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Decision 98-04-048 April 23, 1998

**ORIGINAL**

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Application of Business Telecom, Inc.  
(U-5560-C) to Transfer Stock as Part of a  
Corporate Reorganization.

Application 97-11-025  
(Filed November 20, 1997)

## OPINION

### Summary

By this decision, we grant the application filed November 20, 1997, by Business Telecom, Inc. (U-5560-C) d/b/a BTI Telecommunications Services (BTI or applicant) seeking Commission approval, pursuant to Public Utilities (PU) Code § 852, to transfer stock as part of a corporate reorganization. Notice of the application appeared in the Commission's Daily Calendar on Monday, November 24, 1997. No protests or other opposition to the application have been filed and no hearing on the application is deemed necessary.

### **Business Telecom, Inc. d/b/a/ BTI Telecommunications Services**

BTI is a privately-held North Carolina corporation authorized to do business in California (Exh. A to application) having its principal place of business at 4300 Six Forks Road, Suite 500, Raleigh, NC 27609, and is a leading provider of integrated telecommunications services in the southeastern United States. Pursuant to a Certificate of Public Convenience and Necessity (CPCN) issued by this Commission on February 23, 1996 (D.96-02-038, A.95-05-045) (Exh. B to application), BTI is authorized to operate as a reseller of interLATA, and to the extent authorized by D.94-09-065, intraLATA telecommunications services offered by communication common carriers in California.

### **The Transaction**

For internal corporate reasons, BTI has determined that the operational efficiency of the corporation will be improved by the creation of BTI Telecom Corp. (BTC), a holding company, to which all of the stock of BTI will be transferred. Following the transfer of BTI's stock to BTC, BTI will remain the operating entity and will become a wholly-owned subsidiary of BTC. The transfer of BTI's stock will not change the *de facto* control of BTI.

According to the application, the creation of BTC will be made in a seamless fashion that will be transparent to customers and will in no way inconvenience or have a negative effect on the services provided to BTI's customers. The transfer will have no effect on the service offerings, rates, terms or conditions provided in BTI's current tariffs, nor will the transaction affect the management, operations, or quality of service provided to customers.

### **Discussion**

Under the usual transfer of control situations, where one company, through stock acquisition, acquires control of a company holding a CPCN issued by this Commission, we require the acquiring company to obtain a new CPCN, which requires it to demonstrate that it has sufficient financial resources and possesses a level of technical expertise necessary to satisfy the Commission's then standards. Upon so demonstrating, the acquired company's CPCN and Commission identification number will be canceled and the acquiring company issued a new CPCN and a new identification number. This practice is intended to avoid customer confusion as to the entity providing service, and to insure that the entity providing service has both the financial and technical expertise necessary to provide an adequate level of service. Here, however, since the transfer of BTI's stock and *de jure* control of BTI to BTC in actuality will be transparent to the customers, have no effect on the level, quality, terms or

conditions of service, cause no change in the entity providing service, and is a tax-motivated restructuring only, no real purpose would be served by requiring the submission of new financial data or information concerning the personnel currently managing the company that is and will continue to provide the service authorized. The company will continue to operate in the future 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 creating of the holding company (BTC) and its acquisition of BTI's stock is adverse to the public interest. We determine in this case that it is not.

#### **Findings of Fact**

1. The application is uncontested.
2. BTI seeks permission to transfer all of its stock to a newly created holding company, BTC in a tax-motivated corporate reorganization.
3. The transfer of control of BTI will be transparent to its customers and will result in no change in its operations.
4. There is no necessity for the applicant to submit new financial information or information concerning the technical expertise of its employees.
5. The transfer of the stock of BTI and its *de jure* control does not appear to be adverse to the public interest.
6. BTI will continue to operate as it has in the past.

#### **Conclusions of Law**

1. No hearing on the application is necessary.
2. As a result of the transfer of BTI's stock and *de jure* control, no change will occur in the terms or conditions of service provided by BTI under its CPCN, nor will the management of BTI change.
3. The transfer will not be adverse to the public interest.
4. BTI should retain its CPCN and corporate identification number.

**ORDER**

**IT IS ORDERED that:**

1. The transfer of all of Business Telecom, Inc.'s (BTI) stock to BTI Telecom Corp. is approved.
2. BTI shall continue to provide all services authorized or required by its Certificate of Public Convenience and Necessity (CPCN) within its authorized service territory.
3. BTI shall retain its present CPCN and corporate identification number.
4. Application 97-11-025 is closed.

This order is effective today.

Dated April 23, 1998, at Sacramento, California.

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