

Decision 00-04-045 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 Connect (U-5625-C) That Will Occur Indirectly as a Result of the Merger of Time Warner Inc. and America Online, Inc.

Application 00-03-008
(Filed March 3, 2000)

O P I N I O N

1. Summary

This application seeks approval under Sections 851 and 854 of the Public Utilities Code of a transfer of control of Time Warner Connect, a non-dominant telecommunications carrier serving parts of Los Angeles and Orange County, to AOL Time Warner Inc. (AOL-TW). 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

Time Warner Connect provides resold local exchange service and interstate and intrastate toll services in and around Los Angeles and Orange County. The company was authorized to provide these services by Decision (D.) 96-04-047 and D.96-06-032. Currently, the company has about 1,000 telephone customers in California. Its revenue for telecommunications services in 1999 was approximately \$1 million.

Time Warner Connect is a general partnership. General partners are TW Service Holding I, L.P. (with a 99% interest) and TW Service Holding II, L.P. (with a 1% interest). These entities in turn are owned by general partners

American Television and Communications Corporation and Warner Communications Inc., and limited partners TW/TAE, Inc. and Time Warner Companies, Inc.

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

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. 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 Time Warner Connect. 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 Time Warner Connect will continue to operate under its own name and will 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 Time Warner Connect to continue to serve its existing customer base and compete effectively in its existing telecommunications 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 Time Warner Connect (Exhibit E). The Time Warner Connect 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 Time Warner Control 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 8, 2000.
2. Applicants seek approval pursuant to Pub. Util. Code §§ 851 and 854 of a series of transactions that will transfer control of Time Warner Connect to AOL Time Warner Inc.
3. Time Warner Connect is authorized to provide resold local exchange and interstate and intrastate toll service in California, serving areas in and around Los Angeles and Orange County.
4. There will be no change in name, current services or rates provided by Time Warner Connect 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. and AOL Time Warner Inc. (collectively, applicants) are authorized pursuant to Sections 851 and 854 of the Public Utilities Code to transfer control of Time Warner Connect (U-5625-C) 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 ten 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 Connect 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 00-03-008 is closed.

This order is effective today.

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

/s/ WESLEY M. FRANKLIN

WESLEY M. FRANKLIN
Executive Director