

Decision 00-04-044 April 13, 2000

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of Time Warner Inc. and AOL Time Warner Inc. for Approval of the Change in Control of Time Warner Telecom of California, L.P. (U-5358-C) That Will Occur Indirectly as a Result of the Merger of Time Warner Inc. and America Online, Inc.

Application 00-03-007
(Filed March 3, 2000)

OPINION**1. Summary**

This application seeks approval under Sections 851 and 854 of the Public Utilities Code of a transfer of control of Time Warner Telecom of California, L.P. (TWTC), a non-dominant telecommunications carrier serving the San Diego area and parts of Los Angeles, to AOL Time Warner Inc. The change of control is a result of the merger of Time Warner Inc. and America Online, Inc. The application is unopposed. The application is granted.

2. Description of Applicants

TWTC provides local exchange and interstate and intrastate toll service in and around San Diego and in parts of Los Angeles. The company was authorized to provide local service, intrastate toll service and interstate toll service by Decision (D.) 94-02-046, D. 96-11-037 and D.99-03-050. Currently, the company has fewer than 100 telephone customers in California. Its revenue for telecommunications services for 1999 was approximately \$13 million.

Time Warner Inc. is a Delaware corporation with headquarters in New York. The company operates a number of cable networks, including CNN and

HBO; magazines, including Time and Sports Illustrated; and numerous other media enterprises. Its combined revenue in 1998 was \$26.8 million.

AOL Time Warner Inc. is a newly created Delaware corporation with headquarters in New York. It was organized to facilitate the merger of Time Warner Inc. and America Online, Inc.

3. Nature of Transfer

According to applicants, Time Warner Telecom Inc. holds a 99% limited partnership interest in TWTC and a 100% interest in Time Warner Telecom Holdings Inc., which in turn is a 1% general partner of TWTC. Time Warner Telecom Inc. is owned 48.1% by Time Warner Inc. and certain of its subsidiaries, 14.6% by MediaOne Group Inc. and certain of its subsidiaries, 14.9% by Advance/Newhouse Partnership, and the remainder by the public.

After a public offering of debt securities, Time Warner Inc. and certain of its subsidiaries retained 61.95% of Time Warner Telecom LLC, the predecessor of Time Warner Telecom Inc. In connection with an equity public offering in May 1999, Time Warner Telecom LLC was restructured into a corporation, Time Warner Telecom Inc. Time Warner's ownership in the new corporation was reduced to 50.74% and later to 48.1%.

Applicants state that although Time Warner Inc. and its subsidiaries no longer hold more than 50% of Time Warner Telecom Inc., applicants are filing this transfer application out of an abundance of caution since they remain the largest outstanding shareholder of Time Warner Telecom Inc., the corporation immediately controlling TWTC.

Under the proposed merger of America Online, Inc. and Time Warner Inc., the two corporations will merge with subsidiaries of AOL-TW, becoming wholly owned subsidiaries of AOL-TW. Time Warner Inc. and America Online, Inc.

stock will be converted to AOL-TW stock at fixed exchange ratios. A copy of the original merger agreement is attached to the application as Exhibit F.

Neither Time Warner Inc. nor America Online, Inc. is a public utility subject to regulation by this Commission, nor is AOL Time Warner Telecom Inc., the intermediate corporation that essentially will control TWTC. Accordingly, the merger transaction involves the transfer of interests of a non-Commission regulated indirect parent corporation of a Commission regulated entity.

4. Public Interest

After the proposed merger, according to applicants, there will be no changes in the services provided by TWTC. The tariff will remain the same, as will the manner in which services are provided, and only the underlying ownership of the company will change.

The application states that TWTC will continue to operate under its own name and remain the holder of its California certification. Rates, terms and conditions available to customers will not change as a result of the transaction.

Applicants state that approval of the transfer will permit TWTC to continue to serve its existing customer base and compete effectively in the existing local exchange marketplace in the limited areas in which it currently exists.

The parties in the application have attached copies of the balance sheets and income statements of Time Warner Inc. (Exhibit C) and the most recently available balance sheet and income statement of TWTC (Exhibit E). The TWTC financial data has been filed under seal.

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.)

The proposed transfer of control here promises improved services for California consumers. No changes in the existing services of TWTC are proposed.

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..." (Re California Association of Long Distance Telephone Companies (1986) 21 CPUC2d 549.)

In Resolution ALJ 176-3035, dated March 16, 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 176-3029.

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 March 9, 2000.

2. Applicants seek approval pursuant to Pub. Util. Code § 851 and § 854 of a series of transactions that will transfer effective control of TWTC to AOL Time Warner Inc.

3. TWTC is authorized to provide local exchange, intrastate service and interstate service in California, serving the San Diego area and parts of Los Angeles.

4. There will be no change in name, current services or rates provided by TWTC 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. Time Warner Inc., AOL Time Warner Inc. and Time Warner Telecom of California, L.P. (collectively, applicants) are authorized pursuant to Section 851 and Section 854 of the Public Utilities Code to transfer control of Time Warner Telecom of California, L.P. to AOL Time Warner Inc., as more fully described in the application and its exhibits.

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. Time Warner Telecom of California, L.P. shall make all books and records available for review and inspection upon Commission staff request.

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

5. Application 00-03-007 is closed.

This order is effective today.

Dated April 13, 2000, at San Francisco, California.

/s/ WESLEY M. FRANKLIN

WESLEY M. FRANKLIN

Executive Director