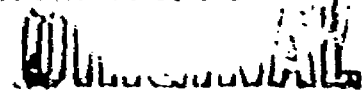


ALJ/JPO/jva

Mailed 9/3/98

Decision 98-09-029 September 3, 1998



BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of MTM Holdings Corporation and Axces, Inc. d/b/a Long Distance Axces for Authority to Transfer the Stock of Axces, Inc. an NDIEC operating in California, to MTM Holdings Corporation.

Application 98-02-022
(Filed February 16, 1998)

O P I N I O N

Summary

This decision grants the joint application of MTM Holdings Corporation (MTM), and Axces, Inc. d/b/a Long Distance Axces (Axces), a nondominant interexchange carrier (NDIEC), which requested approval for MTM to acquire 100% of the issued and outstanding shares of stock of Axces. This results in Axces becoming a wholly-owned subsidiary of MTM.

Parties to the Transaction.

MTM is a Texas corporation authorized to do business in California. Its principal place of business is 2500 Wilcrest, Suite 540, Houston, Texas 77042. MTM does not operate as a public utility within California or any other State.

Axces is a Delaware corporation authorized to do business in California. It's principal place of business is the same as MTM's. By Decision (D.) 96-10-015, Axces was granted a certificate of Public Convenience and Necessity (CPCN) to operate in California as an NDIEC (U-5694-C). Axces operates as a switchless reseller.

Categorization and Need for Hearings

In Resolution ALJ-176-2987, dated February 19, 1998, the Commission preliminarily categorized this application as ratesetting, and preliminarily determined that hearings were not necessary. No protests have been received. Therefore, a public hearing is not necessary, and it is not necessary to alter the preliminary determinations made in Resolution ALJ-176-2987.

Proposed Transaction

Pursuant to the agreement executed by the parties, MTM will acquire 100% of the issued and outstanding stock of Axces. Axces will then become a wholly-owned subsidiary of MTM. MTM does not wish to acquire Axces's CPCN. Axces will continue to operate under its current name and tariffs.

Discussion

In a situation where a company which does not possess a CPCN desires to acquire control of a company that does possess a CPCN issued by this Commission, we will apply the same requirements as in the case of an applicant seeking a CPCN to exercise the type of authority held by the company being acquired. Since Axces possesses a CPCN to act as a reseller of interexchange telecommunications services within California, we will apply the requirements for such authority to MTM.

The Commission has established two major criteria for determining whether a CPCN should be granted. An applicant who desires to act as a switchless¹ reseller must demonstrate that it has a minimum of \$25,000 in cash or

¹ D.93-05-010 defines a switchless reseller as an NDIEC with the following characteristics: it uses the switch of another carrier; it usually, but not always, uses access circuits that the underlying carrier purchases from a local exchange carrier; it provides service in its own name, and its customers view it as their telephone company for interLATA and interstate calls. D.96-06-069 noted that it is possible to control,

Footnote continued on next page

cash equivalent (as described in D.91-05-010, 41 CPUC2d 505 at 520 (1991)), reasonably liquid and readily available to meet the firm's start-up costs. In addition, the applicant is required to make a reasonable showing of technical expertise in telecommunications or a related business.

MTM, as part of this application, provided an unaudited balance sheet as of October 31, 1997 which demonstrated that it has sufficient resources to meet our financial requirements.

Since Axces will continue to operate under its present name and tariffs, and with the same personnel after MTM acquires control, our "technical expertise" requirements are satisfied.

Axces has been the subject of complaints regarding "slamming"² in Illinois, Missouri, Texas, and Oklahoma as follows:

- Cause No. 97-11-CHI-5799; *In the Circuit Court of Cook County, Illinois, County Department-Chancery Division, People of the State of Illinois v. Axces, Inc.*;
- Cause No. 98-CV-4967; *In the Circuit Court of the County of Jackson, Missouri at Kansas City; State of Missouri, ex. rel. Jeremiah W. (Jay) Nixon v. Axces, Incorporated*;
- Cause No. 97-59092; *State of Texas v. Axces, Inc.*; *In the 234th Judicial District Court of Harris County, Texas*; and
- Cause No. CS 970 000009; *Willie Burnett v. Axces, Inc.*, Before the Corporation Commission of the State of Oklahoma;

operate, or manage telephone lines without owning them. The decision also notes that resellers which do not own or directly operate their own telephone wires may still have plant which is owned, controlled, operated, and/or managed in order to facilitate communication by telephone.

² Unauthorized change of a customer's long distance carrier.

- Texas Public Utilities Commission letters of January 6 and February 11, 1998, re: Notice of Intent to Assess an Administrative Penalty for Violation of PUC Substantive Rule § 23.106, Selection of Telecommunication Utilities.

There has been no adjudication of any wrongdoing on the part of Axces in these cases. Additionally, there is no action pending before us regarding Axces. However, MTM and Axces are put on notice that "slamming" will not be tolerated in California. We will direct our Consumer Services Division to pay particular attention to any complaints it may receive regarding Axces.

With the above notice, we will grant the application in the expectation that MTM will insure that Axces operates in compliance with all applicable laws, rules and regulations.

Findings of Fact

1. MTM and Axces seek Commission approval of an agreement for MTM to acquire one hundred percent (100%) of the issued and outstanding stock of Axces, the holder of a CPCN issued by this Commission authorizing it to act as a reseller of interexchange telecommunications services within California.
2. MTM will not acquire the CPCN held by Axces, and Axces will continue to provide, under its current name, the services authorized by its CPCN as a wholly-owned subsidiary of MTM.
3. MTM has sufficient financial resources to meet the Commission's requirements for an NDIEC.
4. MTM, through Axces, possesses the necessary technical expertise required by the Commission.
5. The acquisition of control of Axces by MTM will not have an adverse impact on the public interest.
6. Notice of this application appeared on the Commission's Daily Calendar on February 19, 1998.

7. There were no protests to this application.
8. No hearings are necessary.

Conclusions of Law

1. The Commission will apply the same requirements to a request for approval of an agreement to acquire control of a reseller of interexchange telecommunications services within California as it does to an applicant for authority to provide such services.

2. MTM meets the Commission's requirements for the issuance of a CPCN to provide such services.

3. The application is not adverse to the public interest.

4. The application should be granted and made effective immediately.

5. After the acquisition of control, Axces will be a wholly-owned subsidiary of MTM, and will continue to exercise, in its current name, the authority granted by its CPCN.

O R D E R

IT IS ORDERED that:

1. The joint application of MTM Holdings Corporation (MTM) and Axces, Inc., d/b/a Long Beach Axces (Axces), requesting approval of an agreement for MTM to acquire 100% of the issued and outstanding stock of Axces is approved.

2. Following acquisition of Axces's stock by MTM, Axces will become a wholly-owned subsidiary of MTM.

3. The Certificate of Public Convenience and Necessity (CPCN) currently held by Axces is not acquired by MTM.

A.98-02-022 AIJ/JPO/jva

4. Axces will continue to provide, in its own name, the services authorized by its CPCN.

5. Application 98-02-022 is closed.

This order is effective today.

Dated September 3, 1998, at San Francisco, California.

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