

ALJ/JAR/sid

Decision D99-03-030

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

Application for Authority to Transfer Control of Preferred Carrier Services, Inc. (U-5641-C) to Phones For All, Inc.

Application 98-09-027  
(Filed September 22, 1998)

**OPINION**

**ORIGINAL**

**Summary**

Preferred Carrier Services, Inc. (PCS) and Phones For All, Inc. (PFA) (collectively referred to as applicants) jointly seek approval of the transfer of control of PCS' shares and rights of ownership of its assets to PFA. Previously, this Commission has authorized PCS to provide local, interLATA and intraLATA telecommunication services within California.

Pursuant to Public Utilities (Pub. Util.) Code § 853 and Decision (D.) 86-10-013, applicants further request that the Commission retroactively grant *nunc pro tunc* authority for this transaction. We grant the application.

**Nature of Application**

PCS, a Texas corporation duly qualified to transact business in California, holds authority from the Commission to operate as an interexchange carrier and a reseller of competitive local exchange services. (See D.96-07-041 and D.98-01-066.) Its carrier identification number is U-5641-C. PCS also is authorized to provide intrastate telecommunications services in several other states either pursuant to certification, registration, tariff requirements, or on an unregulated basis, and is authorized by the FCC to provide domestic interstate and international services as a non-dominant carrier.

PFA, a Delaware corporation,<sup>1</sup> does not currently provide telecommunication services within California. Moreover, once the requested transaction takes place, PFA will not directly provide telecommunication services within the state. Rather, its newly acquired subsidiary, PCS, will provide such services.

The proposed transfer of control was accomplished through a transaction in which PFA acquired 100% of the issued and outstanding shares of PCS. PCS was to become, and remain, a wholly-owned subsidiary of PFA. PCS is to continue to operate under its existing operating authority and tariff. PCS and PFA appended a copy of the Purchase and Sale Agreement and the financials to the application as Confidential Exhibits B and C, respectively. Pursuant to Pub. Util. Commission General Order No. 66-C(2.2)(b) and Pub. Util. Code § 583, applicants jointly request a limited protective order for Exhibits B and C on the grounds that the documents contain sensitive price term data and other confidential information of both parties. They submit that the disclosure of this information would place them at an unfair business disadvantage and cause irreparable harm to both business operations. For good cause shown, we grant applicants' request for the limited protective order.

#### **Public Interest**

Applicants assert that neither they nor the public will be adversely impacted by the Commission's approval of this transaction. They state that although some changes may be made in order to take advantage of available efficiencies, they are committed to ensuring that this acquisition will be otherwise

---

<sup>1</sup> PFA was a limited liability company, "Phones For All, LLC," when it entered into the proposed transaction with PCS. In connection with this acquisition of PCS, the structure of PFA was changed to a corporation.

transparent to customers who will receive services in full accordance with PCS' existing terms of services and all applicable regulations.

Applicants maintain that they entered into the transaction in order to increase the efficiency and competitiveness of their operations. PFA intends to maintain PCS' current operation as a separate business unit. However, PFA's existing personnel will handle most operating, administrative and management functions. Finally, applicants contend that this transaction will significantly enhance PCS' position in the marketplace by providing PCS with improved access to capital as well as to operating and administrative efficiencies stemming from its consolidation of functions with PFA's existing operations.

It can be seen with certainty that this transfer of control will have no significant effect on the environment.

#### Discussion

Generally, prior authorization by the Commission is required before any transfer of public utility property is consummated so that we may review the situation and take such action, as a condition of the transfer, as the public interest may require. (San Jose Water Co. 10 CRC 56 (1916).) However, in Re Jacumba Water Company, 22 CPUC2d 43 (1986),<sup>2</sup> the Commission affirmed an earlier decision in which it applied Pub. Util. Code § 853(a) to retroactively exempt a 1979 sale and transfer of the water company from Pub. Util. Code § 851 because "neither the party nor the public appeared to be adversely affected if the invalid sale were to be approved."

The transfer of control of shares and assets resulting from this transaction appears apt to enhance the efficiencies of the telecommunications carrier. The

---

<sup>2</sup> D.86-10-013.

applicants represent that they intend to operate after the transfer in a manner that will minimize confusion to end-users. There will be no significant change in the provision of services by PCS. Applicants state that this transaction closed before the filing of this application, in part, to ensure the continuation of service to PCS' customer base. Thus, as in Re Jacumba Water Company, we find it unlikely that either the parties or the public will be adversely impacted by our approval of this transaction.

Applicants also request approval of this matter 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 Pub. Util. Code §§ 851-855..." (CAWC, Inc., D.87-04-017 (1987).) There have been no protests to this application, and the contemplated transaction appears to be noncontroversial.

In Resolution ALJ 176-3001, dated October 8, 1998, the Commission preliminarily categorized this proceeding as ratesetting, and preliminarily determined that hearings were not necessary. Given the absence of protests in this matter, a public hearing is not necessary, and it is needless to alter the preliminary determination made in Resolution ALJ 176-3001.

#### **Waiver**

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

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 September 25, 1998.

2. Applicants jointly seek approval of a transfer of control of PCS' shares and rights of ownership of its assets to PFA.

3. This transaction closed on October 30, 1997, before the filing of this application, in part, to ensure the continuation of service to PCS' customer base.

4. Exhibits B and C to this application, which exhibits were submitted under seal as an attachment to Applicants' motion for limited protective order, contain Applicants' Purchase and Sale Agreement and financial information related to Applicants' showing. Applicants represent (1) that release of price term and other information from the agreement would place Applicants at an unfair business disadvantage, and (2) that the financial information is commercially sensitive and not currently available to the general public. The motion is unopposed.

5. PCS and PFA meet financial and technical requirements to operate as an interexchange carrier and a reseller of competitive local exchange service.

6. There will be no significant change in the provision of services by PCS.

#### **Conclusions of Law**

1. Neither the parties nor the public will be adversely impacted by our approval of this transfer of control of PCS to PFA.

2. Applicants' motion for limited protective order states grounds, under General Order 66-C and authority there cited, for the requested relief.

Applicants' motion should be granted to the extent set forth below.

3. This proceeding is designated a ratesetting proceeding; no protests have been received; no hearing is necessary.

4. It can be seen with certainty that the granting of this application will have no significant effect on the environment.

5. The application is noncontroversial and may be granted by the Executive Director pursuant to authority delegated by the Commission.

6. Applicants' request for *nunc pro tunc* authorization of the prior transfer of PCS to PFA should be granted.

## O R D E R

### IT IS ORDERED that:

1. Preferred Carrier Services, Inc. (PCS) and Phone For All, Inc. (PFA) are authorized *nunc pro tunc* pursuant to Public Utilities Code § 854 to transfer control of the shares and rights of ownership of assets, including PCS' certificate of public convenience and necessity (CPCN), to the new entity, pursuant to the terms and conditions set forth in the application and Confidential Exhibits B and C.

2. The financial, cost, and customer information referred to in the application as Exhibits B and C shall remain under seal for a period of two years from the effective date of this order, and during that period shall not be made accessible or disclosed to anyone other than Commission staff except on the further order or ruling of the Commission, the assigned Commissioner, the assigned Administrative Law Judge (ALJ), or the ALJ then designated as Law and Motion Judge. If Applicants or either of them believe that further protection of this information is needed after two years, either Applicant may file a motion stating the justification for further withholding the exhibits from public inspection, or for such other relief as the Commission rules may then provide. This motion shall be filed no later than 30 days before the expiration of this limited protective order.

3. PCS, at present the wholly owned subsidiary of PFA, is authorized to do business under its previously assigned utility identification number, U-5641-C.

4. PCS shall continue to be subject to the same terms and conditions that the Commission placed on it in granting the CPCN to provide local exchange, interLATA and intraLATA telecommunications services.


A.98-09-027 ALJ/JAR/sid

5. PCS and PFA shall make all books and records available for review and inspection upon Commission staff request.

6. Application 98-09-027 is closed.

This order is effective today.

Dated                      <sup>MAR 11 1999</sup>, at San Francisco, California.



WESLEY M. FRANKLIN  
Executive Director