

Decision D 99-05-045-

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

Joint Application of Zenex Long Distance, Inc. (U-5699-C), Certain Shareholders of Zenex Long Distance, Inc., and Prestige Investments, Inc. for Approval of a Stock Purchase Agreement and Related Transactions.

Application 99-04-014  
(Filed April 14, 1999)

**CONFIDENTIAL**

## OPINION

**1. Summary**

Applicants seek authorization of a transaction in which the outstanding common stock of Zenex Long Distance, Inc. (Zenex), a telecommunications reseller, will be sold to Prestige Investments, Inc. (Prestige), after which Zenex will continue to operate as a wholly owned subsidiary of Prestige. **Granted.**

**2. Nature of Application**

Zenex is a privately held Oklahoma corporation certified as a telecommunications reseller in the 48 contiguous states. It was granted a certificate of public convenience and necessity by this Commission in Decision (D.) 96-11-036 in November 1996. Zenex also provides interstate telecommunications services pursuant to authority granted by the Federal Communications Commission.

Prestige is an Oklahoma corporation engaged in finance and investment, including investment in telecommunications companies. Prestige is wholly owned by Rick Naylor, an Oklahoma City resident who is a principal in several Oklahoma construction companies called the Naylor Companies. Prestige is an affiliate of the Naylor Companies.

Applicants have entered into a stock purchase agreement, attached to the application as Exhibit 2, by which all outstanding shares of common stock would be acquired by Prestige. The transaction would be effective when all necessary regulatory approvals have been received.

Applicants state that the only change contemplated by this transaction will be the transfer of the ownership of Zenex stock. Zenex will continue to operate in California under its own name and with substantially the same management. Applicants state that customers of Zenex will see no change in rates, terms or conditions of service, and that customers can expect improved service in the future because of the infusion of new capital.

Zenex has approximately \$3 million in assets and \$4 million in 1998 gross revenues. In late 1998, Zenex redirected its marketing effort toward the pre-paid calling card segment of the long distance industry. Applicants state that the proposed transaction will provide Zenex with financial resources far in excess of what it now has available, and that Zenex will be in a better position to compete effectively in the telecommunications market.

Applicants have attached copies of their financial statements as exhibits to their application.

### 3. Discussion

Pub. Util. Code § 854 requires Commission authorization before a person or corporation 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 name, rates or services of the California carrier is proposed. Zenex and Prestige have the technical, managerial and financial qualifications necessary to continue the Zenex services in California.

There have been no protests to this application, and the contemplated corporate reorganization appears to be noncontroversial.

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 [Pub. Util.] Code §§ 851-855..." (CAWC, Inc., D.87-04-017 (1987).)

In Resolution ALJ 176-3014, dated April 22, 1999, the Commission preliminarily categorized this proceeding as ratesetting, and preliminarily determined that hearings were not necessary. Based on the record, we conclude that a public hearing is not necessary, nor is it necessary to alter the preliminary determinations in ALJ 176-3014.

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 April 16, 1999.
2. Zenex and Prestige seek authority pursuant to Pub. Util. Code § 854 of a transfer of control by which Prestige intends to acquire all outstanding shares of Zenex.
3. Zenex is a provider of intrastate interexchange telecommunications services in California.
4. Zenex was authorized in D.96-11-036 to operate as a reseller of interexchange services in California.

5. There will be no change in the name or current services provided by Zenex as a result of the transfer of control.

**Conclusions of Law**

1. The proposed transfer of control 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**

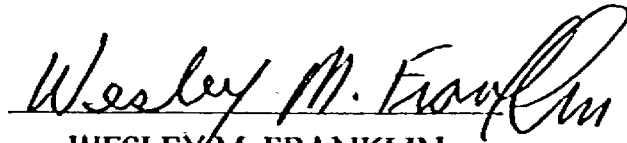
**IT IS ORDERED that:**

1. Zenex Long Distance, Inc. (Zenex) and Prestige Investments, Inc. (Prestige) are authorized pursuant to Section 854 of the Public Utilities Code to enter into the stock acquisition agreement, as more fully described in the application and its exhibits, by which Prestige will acquire control of Zenex.
2. Applicants shall notify the Director of the Commission's Telecommunications Division in writing of the transfer of authority, as authorized herein, within 10 days of the date of consummation of such transfer. A true copy of the instruments of transfer shall be attached to the notification.
3. Zenex shall file new tariffs incorporating any changes in rates, services and management authorized in the transfer transaction.
4. Zenex and Prestige shall make all books and records available for review and inspection upon Commission staff request.
5. The authority granted in this order shall expire if not exercised within 12 months after the effective date of this order.

6. Application 99-04-014 is closed.

This order is effective today.

Dated 5/21/99 **MAY 21 1999**, at San Francisco, California.



WESLEY M. FRANKLIN  
Executive Director