

Decision 00-04-043 4/12/2000

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

Joint Application Under Public Utilities  
Code § 854 for Approval of the Merger of ACN  
Communications, Inc. (U-2528-C) and Arrival  
Communications of California, Inc.

Application 00-02-022  
(Filed February 9, 2000;  
Amended Application Filed  
March 1, 2000)

**O P I N I O N**

**1. Summary**

This application seeks approval under Section 854 of the Public Utilities Code of a merger of ACN Communications, Inc. (ACN), a non-dominant telecommunications carrier, and Arrival Communications, Inc. (Arrival Com), a new telecommunications company. After the merger, Arrival Com would become the successor of all of ACN's assets, including ACN's operating authority, and ACN would cease to exist. In examining this application, we have applied the same tests to Arrival Com that we would have applied had it sought this operating authority on its own. The application is unopposed. The application is granted.

**2. Description of Applicants**

ACN holds interstate and intrastate interexchange authority pursuant to Decision (D.) 91-11-063 and D.93-04-063. It also has facilities-based and resale competitive local carrier authority pursuant to D.95-12-057 and D.96-02-072. The company operates primarily in the Bakersfield area and specializes in providing business local exchange and interexchange services. Its utility identification number is U-2528-C.

Arrival Com is a newly formed start-up company, incorporated in Delaware, with no current operations. Applicants state that the company is in the process of acquiring local and interexchange operating authorities in a number of western states.

### **3. Nature of Application**

Pursuant to the plan of merger, a draft of which is attached to the application as Exhibit D, all outstanding shares of stock in ACN will be transferred by its shareholders to Arrival Com in exchange for a combination of \$4.5 million in cash, notes, and shares of stock in Arrival Com. The transaction would be funded through notes issued by Arrival Com and through equity financing advanced by Housatonic Partners and BancBoston Ventures, Inc. After the merger, Arrival Com would be the surviving entity and ACN would cease to exist.

Applicants state that, after the merger, day-to-day management of ACN's current operations will continue in the hands of ACN's existing management team. All customer service and support services, billing functions and technical network operations will be carried out by the same personnel who are handling those functions today. Although the joint applicants state that they intend to expand ACN's service offerings, Arrival Com will adopt ACN's existing tariff in its entirety. Rates, terms and conditions available to customers will not change. Applicants state that, apart from the change in name, the proposed transactions will be transparent to current customers.

### **4. Public Interest**

The application states that the transfer of control will serve the public interest in promoting competition by combining the financial resources and technical and managerial strengths of Arrival Com and ACN.

Applicants state that their merger will facilitate entry into the market for provision of digital subscriber line (DSL) and other advanced services to residential and business customers. Arrival Com's plan in most states is to concentrate initially on providing high speed data capability for Internet access and other broadband applications. In California, however, the company states that it will have the immediate capability to furnish both advanced and traditional services in areas now served by ACN, and that it plans to expand ACN's current services in California and, ultimately, in other states.

The parties in the application have attached copies of their financial statements, and they have attached a copy of the agreement and plan of merger describing the proposed transfer of control.

## **5. 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.)

In a situation where a company that does not have a certificate of public convenience and necessity (CPCN) desires to acquire control of a company that does possess a CPCN, we apply the same requirements as in the case of an applicant seeking a CPCN for the first time. Since ACN has a CPCN to act as a switchless reseller of interexchange telecommunications services in California and a CPCN to operate as a facilities-based competitive local carrier, we apply the more stringent competitive local carrier requirements.

To obtain a facilities-based competitive local carrier CPCN, an applicant must possess the requisite managerial qualifications, technical competence, and financial resources consisting of a minimum of \$100,000 in cash or cash equivalent. Financial documents filed under seal as Exhibits B, C and E show that applicants meet the financial requirements. Since ACN's current managers will continue to operate the merged company, applicants have demonstrated requisite management and technical competence. Additionally, the ACN managers will be joined by Warren Heffelfinger and David R. Riordan, founders of Arrival Com, each of whom has several years of experience in the telecommunications field, and an Arrival Com management staff with additional telecommunications experience.

Applicants state that no officer, director, or manager of Arrival Com has been involved with a California carrier that has abandoned service or become insolvent, or has been sanctioned by federal or state regulatory agencies.

The proposed transfer of control here promises improved services for California consumers. No changes in the existing services of ACN are proposed. No new construction is being proposed. Accordingly, there is no possibility that the transaction contemplated here will have any significant impact on the environment.

There have been no protests to this application, and the contemplated transfer of control appears to be noncontroversial. The application requests expedited approval of the application. Expedited approval may be granted 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 176-3034, dated March 2, 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 176-3034.

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 February 17, 2000, and notice of the amended application appeared in the Daily Calendar of March 8, 2000.

2. Applicants seek approval pursuant to Pub. Util. Code § 854 of a merger of ACN and Arrival Com, with Arrival Com the surviving entity.

3. ACN is authorized to provide interstate and intrastate interexchange services in California, and is authorized to provide facilities-based and resale competitive local carrier authority.

4. Arrival Com is a newly formed start-up company, incorporated in Delaware, with no current operations.

5. After the merger, Arrival Com will adopt ACN's existing tariff in its entirety, and there will be no change in rates, terms and conditions of service provided to current customers.

### **Conclusions of Law**

1. The proposed transfer of control is not adverse to the public interest.

2. Arrival Com meets the financial, technical and managerial requirements of a company seeking authority as a facilities-based competitive local carrier.

3. This proceeding is designated a ratesetting proceeding; no protests have been received; no hearing is necessary.
4. The application is noncontroversial and may be granted by the Executive Director pursuant to authority delegated by the Commission.
5. The application should be approved.

## O R D E R

### IT IS ORDERED that:

1. ACN Communications, Inc. (ACN) and Arrival Communications, Inc. (Arrival Com) are authorized pursuant to Section 854 of the Public Utilities Code to enter into the transaction, as more fully described in the application and its exhibits, by which Arrival Com will acquire control of ACN.
2. ACN and Arrival Com 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. Arrival Com shall file new tariffs incorporating any changes in names, rates, services and management authorized in the merger transaction.
4. Arrival Com and ACN shall make all books and records available for review and inspection upon Commission staff request.
5. The certificates of public convenience and necessity granted to ACN in Decision (D.) 91-11-063, D.93-04-063, D.95-12-057, and D.96-02-072 will transfer to Arrival Com upon consummation of the merger, and Arrival Com is authorized to continue use of the utility identification number U-2528-C.
6. The authority granted herein shall expire if not exercised within one year of the date of this order.

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

8. Application 00-02-022 is closed.

This order is effective today.

Dated April 12, 2000, at San Francisco, California.

/s/ WESLEY M. FRANKLIN

WESLEY M. FRANKLIN  
Executive Director