

Decision 98-10-045 October 22, 1998

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of Coyote Network Systems, Inc. and Interactive Network System, L.L.C. for Authority to Transfer the Stock of Interactive Network System, L.L.C., an NDIEC Operating in California, to Coyote Network Systems, Inc.

Application 98-07-052
(Filed July 30, 1998)

O P I N I O N

ORIGINAL

Summary

This decision grants the joint application of Coyote Network Systems, Inc. (Coyote) and Interactive Network System, L.L.C. (INS), a nondominant interexchange carrier (NDIEC), which requested approval for Coyote to acquire 100% of the issued and outstanding shares of stock of INS. This results in INS becoming a wholly-owned subsidiary of Coyote.

Parties to the Transaction

Coyote is a Delaware corporation authorized to do business in California. Its principal place of business is 4360 Park Terrace Drive, Westlake Village, California 91361. Coyote does not operate as a public utility within California or any other state.

INS is a California limited liability company. Its principal place of business is 1640 S. Sepulveda Blvd., Suite 320, Los Angeles, California 90025. By Decision (D.) 95-07-029, INS was granted a certificate of Public Convenience and Necessity (CPCN) to operate in California as an NDIEC (U-5492-C). INS operates as a switchless reseller.

Categorization and Need for Hearings

In Resolution ALJ 176-2998, dated August 6, 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-176-2998.

Proposed Transaction

Pursuant to the agreement executed by the parties, Coyote will acquire 100% of the issued and outstanding stock of INS. The vehicle for this transaction is a merger of INS with and into an acquisition subsidiary of Coyote. INS will then become a wholly-owned subsidiary of Coyote. Coyote does not wish to acquire INS' CPCN. The subsidiary will continue to operate under INS' 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 INS possesses a CPCN to act as a reseller of interexchange telecommunications services within California, we will apply the requirements for such authority to Coyote.

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 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.

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

As part of its application, Coyote provided information on its directors and executive officers. We conclude that Coyote's personnel have sufficient qualifications to operate as an NDIEC reseller. We will, therefore, grant the application.

Findings of Fact

1. Coyote and INS seek Commission approval of an agreement for Coyote to acquire one hundred percent (100%) of the issued and outstanding stock of INS, the holder of a CPCN issued by this Commission authorizing it to act as an NDIEC.

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, 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. Coyote will not acquire the CPCN held by INS, and INS, after its merger with the subsidiary, will continue to provide, under its current name, the services authorized by its CPCN as a wholly-owned subsidiary of Coyote.

3. Coyote has sufficient financial resources to meet the Commission's requirements for an NDIEC.

4. Coyote possesses the necessary technical expertise required by the Commission.

5. The acquisition of control of INS by Coyote will not have an adverse impact on the public interest.

6. Notice of this application appeared on the Commission's Daily Calendar on August 3, 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 interLATA telecommunications services within California as it does to an applicant for authority to provide such services.

2. Coyote 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, INS will be a wholly-owned subsidiary of Coyote, 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 Coyote Network Systems, Inc. (Coyote) and Interactive Network System, L.L.C. (INS) requesting approval of an agreement for Coyote to acquire 100% of the issued and outstanding stock of INS is approved.
2. Following acquisition of INS' stock by Coyote, INS will become a wholly-owned subsidiary of Coyote.
3. The Certificate of Public Convenience and Necessity (CPCN) currently held by INS is not acquired by Coyote.
4. INS will continue to provide, in its own name, the services authorized by its CPCN.
5. Application 98-07-52 is closed.

This order is effective today.

Dated October 22, 1998, at San Francisco, California.

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