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Decision 98-03-053 March 26, 1998

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Cox California Telcom, Inc. For Authority to Transfer All Assets and Liabilities of the Corporation to Cox California Telcom II, L.L.C. dba Cox Communications.

Application 97-11-001
(Filed November 4, 1997)

ORIGINAL

O P I N I O N

Summary

By this decision we grant the November 4, 1997, application of Cox California Telcom, Inc. (Cox-INC) seeking authority to transfer all its assets, including its Certificate of Public Convenience and Necessity (CPCN), and all its liabilities to Cox California Telcom II, L.L.C. (Cox-LLC). Notice of the filing of the application appeared in the Commission's Daily Calendar on November 6, 1997. No protests to the application were filed, and no hearing is deemed necessary.

Parties

Cox-INC (U-5684-C), a wholly-owned subsidiary of Cox Communications, Inc. (CCI), is a Delaware corporation authorized to do business in California, having its principal place of business located at 5159 Federal Boulevard, San Diego, California 92105, and its regulatory offices at 2200 Powell Street, Suite 865, Emeryville, California 94608. By Decision (D.) 96-09-074 issued September 20, 1997, this Commission approved the application (A.96-03-050) of, and issued a Certificate of Public Convenience and Necessity to, Cox-INC to operate as a Competitive Local Carrier (CLC) offering both facilities-based and resale local exchange services, intraLATA toll, and intrastate interLATA services throughout Southern California.

In a May 22, 1996, amendment (Amendment) to its application for its CPCN, Cox-INC informed the Commission that its parent, CCI, was in the process of forming a wholly-owned subsidiary company known as Cox Broadband Services, Inc. (CBSI), which would subsequently be the sole owner of Cox-INC. The Commission granted the

CPCN application based on that representation. Since that time, CCI abandoned its plans to form CBSI, and instead formed a holding company named CoxCom, Inc. (CoxCom) which is the sole owner of both Cox-INC and Cox-LLC.

Cox California Telcom II, L.L.C. (Cox-LLC) is a recently formed company organized under the Limited Liability Company Act of the State of Delaware and registered with the State of California, having its principal place of business at 5159 Federal Boulevard, San Diego, California 92105 and its regulatory office at 2200 Powell Street, Suite 865, Emeryville, California 94608.

The Transaction

The transaction between Cox-INC and Cox-LLC can most accurately be characterized as a reformation of the current corporate entity (Cox-INC - a corporation organized under the laws of the State of Delaware) into a new legal entity (Cox-LLC - a limited liability corporation organized under Delaware law). Essentially, after the transfer is complete, Cox-LLC will mirror the pre-transfer Cox-INC, noting the minor exception discussed above; that the intermediate holding company between Cox-LLC and CCI is CoxCom, rather than CBSI as stated in the CPCN amendment filed by Cox-INC.

The purpose of this reformation is to provide more favorable tax treatment for earnings from telephone operations than could be secured through the Cox-INC corporation. By changing the type of entity from a general corporation to a limited liability company, Cox-LLC's tax expense will be lessened and, as a consequence, the company's cost foundation will be lower, allowing for lower rates.

Applicants seek authority to transfer all of the assets and liabilities of Cox-INC to Cox-LLC, which assets include Cox-INC's CPCN, and which liabilities and obligations include Cox-INC's tariff and interconnection agreements. Cox-LLC intends to ratify and/or concur in Cox-INC's tariffs and/or interconnection agreements to allow for a transition between the two companies that is transparent to end-users and to co-carriers. As a result, the character of the service offerings by and geographic territory in which Cox-LLC will operate will not change due to the reformation of the

corporate entity from Cox-INC to Cox-LLC. The officers and corporate employees will also remain the same in the new entity.

Discussion

Normally, the Commission does not approve transfers of CPCN authority, ordering instead that the acquiring company seek its own CPCN and utility identification number and when granted, revoking the CPCN and identification number of the acquired company. This practice is intended to avoid customer confusion as to the entity providing service. Here, the only change will be the name of the provider from Cox-INC to Cox-LLC. All other terms and conditions of service, as well as personnel, will remain unchanged. Accordingly, we will permit the transfer of Cox-INC's CPCN to Cox-LLC, and we will authorize Cox-LLC to provide the services authorized by that CPCN under the current identification number, U-5684-C. We will require Cox-LLC to file new tariffs in its own name within thirty (30) days of the date of this order.

Also, under the usual transfer of control situations, where one company acquires another company, we require the acquiring company to demonstrate that it has sufficient financial assets and possesses a level of technical expertise necessary to satisfy then Commission standards. In addition, we require a showing that the proposed acquisition is in the public interest. Here, however, since the change of control from Cox-INC to Cox-LLC in actuality entails nothing more than a change in type of corporate entity or structure, and does not involve a change in financial organization or management personnel, or a change in method of operation or service territory, no real purpose would be served by requiring the submission of new financial data or information concerning the personnel currently managing the company. We assume that the company will continue to operate as it has in the past subject to the authority and limitations of its CPCN. That being the case, we need only to determine if the proposed change in structure of the entity possessing a CPCN is adverse to the public interest. We determine in this case that it is not.

Findings of Fact

1. No protests to the application were filed and no hearing is necessary.
2. Cox-INC, a corporation, seeks authority to transfer its assets and liabilities, as well as its CPCN to Cox-LLC, a limited liability company, both of which are owned by CCI.
3. The transfer is, in reality, simply a tax-motivated reformation in the type of organizational entity by which the services authorized by the CPCN will be provided.
4. Since there will be a change only in the legal structure of the entity providing services authorized by this Commission, and no change in the method of operation or in the terms and conditions of service, there is no necessity for the applicant to submit financial or managerial information in support of the application.
5. The change in legal structure does not appear to be adverse to the public interest.
6. The CPCN and identification number of Cox-INC. should be transferred to Cox-LLC without change.
7. Cox-LLC should file tariffs in its own name within 30 days from the date of this order.

Conclusions of Law

1. No hearing on the application is necessary.
2. The requested transfer relates only to the type of legal entity that will provide services previously authorized by this Commission.
3. As a result of the transfer of control, no change will occur in the terms and conditions of service or management of the entity providing the services.
4. The transfer will have no adverse impact on the public interest.
5. The CPCN and identification number should be transferred from Cox-INC. to Cox-LLC.
6. Cox-LLC shall, within 30 days from the date of this order, file tariffs in its own name with the Commission.
7. The application should be approved.

O R D E R

IT IS ORDERED that:

1. Transfer of the assets and liabilities of Cox California Telcom, Inc. (Cox-INC), including its certificate of public convenience and necessity (CPCN), to Cox California Telcom II, L.L.C. (Cox-LLC) is approved.
2. Cox-LLC shall hereafter provide all services authorized or required by the CPCN transferred, on the same terms and conditions as provided in the CPCN.
3. The CPCN and identification number (U-5684-C) of Cox-INC shall be transferred to Cox-LLC.
4. Cox-LLC shall, within 30 days from the date of this order, file tariffs in its own name with the Commission.
5. Application 97-11-001 is closed.

This order is effective today.

Dated March 26, 1998, at San Francisco, California.

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