

ALJ/GEW/avs

Decision 98-07-021

**ORIGINAL**

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

Application of Teleglobe Inc. and Excel  
Communications, Inc. for Approval of Agreement  
and Plan of Merger.

Application 98-07-021  
(Filed July 7, 1998)

## **OPINION**

### **Summary**

Teleglobe Inc. (Teleglobe) and Excel Communications, Inc. (Excel), seek approval of a merger and transfer of control through which Excel will become a wholly owned subsidiary of Teleglobe. Granted.

### **Nature of Application**

Teleglobe is a Canadian corporation which, through its operating subsidiaries, is among the world's largest intercontinental telecommunications carriers, with services reaching 240 countries and territories. Its indirect wholly owned subsidiary, Teleglobe USA Inc. (Teleglobe USA) is authorized to provide interexchange services in 24 states, including California. Authorization in this state was granted through the Commission's registration process, as approved in Decision (D.) 97-09-097 on September 22, 1997.

Excel is a Delaware holding company which, through its subsidiaries, is the fifth largest long distance company in the United States. It has focused primarily on providing residential resold telephone services. The Commission has authorized interexchange and competitive local exchange service for three Excel subsidiaries: Telco Holdings, Inc. (U-5526-C) in D.97-08-085; Long

Distance Wholesale Club, Inc. (U-5653-C) in D.96-08-019; and Excel Telecommunications, Inc. (U-5196-C) in D.90-02-028 and D.97-04-058.

Applicants have agreed to a transaction in which North Merger Sub Corporation, a wholly owned subsidiary of Teleglobe, will merge into Excel, and each outstanding share of Excel's common stock will be converted into the right to receive 0.885 of a common share of Teleglobe capital stock. As a result, Excel will become a wholly owned subsidiary of Teleglobe, the former Excel shareholders will hold 48.5% of Teleglobe's common shares, and the pre-merger Teleglobe shareholders will hold 51.5% of Teleglobe's common shares.

Teleglobe states that it has the technical, managerial and financial qualifications to continue Excel's service in California. Financial information attached to the application as Exhibit A shows that Teleglobe last year recorded revenues of more than \$1.9 billion. The parties in July 1998 announced that the waiting period required by the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, has been terminated, and that close of the merger transaction is expected to occur before year end following approval of the Federal Communications Commission, state commissions and Canadian authorities.

#### **Public Interest**

Teleglobe and Excel state that they will realize significant revenue and operating advantages by merging the two entities. Applicants state that their current subsidiaries will continue to operate under their current names, and the merger will not disrupt service or cause confusion to customers. According to applicants, the merger will be virtually seamless to customers in terms of the services they now receive, but it will make additional products and services available to both Excel's and Teleglobe's customers.

The applicants state that the merger will serve the public interest in promoting competition in the telecommunications market by combining the companies' financial resources and complementary services, facilities and expertise. Applicants state that the combination of Teleglobe's extensive intercontinental network with Excel's channels of distribution and U.S. network will allow the combined company to offer an array of new products and services to homes, businesses, other carriers and Internet service providers.

Applicants have attached a copy of their merger agreement to their application as Exhibit C, and they have provided a chart depicting the transfer of control and post-merger organization as Exhibit D.

#### Discussion

Public Utilities 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.)

The proposed merger here promises improved products and services for California consumers. No change in the names or services of California subsidiaries of the two companies is contemplated. Teleglobe has the technical, managerial and financial qualifications necessary to continue operating all of the California telecommunications subsidiaries affected by the merger.

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, nor is it necessary to alter the preliminary determination in 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 17, 1998.
2. Teleglobe and Excel seek authority pursuant to PU Code § 854 of a merger and transfer of control by which Excel will become a wholly owned subsidiary of Teleglobe.
3. A Teleglobe subsidiary, Teleglobe USA, is authorized to provide facilities-based interexchange services throughout California.
4. Three Excel subsidiaries are authorized to provide interexchange and competitive local exchange telecommunications services in California.
5. There will be no change in the names or current services provided by the companies' subsidiaries as a result of the merger.

#### **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, Teleglobe Inc. (Teleglobe) and Excel Communications, Inc. (Excel) are authorized pursuant to Public Utilities Code § 854 to enter into a merger transaction as more fully described in the application and in Exhibit C.
2. Applicants 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.
3. Subsidiaries of Excel shall file new tariffs incorporating any changes in rates, services and management authorized in the merger transaction.
4. Teleglobe and Excel shall make all books and records available for review and inspection upon Commission staff request.

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

6. Application 98-07-021 is closed.

This order is effective today.

Dated SEP 24 1998, at San Francisco, California.



WESLEY M. FRANKLIN

Executive Director