

Decision 00-04-014 April 6, 2000

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of HTC Communications, LLC
(U-6185-C) for Approval Nunc Pro Tunc to
Transfer Control to Pointe Communications
Corporation and for Other Related Transactions.

Application 00-01-006
(Filed January 7, 2000)

OPINION

1. Summary

This application seeks retroactive approval under Sections 852 and 854 of the Public Utilities Code of a merger and transfer of control of HTC Communications, LLC, (HTC Communications) a non-dominant telecommunications carrier. The application is unopposed. The application is granted.

2. Nature of Application

HTC Communications seeks after-the-fact approval of a series of transactions by which it would be merged into Pointe Local Exchange Company (Pointe Local), the operating subsidiary of Pointe Communications Corporation (Pointe Communications). Additionally, applicant asks that the certificate of public convenience and necessity (CPCN) issued to HTC Communications be transferred to Pointe Local, which is the surviving entity of the merger.

3. Description of Parties

HTC Communications, a California limited liability company headquartered in Monrovia, was authorized to provide intrastate telecommunications services, including local and interexchange services, in Decision 99-06-083, issued on June 24, 1999.

Pointe Communications is a Nevada corporation headquartered in Roswell, Georgia. Founded in 1995 as Charter Communications International, Inc., the company provides telecommunications products and services to domestic and international markets, with a primary focus on Latin America. The products and services include calling cards, switched voice products, international private line services, Internet access and call center services.

Pointe Communications states that it recently began to deploy domestic facilities and offer competitive local exchange services. Through its operating subsidiaries, Pointe Local and PointeCom, Inc., the company operates as a facilities-based and non-facilities-based provider of private line and switched local and interexchange services in Florida and Georgia. Pointe Communications also is authorized by the Federal Communications Commission to provide interstate and international telecommunications services as a non-dominant carrier.

Pointe Local is a newly created Georgia corporation headquartered in Roswell, Georgia. It is a wholly owned subsidiary of Pointe Communications. In the transactions described below, it would be the surviving entity of a merger between HTC Communications and HTC Acquisition Company. Pointe Local is not now authorized and does not provide service in any state.

4. History of Merger

On August 16, 1999, the parties completed the transaction by which HTC Communications would be merged into Pointe Local. The proposed transfer of control was accomplished through use of a reverse triangular merger whereby HTC Communications was merged into HTC Acquisition Company, a special-purpose subsidiary of Pointe Communications. Subsequently, the name of HTC Acquisition was changed to Pointe Local Exchange Company. After the

merger, Pointe Local continued to exist as a wholly owned subsidiary of Pointe Communications.

Under terms of the merger agreement, Pointe Communications transferred 600,000 of its shares to the former members of HTC Communications. Property and rights of HTC Communications, as well as debts and liabilities, were transferred to Pointe Local. The parties state that the managers of HTC Communications will continue to manage the telecommunications operations of Pointe Local.

5. Public Interest

The parties state that significant financial and competitive benefits are made available to the company through the merger. They state that the merger will enhance the carrier's operational flexibility and efficiency, and will give it the opportunity to strengthen its competitive position.

Exhibits attached to the application show that Pointe Local has the financial, managerial and technical ability to provide intrastate telecommunications services in California. Pointe Communications, the parent company, has been involved in the telecommunications industry since 1995 and, through its subsidiaries, operates in Florida and Georgia and in several countries in Latin America, including Mexico, Panama, Nicaragua and El Salvador. The parties state that between 1995 and 1998 the Pointe Communications companies have invested more than \$28 million in network and market development and currently have a network consisting of two tandem switches, three class 5 switches (including a switch in El Monte, California), satellite teleports in seven countries and five Internet points of presence.

The parties state that if this application is approved, Pointe Local will file a new tariff that will incorporate all existing services of HTC Communications at

the same rates, terms and conditions as are currently available. The parties state that the impact of the transfer will be negligible because Pointe Local will serve current customers of HTC Communications using essentially the same customer service operations.

The parties in the application have attached copies of their financial statements and biographical data for the company's officers, and they have attached a copy of the merger agreement describing the proposed transfer of control.

6. Retroactive Approval

The parties ask that approval of the merger be made effective, nunc pro tunc, to August 16, 1999, the date of consummation of these transactions. Otherwise, the transactions would be void under Pub. Util. Code § 854. The parties state that they were unable to seek Commission approval of the transfer of control prior to consummating the merger because time was of the essence in closing the transactions.

7. Discussion

Pub. Util. Code § 854 requires Commission authorization before a company 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 merger here promises improved services for California consumers. Although the proposed transaction results in a change in name and in the

ultimate ownership of HTC Communications, it does not involve a substantial change in the manner in which the company provides service in California.

Where appropriate, this Commission has granted approval to transfers nunc pro tunc, i.e., with the same effect as if done earlier, where our examination of the transfer revealed no prejudice to ratepayers. (See, e.g., WinStar Communications (1995) 59 CPUC2d 635.) We conclude that after-the-fact approval under Sections 854 and 852 is appropriate, based on the record before us.

In Resolution ALJ 176-3031, dated January 20, 2000, 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 Resolution ALJ 176-3031.

There have been no protests to this application, and the contemplated transfer of control appears to be noncontroversial. The application is granted, subject to the terms and conditions set forth below.

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.

Findings of Fact

1. Notice of this application appeared in the Commission's Daily Calendar of January 11, 2000.
2. The parties seek after-the-fact approval pursuant to Pub. Util. Code § 852 and § 854 of a series of transactions by which HTC Communications would be merged into Pointe Local, an operating subsidiary of Pointe Communications.

3. HTC Communications is authorized to provide intrastate telecommunications services, including local and interexchange services.

4. Pointe Communications provides telecommunications products and services to domestic and international markets and, through its subsidiaries, operates as a facilities-based and non-facilities-based provider of private line and switched local and interexchange services in Florida and Georgia.

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

6. The parties seek retroactive approval of the merger transactions.

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 should be approved, with approval retroactive to the date of consummation of the reorganization, or August 16, 1999.

O R D E R

IT IS ORDERED that:

1. HTC Communications, LLC (HTC Communications); Pointe Communications Corporation (Pointe Communications) and Pointe Local Exchange Company (Pointe Local) are authorized pursuant to Sections 852 and 854 of the Public Utilities Code to enter into the transactions, as more fully described in the application and its exhibits, by which Pointe Communications will acquire control of HTC Communications.

2. Pointe Local and Pointe Communications 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 this order. A true copy of the instruments of transfer shall be attached to the notification.

3. Pointe Local and Pointe Communications shall file new tariffs incorporating any changes in name, rates, services and management authorized in the transfer transaction.

4. Pointe Local and Pointe Communications shall make all books and records available for review and inspection upon Commission staff request.

5. The authority granted herein is made effective nunc pro tunc to the date of August 16, 1999.

6. The certificate of public convenience and necessity granted to HTC Communications in Decision 99-06-083 is transferred to Pointe Local, which is authorized to continue use of the utility identification number U-6185-C.

7. If it has not already done so, Pointe Local shall within 30 days notify all customers of HTC Communications of the change in name and change in control authorized herein.

8. The authority granted herein shall expire if not exercised within one year of the date of this order.

9. Application 00-01-006 is closed.

This order is effective today.

Dated April 6, 2000, at San Francisco, California.

LORETTA M. LYNCH
President

HENRY M. DUQUE
JOSIAH L. NEEPER
RICHARD A. BILAS
CARL W. WOOD
Commissioners