22182, and its principal place of business in California located at 3600 Wilshire Blvd., Suite 1700, Los Angeles, California. Teligent, Inc. is a wholly-owned subsidiary of Teligent, L.L.C.

The Transaction

The transaction essentially involves a pro forma change of control. Teligent, L.L.C. is a joint venture Delaware limited liability company of which MSI holds a 55% majority ownership interest. According to the application, Teligent, L.L.C. was formed to act as a marketing and management agent on behalf of MSI and Digital Services Corporation (DSC). Through Teligent, L.L.C., MSI and DSC were able to combine strategic resources to more efficiently and effectively develop sophisticated, technologically advanced, digital microwave networks that provide customers with state-of-the-art high band width, low-cost telecommunications services. In order to

increase the operating efficiencies inherent in having Teligent, L.L.C. function as a single agent for both companies and eliminate redundant or duplicative functions in order to better serve the customer, it has been determined that Teligent, L.L.C.'s wholly-owned subsidiary, Teligent, Inc. can be most effective by becoming the telecommunications service provider.

The transfer and assignment of the public utility assets of MSI to Teligent, Inc. is part of the corporate strategies of both entities. To achieve economies of scale and meet other business objectives, the entities desire to consolidate the public utility assets, management and operations into a single entity. Applicants now wish for MSI to transfer and assign to Teligent, Inc. the public utility assets currently controlled by MSI.

Concurrent with this application, MSI has submitted applications to the Federal Communications Commission (FCC) to assign the existing DEMS (not otherwise described) licenses for its microwave facilities for the local exchange service networks to Teligent, Inc. In addition, new DEMS licenses have been granted to Teligent, L.L.C. for the Ventura, Stockton, Fresno, and Santa Barbara Standard Metropolitan Statistical Areas. Once the transfers and assignments are completed, Teligent, Inc. will control, manage, and operate the public utility business of MSI. The transaction is essentially *pro forma* in nature and does not involve a change of substance and control; Teligent, Inc. will remain with MSI through its ownership interest in Teligent, L.L.C. In addition, there will be no material change in management or operation of the business.

According to the application, the transaction between the parties merely represents a business reorganization by applicants to consolidate their planned and authorized services into a single entity. No consideration will be paid by any party for this transaction, and no stock will be bought, sold, or transferred. The control, management, and day-to-day operations will remain the same.

Discussion

In a situation where a company which does not possess a CPCN desires to acquire control of a company that does possess a CPCN issued by this Commission, we will apply the same requirements as in the case of an applicant seeking a CPCN to

exercise the type of authority held by the company being acquired. Since MSI possesses CPCNs to provide facilities-based and resale intraLATA and interLATA private line services, switched intraLATA and interLATA services, and local exchange services, we will apply the requirements for such authority to Teligent, Inc.

The Commission has established two major criteria for the issuance of a CPCN to act as a facilities-based provider of telecommunications services. An applicant that desires to act as such must demonstrate that it has a minimum of \$100,000 cash or cash equivalent (as described in D.91-10-041, Appendix A, Paragraph 5.1 (41 CPUC2d 505 at 520)), reasonably liquid and readily available to meet the firm's start-up expenses. An applicant that desires to act as a switchless¹ reseller must demonstrate that it has a minimum of \$25,000 in cash or cash equivalent reasonably liquid and readily available to meet the firm's start-up costs. In addition, those seeking to provide services as a facilities-based provider of telecommunications services and those desiring to provide services as a reseller must both make a reasonable showing of technical or managerial expertise in telecommunications or a related business.

Financial Information

Teligent, Inc.'s financial ability to provide the telecommunications services for which it seeks authority is derived primarily from the financial resources of MSI, its parent's majority equity owner. In D.96-08-010 and D.97-06-100, the Commission found MSI to be financially qualified to provide those services. In addition, applicants have attached to the application as Exhibit B, a letter of commitment from MSI, that demonstrates its commitment to provide the financial resources available from its

¹ D.93-05-010 defines a switchless reseller as an 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; it provides service in its own name, and its customers view it as their telephone company for interLATA and interstate calls. D.96-06-069 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.

parent company, The Associated Group, Inc., to Teligent, L.L.C. Further, MSI will continue to make any necessary funds available to Teligent, L.L.C. and Teligent, Inc. to meet the company's start-up expenses for its local exchange service and to advance funds sufficient to pay any deposits that may be required by local exchange and/or inter-exchange carriers. In addition, Exhibit C to the application provides evidence of a third party \$50 million revolving credit line which Teligent, L.L.C., under its former name Associated Communications L.L.C., has secured for the purpose of developing and providing competitive telecommunications services.

We are satisfied that Teligent, Inc., through its parent, Teligent, L.L.C. has sufficient financial resources available to it to satisfy Commission requirements.

Technical and Managerial Expertise

According to the application, the transfer contemplated by the application will not result in any change in management personnel, as the personnel now managing MSI will continue to manage the enterprise after the transfer. This being the case, we find that Teligent, L.L.C. and its wholly-owned subsidiary, Teligent, Inc. meet the Commission's requirements as to technical and/or managerial expertise.

Public Interest

According to the application, approval of the transaction will further the public interest by consolidating the facilities, management and operation functions of the public utility business into a single entity, thus allowing applicants to achieve economies of scale, operate more efficiently, and thus provide a broader range and higher quality of telecommunications services to the public. Nothing has been submitted that would indicate the contrary.

Conclusion

Teligent, Inc. and its parent Teligent, L.L.C. have met the Commission's requirements, and the public interest is advanced by the transaction. We will approve the application and authorize the transfer of MSI's assets to Teligent, Inc.

Findings of Fact

1. MSI is the holder of CPCNs issued by the Commission to provide facilities-based and resale intraLATA and interLATA private line services, switched intraLATA and interLATA services, and local exchange services.

2. Teligent, L.L.C. is a joint venture Delaware limited liability company authorized to do business in California of which MSI has a 55% ownership interest.

3. Teligent, Inc. is a Delaware corporation authorized to do business in California.

4. MSI, Teligent, L.L.C. and Teligent, Inc. have made application to transfer of MSI's assets, including MSI's CPCNs, to Teligent, Inc.

5. The transaction essentially involves a pro forma change of control, as no money will change hands, and the personnel who manage MSI will continue to perform the same duties under Teligent, Inc. as they presently do.

6. Notice of the filing of the original application appeared in the Daily Calendar on September 9, 1997, and no protests or other opposition to the application have been filed. Notice of the amendment to the application appeared in the Daily Calendar on November 25, 1997. By Ruling issued November 21, 1997, the assigned Administrative Law Judge shortened the protest period to ten (10) days from the date of filing of the amendment. No protests were received, and no hearing on the amended application is necessary.

7. The applicants have provided financial information regarding financial resources available to Teligent.

8. The applicants have provided information concerning the transactions' impact on the public interest.

Conclusions of Law

1. Teligent, Inc., through its parent, Teligent, L.L.C. has sufficient financial resources available to it to meet Commission requirements and other anticipated obligations inherent in the transaction.

2. The public interest will be furthered by combining MSI's assets with those of Teligent, Inc. and its parent, Teligent, L.L.C., to better serve its customers.

3. No opposition to the application has been submitted and no hearing on the application is required.
4. Teligent, Inc. will operate utilizing the same personnel that MSI now uses.
5. The application should be approved.

O R D E R

IT IS ORDERED that the transfer of assets of Microwave Services, Inc., including certificates of public convenience and necessity issued by this Commission, to Teligent, 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