

ALJ/JPO/tcg

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Decision 99-02-037 February 4, 1999

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Telecom Resources, Inc. (U-6007-C)
for authority to Transfer Control to Advanced
Communications Group, Inc.

Application 98-12-004
(Filed December 3, 1998)

OPINION

Summary

This decision grants the joint application of Advanced Communications Group, Inc. (ACG) and Telecom Resources, Inc. (TRI), a nondominant interexchange carrier (NDIEC), which requested approval for ACG to acquire 100% of the issued and outstanding shares of stock of TRI. This results in TRI becoming a wholly-owned subsidiary of ACG.

Parties to the Transaction

ACG is a publicly-held Delaware corporation. Its principal offices are located at 390 South Woods Mill Road, Suite 150, St. Louis, Missouri 63017. ACG is a competitive local exchange carrier operating in selected service areas of Southwestern Bell and US West. It also operates as a provider of local and long distance services, internet access and cellular services primarily in Kansas, Nebraska, North Dakota, Oklahoma, South Dakota, and Texas.

TRI is a privately-held Texas corporation. Its principal offices are located at 1950 Stemmons Freeway, Suite 4033, Dallas, Texas 75207. It is a nondominant provider of domestic interstate and international services in all 50 states and the District of Columbia. It provides intrastate services in all 50 states except Alaska, Connecticut, Louisiana, North Carolina, and South Carolina. It was authorized

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to operate as a switchless reseller of interLATA and intraLATA services in California by Decision 98-06-039.

Procedural Matters

In Resolution ALJ 176-3006, dated December 17, 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-176-3006.

This is an uncontested matter in which the decision grants the relief requested. Therefore, pursuant to Public Utilities Code (PU) § 311(g)(2), the otherwise applicable 30-day period for public review and comment is being waived.

Proposed Transaction

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

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.

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

ACG is an experienced telecommunications provider. After the acquisition, TRI will continue to operate with its existing management and operations staff. Therefore, we conclude that ACG is qualified to operate as a telecommunications reseller. We will grant the application.

Findings of Fact

1. ACG and TRI seek Commission approval of an agreement for ACG to acquire one hundred percent (100%) of the issued and outstanding stock of TRI, 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. ACG will not acquire the CPCN held by TRI, and TRI, after its acquisition by ACG, will continue to provide, under its current name, the services authorized by its CPCN as a wholly-owned subsidiary of ACG.

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

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

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

6. Notice of this application appeared on the Commission's Daily Calendar on December 7, 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 and intraLATA telecommunications services within California as it does to an applicant for authority to provide such services.

2. ACG 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, TRI will be a wholly-owned subsidiary of ACG, 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 Advanced Communications Group, Inc. (ACG) and Telecom Resources, Inc. (TRI) requesting approval of an agreement for ACG to acquire 100% of the issued and outstanding stock of TRI is approved.
2. The Certificate of Public Convenience and Necessity (CPCN) currently held by TRI is not acquired by ACG.
3. TRI will continue to provide, in its own name, the services authorized by its CPCN.
4. Application 98-12-004 is closed.

This order is effective today.

Dated February 4, 1999, at San Francisco, California.

RICHARD A. BILAS
President
HENRY M. DUQUE
JOSIAH L. NEEPER
Commissioners