

ALJ/GEW/jva

Decision 98-09-050

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of PWT Acquisition Corp. and
Pac-West Telecomm, Inc. (U-5226-C) for
Approval to Transfer Control of Pac-West
Telecomm, Inc.

ORIGINAL

Application 98-07-011
(Filed July 7, 1998)

O P I N I O N

1. Summary

PWT Acquisition Corp. (PWT Acquisition) and Pac-West Telecomm, Inc. (Pac-West) seek approval of a merger of the applicants and approval of a transfer of control of Pac-West's certificate of public convenience and necessity (CPCN). Pac-West is authorized to provide resold and facilities-based intrastate interexchange and local exchange telephone services in California. The application is granted.

2. Nature of Application

Pac-West holds authority from the Commission to operate as an interexchange carrier and as a facilities-based seller and reseller of competitive local exchange services. (See Decision (D.) 92-03-081 and D.98-01-055.) Its carrier identification number is U-5266-C. PWT Acquisition is a privately held California corporation created specifically for the purpose of consummating the proposed merger.

The proposed transfer of control will be accomplished through a transaction in which PWT Acquisition will merge with Pac-West, with Pac-West surviving. Pac-West would continue its operation with both continuing and new

shareholders under the Pac-West name. A copy of the merger agreement is attached to the application as Confidential Exhibit B.

Bay Alarm Company is the single largest shareholder of Pac-West, and will remain so after the merger, but new shareholders will participate in the control of Pac-West. New shareholders in the company will for the most part be limited partnerships that specialize in providing capital to emerging companies in the telecommunications and high-technology industries.

Applicants state that, although the ultimate corporate ownership of Pac-West will be transferred, the transaction will not result in a change in the manner in which Pac-West provides service to its California customers. Personnel changes are expected to be minimal. Applicants state that, as a result of the merger, Pac-West will gain access to the capital necessary to finance possible expansion. Financial information, including a pro forma post-transaction balance sheet, is attached to the application as Confidential Exhibit D.

3. Public Interest

Applicants state that the transaction is in the public interest, in that Pac-West will be able to draw on the financial and technical resources of the new stockholders. Pac-West states that the infusion of new capital and management skills will enhance the ability of the company to offer competitively priced services in the California interexchange and local exchange marketplaces.

The proposed transaction involves only a change in corporate structure of a certified telecommunications carrier. It can be seen with certainty that the proposed transaction will have no significant effect on the environment.

4. Discussion

Public Utilities (PU) Code § 854 requires Commission authorization before a utility 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 transaction contemplates a transfer of control. As a practical matter, however, no significant change in the operation of the telecommunications carrier is proposed or planned. The transfer of CPCN authority to the reorganized Pac-West corporate entity should not be a matter of confusion to end-users.

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-176-2997, dated July 23, 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, a public hearing is not necessary, and it is not necessary to alter the preliminary determination made in Resolution ALJ-176-2997.

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 July 16, 1998.
2. Pac-West seeks authority to merge with PWT Acquisition, with Pac-West the surviving entity.

3. Pac-West and PWT Acquisition meet financial and technical requirements to operate as an interexchange carrier and a reseller of competitive local exchange service.

4. There will be no significant change in the management or in the provision of services by Pac-West.

Conclusions of Law

1. The proposed transfer of operating authority 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, PWT Acquisition Corp. (PWT Acquisition) and Pac-West Telecomm, Inc. (Pac-West) are authorized pursuant to Public Utilities Code § 854 to merge and to transfer Pac-West's certificate of public convenience and necessity (CPCN) to the new entity, pursuant to the terms and conditions set forth in the application and Confidential Exhibit B.

2. Pac-West, the surviving entity, is authorized to do business under the utility identification number, U-5226-C, the number previously assigned to Pac-West.

3. Applicants shall notify the Director of the Commission's Telecommunications Division in writing of the actual date of transfer of

A.98-07-011 ALJ/GEW/jva

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. Pac-West shall file a new tariff incorporating rates, services and ownership information under its new corporate name.

5. Pac-West shall continue to be subject to the same terms and conditions that the Commission placed on it in granting the CPCN to operate as a facilities-based intrastate interexchange and local exchange telecommunications service provider.

6. PWT Acquisition and Pac-West shall make all books and records available for review and inspection upon Commission staff request.

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

8. Application 98-07-011 is closed.

This order is effective today.

Dated SEP 11 1998, at San Francisco, California.


WESLEY M. FRANKLIN
Executive Director