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Decision 98-03-060 March 26, 1998

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of NucomNet, LLC (U-5583-C) and NSC Communications Corporation for Authority for NSC Communications Corporation to Acquire Control of NucomNet, LLC.

U-5583-C

Application 97-11-039
(Filed November 26, 1997)

O P I N I O N

Summary

By this decision we grant the joint application of NucomNet, LLC (U-5583-C) (NucomNet) and NSC Communications Corporation (NSC) seeking authority for NSC to acquire control of NucomNet. The Certificates of Public Convenience and Necessity currently held by NucomNet will remain in NucomNet's name, and NucomNet will continue to operate under its present name and corporate identification number, but as a wholly-owned subsidiary of NSC.

Background

By joint application pursuant to Public Utilities Code § 854 filed November 26, 1997, NucomNet, a California limited liability company, and NSC, a Delaware corporation qualified to do business in California, seek authority for NSC to acquire control of NucomNet.

Notice of the filing of the application was published in the Commission's Daily Calendar on December 8, 1997. No protests or other opposition to the application have been filed, and no hearing on the application is deemed necessary.

The Parties

NucomNet is a limited liability company organized and existing under the laws of the State of California, having its principal place of business at 7901 Stoneridge Drive, Pleasanton, California 94588. NucomNet is owned in equal 25% shares by four individuals: George Huff and Sean Venezia, who are also officers of NSC, and Thomas Keane and Michael Zumbo, who are also officers of Jaroth, Inc., dba PayTel, a NuCom

company. NucomNet is presently authorized, pursuant to Commission Decision (D.) 96-02-072 dated February 23, 1996, to operate as a Competitive Local Carrier (CLC) in a service area co-terminus with the authorized local exchange service areas of Pacific Bell and GTE California, Incorporated, and implemented its CLC authority by its Advice Letter No. 1. It is also authorized by D.96-09-079, dated September 20, 1996, to provide interexchange telecommunications services as a nondominant interexchange carrier (NDIEC) in California. A request for an extension to exercise that authority was filed on September 11, 1997, and granted by the Executive Director on September 17, 1997, extending NucomNet's date for implementation of its interexchange authority until September 21, 1998.

NSC is a closely held Delaware corporation Exhibit (Exh.) 1 to applic.), duly qualified to do business in California (Exh. 2 to applic.), having its principal place of business at 6920 Koll Center Parkway, Suite 211, Pleasanton, California 94566. NSC was established and is owned by Payphone Holding Co., LLC (Payphone Holding), a Delaware Limited Liability Company, 6100 Sears Tower, Chicago, Illinois 60606-6402.

The Transaction

The property involved in this transaction consists of all membership interests in NucomNet which are being transferred by Huff, Venezia, Keane and Zumbo to NSC. As an intermediary step, the membership interests of Keane and Zumbo are being transferred in equal shares to Huff and Venezia, who in turn will assign and transfer all their membership interests, including those obtained from Keane and Zumbo, to NSC Comm and NSC Telemangement Corporation (NSC Tel), an NSC company, in the respective proportions of 99.999% and 0.001%. By Assignment Agreement dated October 18, 1997 (Exh. 3 to applic.) (the Agreement), the assignment and transfer of Huff and Venezia's respective interests in NucomNet to NSC and NSC Tel in the respective proportions of 99.999% and 0.001% will become effective upon the Commission's approval of the application.

Discussion

Financial Statements

Financial statements consisting of a Balance Sheet and an Income Statement as of June 30, 1997 for NSC (Exh.5 to applic.) were submitted under seal with a request that a protective order issue directing the exhibit to be considered confidential. In addition to the information submitted on behalf of NSC, NucomNet submitted a copy of page 4 of Internal Revenue form 1065 (partnership return) for 1996. (Exh. 6 to applic.). Examination of Exhibit 5 indicates that NSC has more than sufficient cash resources to meet Commission requirements concerning this type of transaction. In respect to the request for confidentiality of Exhibit 5 to the application, we are of the opinion that the request should be granted and the documents withheld from the public for a period of one year.

Technical Expertise

In the application and in a letter to the assigned Administrative Law Judge (ALJ), applicant's counsel submitted the following information concerning the Officers and Directors who will be responsible for the management and control of NSC:

Sean Venezia, President and Chief Financial Officer of NSC, and George Huff, Chief Executive Officer and Chairman of the Board of Directors of NSC, are also co-founders of NucomNet. With the acquisition of control of NucomNet by NSC, Venezia and Huff will continue to be responsible for many of the key decisions regarding operations and services of NucomNet.

Kerry Akins, Chief Operating Officer of NSC, has substantial management experience in the field of telecommunications, in positions with Continental Payphone Corporation, and later at Nucom Company, LLC, an affiliate of NucomNet.

James DeArkland, a Director of NSC, also has broad telecommunications operating experience, having been President and Chief Executive Officer of companies providing long-distance, hospitality and payphone services.

Bruce Rauner and David Doninni, members of the Board of Directors of NSC, are principals of the private investment firm of Golder, Thoma, Cressey, Rauner,

Inc., where they specialize in growth and emerging markets, with recent emphasis on the telecommunications industry.

Anthony McDonald, a director of NSC and President of Intera, an NSC subsidiary which provides equipment and account management support services related to the provision of payphone related telecommunications, has nearly ten years telecommunications experience, the last nine with Intera.

Iain MacLeod, Vice-President, Secretary and General Counsel of NSC, has been counsel to NSC for more than six years, first as outside counsel and, since 1997, as general counsel, assisting the company with its day-to-day corporate legal needs.

After reviewing the qualifications and experience of the above individuals, we believe applicant possesses the managerial and technical expertise necessary to meet the requirements of the Commission.

Public Interest

We know of nothing, and nothing has been brought to our attention that would indicate that granting the application would be adverse to the interests of NucomNet, its subscribers or the public in general. To the contrary, it would appear that the additional financial resources and management expertise of NSC would enhance the interests of NucomNet and its subscribers, and thus be in the public interest.

We will grant the application.

Findings of Fact

1. NSC seeks to acquire control of NucomNet, LLC (U-5583-C), the holder of a CPCN to provide services as a CLC (on a reseller basis) and as an NDIEC (also on a reseller basis).
2. Under the acquisition agreement, NSC will acquire 99.999% of the ownership interests of the shareholders of NucomNet, and the remaining 0.001% ownership interest will be transferred to NSC Telemanagement Corporation, a corporate affiliate of NSC under common ownership and control.

3. NSC has cash or cash equivalents on hand that meet or exceed Commission requirements for this type of transaction.
4. NSC possesses the necessary technical and managerial expertise to operate the entity it desires to acquire.
5. Nothing has been brought to the attention of the Commission that would preclude the acquisition. The addition of the financial resources of NSC will strengthen the company's ability to provide service to the subscribers, and thus be in the public interest.

Conclusions of Law

1. NSC meets the Commission's financial, technical and managerial requirements for the acquisition of control of NucomNet.
2. The acquisition of control of NucomNet by NSC will not adversely affect the public interest.
3. The application should be approved.

O R D E R

IT IS ORDERED that:

1. The joint application of NucomNet, LLC (U-5583-C) (NucomNet) and NSC Communications Corporation (NSC) seeking authority for NSC to acquire control of NucomNet is granted.
2. Applicants motion for a limited protective order keeping Exhibit 5 to the application confidential is granted. Exhibit 5 to the application shall remain under seal for one year from today and during that period shall not be made accessible or disclosed to anyone other than Commission staff except on the further order or ruling of the Commission, the Assigned Commissioner, the assigned Administrative Law Judge (ALJ), or the ALJ then designated as Law and Motion Judge. If applicants believe that further protection of this information is needed after one year, they may file a motion stating the justification for further withholding Exhibit 5 to the application from public inspection, or for such other relief as the Commission rules may then provide.

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Such motion shall be filed no later than 30 days before the expiration date of this protective order.

3. NucomNet will continue to provide, under its present name and corporate identification number, the services authorized by its current certificates of public convenience and necessity.

4. Application 97-11-039 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