

Decision 98-12-017 December 3, 1998

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

In the Matter of WAXS INC., and CHERRY  
COMMUNICATIONS INCORPORATED  
Application for Authority to Transfer Control of  
an Authorized Reseller of Telephone Services  
Within the State of California.

Application 98-09-034  
(Filed September 29, 1998)

**O P I N I O N**

**ORIGINAL**

**Summary**

By joint application WAXS, Inc., (WAXS) and Cherry Communications Incorporated (Cherry), an interLATA telecommunications service reseller, requested authorization for WAXS to acquire ownership and control of Cherry. This would result in Cherry becoming a wholly-owned subsidiary of WAXS. This decision grants the request.

**Categorization and Need for Hearings**

In Resolution ALJ 176-3001, dated October 8, 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 176-3001

**The Parties**

WAXS is a Delaware corporation which does not currently provide communications services within California. Its address is 945 East Paces Ferry Road, Suite 2240, Atlanta, Georgia 30326. WAXS is a manufacturer and marketer of telecommunications switching, transport and access products.

Cherry is an Illinois corporation which is authorized to resell interLATA communications in California (U-5306-C). Its address is 1919 South Highland Avenue, Suite 129-D, Lombard, Illinois 60148.

#### **The Transaction**

On October 24, 1997, Cherry filed a Chapter 11 voluntary petition for relief in bankruptcy. The case is pending before the Bankruptcy Court for the Northern District of Illinois under Case No. 97B 32873. A plan for reorganization was filed on June 15, 1998. The plan calls for the merger of Cherry with WAXS.

WAXS is currently a wholly-owned subsidiary of World Access, Inc. Under a planned reorganization, WAXS will become the parent company and World Access, Inc. will be the subsidiary.

Applicants represent that the merger and reorganization are mutually dependent. Neither one will happen without the other.

The overall result of the merger and the reorganization is that 100% of Cherry's stock will be acquired by WAXS. Cherry will become a wholly-owned subsidiary of WAXS. Cherry will continue to operate under its current management, name, and tariffs. WAXS does not seek to acquire Cherry's certificate of public convenience and necessity (CPCN).

#### **Financial Information**

As part of its application, applicant included a copy of its United States Security and Exchange Commission Form 10-K filing for the year ended December 31, 1997. This document demonstrates that the current parent company, World Access, Inc., has the necessary resources to continue Cherry's operations. Assuming that the planned reorganization goes through, the assets of World Access, Inc. become the assets of WAXS. Therefore, WAXS will have the necessary resources to continue Cherry's operations. We, therefore, conclude

that Cherry's financial position will not be downgraded by the proposed merger assuming the reorganization goes through.

#### **Technical Expertise**

WXS is experienced in providing communications equipment-related manufacturing and marketing. Cherry has experience as a telecommunications reseller. We conclude that Cherry, after the merger, will retain sufficient expertise to operate as a telecommunications reseller under its current CPCN.

#### **Cherry's Slamming History**

By Decision 96-09-041, we adopted a settlement, between Cherry and our Safety and Enforcement Division, of our Investigation 95-10-007 regarding allegations of slamming.<sup>1</sup> Among the restrictions placed on Cherry was a 24-month suspension of Cherry's CPCN effective September 4, 1996.

The suspension period is over. No one has protested this application or alleged that Cherry has not complied with D.96-09-041.

#### **Public Interest**

The Commission has determined that the public interest requires competition in the provision of interLATA telecommunications services. Applicants represent that the proposed transfer of control will strengthen Cherry by the combination of the managerial expertise and financial resources of both companies. They further represent that this will promote competition.

We believe that the proposed acquisition will strengthen competition and that it is, therefore, in the public interest.

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<sup>1</sup> Unauthorized switching of a customer from one long distance carrier to another.

**Conditions of Approval**

Our evaluation of this application is based on applicant's assertion that the proposed merger and reorganization will both take place. Therefore, our approval of the acquisition is contingent on the proposed reorganization.

**Findings of Fact**

1. Cherry is an Illinois corporation authorized to provide interLATA service in California.
2. WAXS is a Delaware corporation. It does not provide telecommunications services.
3. On September 29, 1998, Cherry and WAXS filed a joint application for approval of WAXS's acquisition of Cherry.
4. Notice of the filing of this application appeared on the Commission's Daily Calendar on October 2, 1998.
5. Financial information filed by the parties indicates that Cherry's financial position is unlikely to be downgraded by the proposed acquisition.
6. Cherry will continue to operate under its current name, authorities, and tariffs.
7. The proposed acquisition will improve Cherry's access to capital, thus enhancing its competitive potential.
8. Pursuant to a proposed reorganization, WAXS will become the parent company of World Access, Inc.
9. No protests to this application have been received.
10. No hearing is necessary.

**Conclusions of Law**

1. Approval of the joint application would be in the public interest.
2. The application should be approved contingent upon the proposed reorganization of WAXS and its parent company, World Access, Inc., such that WAXS, becomes the parent company.

**O R D E R**

**IT IS ORDERED that:**

1. The joint application of the parties is approved contingent upon the proposed reorganization, whereby WAXS, Inc. (WAXS) becomes the parent company of World Access, Inc.
2. WAXS is authorized to acquire control of Cherry Communications Incorporated (Cherry), (U-5306-C).
3. The certificate of public convenience and necessity (CPCN) held by Cherry is not acquired by WAXS.
4. Within 10 days of the purchase of Cherry, WAXS shall notify the Commission of the date control is acquired, and shall provide the Commission with the name and business address of WAXS's designated agent for service of process.
5. Subsequent to acquiring control of Cherry, WAXS shall in all respects comply with the terms of Cherry's CPCN.

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6. The application is closed.

This order is effective today.

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

RICHARD A. BILAS

President

P. GREGORY CONLON

JESSIE J. KNIGHT, JR.

HENRY M. DUQUE

JOSIAH L. NEEPER

Commissioners