

FEB 19 1998

Decision 98-02-102 February 19, 1998

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of MTEL Digital Services, Inc. (U-5141-C) for authority to transfer, and of Linkatel Pacific, L.P., a California Limited Partnership (U-5307-C) for authority to acquire, certain of MTEL's assets, including its certificate of public convenience and necessity.

ORIGINAL
Application 93 08 002
(Filed August 2, 1993)

O P I N I O N

On September 10, 1993, MTEL Digital Services, Inc. (U-5141-C) (MTEL) and Linkatel Pacific, L.P., a California limited partnership (U-5307-C) (LINKATEL PACIFIC) filed an application for authority for MTEL to transfer, and for LINKATEL PACIFIC to acquire, certain of MTEL's assets, including the certificate of public convenience and necessity (CPCN) awarded to MTEL by Decision (D.) 91-04-046 (April 24, 1991) and the CPCN awarded to MTEL's corporate predecessor, MCCA Microwave, Inc. (MCCA) by D.88-01-060 (January 28, 1988).

MTEL's corporate predecessor, MCCA, was granted a CPCN by D.88-01-060 (January 28, 1988), authorizing MCCA to provide interLATA (Local Access Transport Area) private line data and voice-grade microwave transmission services in California. Later in 1988, MCCA's corporate name was changed to MTEL.

LINKATEL PACIFIC, a limited partnership, under the laws of California, was known as Linkatel of San Diego, Inc. prior to January, 1993, and was authorized to provide intraLATA and interLATA High Capacity Digital Private Line Service (HiCap) telecommunications services and to provide on a resale basis telephone services offered by communications common carriers in California.

The purpose of the application was to authorize the transfer of assets that will be employed by LINKATEL PACIFIC in furtherance of its operations as a provider of intraLATA and interLATA HiCap telecommunications services pursuant to Public Utilities (PU) Code § 851, and Rules 35 and 36 of the Commission's rules.

Discussion

In *California Association of Long Distance Telephone Companies*, 54 CPUC2d 520 (1994) (D.94-05-051), the Commission established an advice letter process for consideration of transactions under PU Code §§ 851-854 for nondominant interexchange carriers.

In D.94-05-051, the Commission noted that nondominant interexchange carriers are not providers of monopoly services such that customers have a choice of carrier from which they may purchase services. In recognition of this fact, the Commission modified certain procedures applicable to these carriers to allow the Commission to expedite regulatory review of matters which do not usually raise concerns regarding the protection of consumer interests or the interests of other market participants. Among those types of matters for which Commission procedures have been simplified are requests for authority to encumber or transfer utility property or control under PU Code §§ 851-854.

Under the procedure established in D.94-05-051, the advice letter becomes effective 40 days after filing absent Commission action to suspend the advice letter. Given the lack of any protests to the applicant's request, it is reasonable to treat this application in the same manner as if it had been filed as an advice letter requesting the same authority pursuant to D.94-05-051. Accordingly, the application of MTEL and LINKATEL PACIFIC should be approved.

Findings of Fact

1. On September 10, 1993, MTEL Digital Services, Inc. and LINKATEL PACIFIC, L.P. filed an application for authority to transfer utility assets between them pursuant to PU Code § 851, and Rules 35 and 36 of the Commission's Rules.

2. In *California Association of Long Distance Telephone Companies*, 54 CPUC2d 520 (1994) (D.94-05-051), the Commission established an advice letter process for consideration of utility asset transfer transactions under PU Code §§ 851-854 for nondominant interexchange carriers.

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3. The instant application for authorization for the transfer of utility assets essentially serves the same purpose as would an advice letter filing pursuant to D.94-05-051.

4. No party has protested A.93-08-002.

Conclusion of Law

It is reasonable to treat this application in the same manner as if it had been filed as an advice letter pursuant to the procedures adopted in D.94-05-051.

O R D E R

IT IS ORDERED that:

1. The application for transfer of utility assets from MTEL Digital Services, Inc. to LINKATEL PACIFIC is hereby approved.

2. Application 93-08-002 is closed.

This order is effective today.

Dated February 19, 1998, at San Francisco, California.

RICHARD A. BILAS
President
P. GREGORY CONLON
JESSIE J. KNIGHT, JR.
HENRY M. DUQUE
JOSIAH L. NEEPER
Commissioners