

ALJ/GEW/sid

Decision 98-05-092

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Accelerated Connections, Inc.
(U-5813-C) for Approval of a Pro Forma Change
of Control and Transfer of a CPCN Under
Section 854 of the Public Utilities Code.

Application 98-04-052
(Filed April 24, 1998)

ORIGINAL

OPINION

1. Summary

Accelerated Connections, Inc. notifies the Commission of a name change and requests authority for a pro forma change of control and a transfer of operating authority. Granted.

2. Nature of Application

Accelerated Connections, Inc., holds authority from the Commission to operate as a reseller and facilities-based carrier of interexchange and local exchange services. (See Decision (D.) 97-07-032, D.97-09-110, D.98-02-038.)

Accelerated Connections, Inc., a Delaware corporation, has changed its name to Rhythms NetConnections, Inc. (Rhythms). The name change was part of a larger corporate transaction which also created a wholly owned subsidiary for Rhythms called ACI Corp. ACI Corp. is authorized to do business in California as Accelerated Connections, Inc. (ACI). Pursuant to this change in corporate structure, ACI will become the legal entity that will be offering telecommunications services in California.

Rhythms requests authority to transfer its certificate of public convenience and necessity (issued in the name of Accelerated Connections, Inc.) to ACI, which

in turn will do business in California under the name of Accelerated Connections, Inc.

The application states that the requested change will have no substantive effect on the personnel or operations of Rhythms or ACI. Information in the applications filed by Rhythms (filed under the name of Accelerated Connections, Inc.) for its CPCN remains substantially the same. The only change that will occur is that Rhythms will offer services to California consumers through its subsidiary, ACI, rather than directly.

3. Financial Information, Public Interest

The application states that all funds for the operation of ACI will be provided by Rhythms, its parent corporation. ACI, as a newly formed company, does not yet have a balance sheet and income statement. However, in its previous applications, Rhythms submitted all necessary financial information, and the Commission determined that Rhythms met the financial qualifications for a reseller and a facilities-based carrier of local and interexchange services.

The applicant states that this transaction will improve the organization and financial strength of Rhythms and ACI. According to the application, the restructure will improve the companies' efficiency and financing ability, and will assist them in entering the California local market to provide competitive services to consumers. Because the two companies share management and operational personnel, and no material change in those areas is anticipated, ACI will provide all of the services stated in the tariffs that are now in effect.

The proposed transaction involves what essentially is a "paper change" in the corporate structure of an already certified telecommunications carrier. While ACI would be a facilities-based carrier, it plans on offering services only through the leasing of unbundled network elements and collocation of its equipment in existing central offices. The Commission previously issued a negative

declaration for Rhythms in D.97-09-110 for the same business plans. It can be seen with certainty that the proposed transaction will have no significant effect on the environment.

4. Discussion

Public Utilities Code § 854 requires Commission authorization before a company may "merge, acquire, or control...any public utility organized and doing business in this state..." The purpose of this and related sections is to enable the Commission, before any transfer of public utility property is consummated, to review the situation and to take such action, as a condition of the transfer, as the public interest may require. (San Jose Water Co. (1916) 10 CRC 56.)

Technically, the transfer of control from Rhythms (doing business as Accelerated Connections, Inc.) to a wholly owned subsidiary, ACI Corp. (doing business also as Accelerated Connections, Inc.) contemplates a transfer of control. As a practical matter, however, no change in the operation of the telecommunications carrier is proposed or planned. California end-users served by ACI will not be adversely affected by the corporate reorganization. The transfer of CPCN authority to ACI should not be a matter of confusion to end-users, since the same service on the same terms and conditions will be supplied by an entity doing business as Accelerated Connections, Inc.

Applicants request expedited approval of the application by the Executive Director pursuant to authority delegated to him by the Commission to grant "noncontroversial applications for authority to transfer assets or control under PU Code §§ 851-855..." (CAWC, Inc., D.87-04-017 (1987).) There have been no protests to this application, and the contemplated corporate reorganization appears to be noncontroversial.

In Resolution ALJ 176-2992, dated May 7, 1998, the Commission preliminarily categorized this proceeding as ratesetting, and preliminarily determined that hearings were not necessary. No protests have been received. Given this status, public hearing is not necessary, and it is not necessary to alter the preliminary determinations made in Resolution ALJ 176-2992.

The application is granted, subject to the terms and conditions set forth below.

Findings of Fact

1. Notice of this application appeared in the Commission's Daily Calendar of May 5, 1998.
2. Under the proposed reincorporation, Accelerated Connections, Inc., has changed its name to Rhythms NetConnections, Inc. (Rhythms) and has formed a wholly owned subsidiary, ACI Corp., which will do business in California as Accelerated Connections, Inc.
3. Rhythms seeks authority to transfer its CPCN to ACI.
4. There will be no change in the management or in the provision of services by the new entity.

Conclusions of Law

1. The proposed reorganization of applicant is not adverse to the public interest.
2. This proceeding is designated a ratesetting proceeding; no protests have been received; no hearing is necessary.
3. The application is noncontroversial and may be granted by the Executive Director pursuant to authority delegated by the Commission.
4. The application should be approved.

O R D E R

IT IS ORDERED that:

1. On or after the effective date of this order, Rhythms NetConnections, Inc. (Rhythms), doing business in California under the name Accelerated Connections, Inc., is authorized pursuant to Public Utilities Code § 854 to transfer Rhythms' certificate of public convenience and necessity (CPCN) to a wholly owned subsidiary, ACI Corp., which will do business in California under the name Accelerated Connections, Inc.
2. ACI Corp. is authorized to do business under the utility identification number, U-5813-C, previously assigned to Rhythms and to Accelerated Connections, Inc.
3. Applicant shall notify the Director of the Commission's Telecommunications Division in writing of the actual date of transfer of authority, as authorized herein, within 10 days after completion of the transfer. A true copy of the instruments of transfer shall be attached to the notification.
4. ACI Corp. shall file a new tariff incorporating the present rates and services of Rhythms (doing business as Accelerated Connections, Inc.) into a single new tariff under the name of the transferee, ACI Corp. (doing business as Accelerated Connections, Inc.)
5. ACI Corp. shall be subject to the same terms and conditions that the Commission has placed on Rhythms (doing business as Accelerated Connections, Inc.) in granting the CPCN to operate as a reseller and facilities-based carrier of interexchange and local exchange services.
6. ACI Corp. and Rhythms shall make all books and records available for review and inspection upon Commission staff request.
7. Upon compliance with all of the conditions of this order, including the payment of all fees due under Public Utilities Code § 431 to the date of transfer,

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Rhythms (doing business as Accelerated Connections, Inc.) shall stand relieved of all future public utility obligations as a reseller and facilities-based carrier of interexchange and local exchange services in California, and its utility identification number, U-5813-C, shall be transferred to ACI Corp.

8. The authority granted in this order shall expire if not exercised within 12 months after the effective date of this order.

9. Application 98-04-052 is closed.

This order is effective today.

Dated JUN 30 1998, at San Francisco, California.



WESLEY M. FRANKLIN
Executive Director