

PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298



June 1, 2000

TO: PARTIES OF RECORD IN APPLICATION 99-08-013

Decision 00-05-023 was mailed on May 16, 2000, without the concurring opinion of Commissioner Lynch. Attached herewith is the concurring opinion.

A handwritten signature in cursive script, reading "Lynn T. Carew", is positioned above the typed name.

Lynn T. Carew, Chief
Administrative Law Judge

LTC:vd1

Attachment

71424

Partial Concurrence of Commissioner Lynch:

I generally support this decision. I take this opportunity to clarify that I do not consider the resolution of two specific issues to be precedential.

First, I agree with the concerns articulated by Commissioner Wood today about what seems to be a growing trend of authorizing exceptions to the application of Public Utilities Code § 854(b) and (c) (§ 854(b)) in corporate mergers or transfers. In this decision, we have concluded we do not exercise the ratemaking authority referenced in § 854(b). That conclusion should not be read as establishing a precedent that such authority does not exist, or that we would not exercise it in the future. Indeed, the Commission has taken pains not to set precedent when it has exempted some mergers from § 854(b) and (c) review.

The second area of concern relates to the Internet. I believe that the Commission may have some jurisdiction to determine whether a merger will have adverse effects on the Internet backbone market. The Internet is at the very least of mixed jurisdictional status and portions of it may, according to two recent federal appeals court decisions, be subject solely to the jurisdiction of state commissions. Furthermore, regulatory jurisdiction questions aside, the Commission has the responsibility to consider adverse effects on California consumers as a result of consolidation in the Internet backbone market. Finally, to the extent that Internet operations in California avail themselves of telephone services or otherwise make use of the public switched network, I believe we must consider the ancillary effects of a merger on the citizens and businesses that depend upon that network.

I intend to closely examine these issues in future proceedings. I concur with this decision.

Dated May 4, 2000, at San Francisco, California.

/s/ LORETTA M. LYNCH
LORETTA M. LYNCH
President

D00-05-023

STATE OF CALIFORNIA

GRAY DAVIS, Governor

PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE

SAN FRANCISCO, CA 94102-3298



May 16, 2000

TO: ALL PARTIES OF RECORD IN APPLICATION 99-08-013

Decision 00-05-023 is being mailed without the Concurring Opinion of Commissioner Lynch. The Concurring Opinion will be mailed separately.

Very truly yours,

A handwritten signature in cursive script that reads 'Lynn T. Carew'.

Lynn T. Carew, Chief
Administrative Law Judge

LTC:avs

Attachment

Mailed 5/16/2000

Decision 00-05-023 May 4, 2000

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Joint Application of AT&T Corp., Meteor Acquisition Inc., and MediaOne Group, Inc. for Approval of the Change in Control of MediaOne Telecommunications of California, Inc., (U-5549-C) That Will Occur Indirectly as a Result of the Merger of AT&T Corp. and MediaOne Group, Inc.

Application 99-08-013
(Filed August 9, 1999)

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O P I N I O N

I. Summary

We grant joint Applicants AT&T Corp. (AT&T), Meteor Acquisition Inc. (Meteor), and MediaOne Group, Inc. (MediaOne Group) authority to transfer control of MediaOne Telecommunications of California, Inc. (MediaOne Telecom) from MediaOne Group to AT&T. The transfer of control of MediaOne Telecom authorized by this opinion is exempt from Pub. Util. Code ¹ § 854(b) and (c) pursuant to § 853, and is in the public interest pursuant to § 854(a).

We also exempt the indirect ownership change in MediaOne TWE Holdings, Inc.'s (MediaOne TWE) minority interest in Time Warner Telecom Inc. (TWT), whose subsidiary Time Warner Telecom of California L.P. (TWT-California) provides facilities-based telecommunications services in California, from MediaOne Group to AT&T from § 852 pursuant to § 853.

The change of control of MediaOne Telecom and change of indirect ownership of MediaOne TWE's minority interest in TWT from MediaOne Group to AT&T are being made pursuant to the terms and conditions of the May 6, 1999 Agreement and Plan of Merger (Agreement), Exhibit H to the application.

II. Jurisdiction

This application is filed pursuant to §§ 851-854, which precludes any person or corporation from transferring the control of any public utility organized and doing business in the state without first securing authorization to do so from this Commission.

¹ All code section references are to the Public Utilities Code.

III. Categorization

Applicants request that this application be categorized as a ratesetting proceeding as defined in § 1701.1(c) and Rules 5(c), and 6.1(c) of the Commission's Rules of Practice and Procedure (Rules). Applicants also recommend that no hearings were needed.

By Resolution ALJ 176-3022, dated September 2, 1999, the Commission preliminarily determined that this matter was a ratesetting proceeding and determined that no hearings were expected.

Notice of this application appeared in the Commission's Daily Calendar of August 10, 1999. Although two protests to the application were filed and are addressed in a subsequent section of this order, neither of the Protestants addressed the categorization of this proceeding as required by Rule 6(a)(2).

With no filed protest addressing the ratesetting categorization of this proceeding there is no reason to consider changing the preliminary determination made in Resolution ALJ 176-3022. We confirm that this proceeding is a ratesetting proceeding.

IV. The Parties

The parties involved in the proposed transfer before us are AT&T, Meteor, and MediaOne Group.

A. AT&T

AT&T, a New York corporation, on its own and through a number of subsidiaries, is authorized to provide domestic and international telecommunications services throughout the United States.

AT&T's California operating subsidiary, AT&T Communications of California, Inc. (AT&T-C) provides local exchange service on a limited basis and interexchange telecommunications services, pursuant to Certificates of Public

Convenience and Necessity (CPCN) granted by this Commission and in accordance with tariffs approved and regulated by the Commission. Most recently, AT&T-C began a market trial of facilities-based local exchange telephone service in Fremont, California. The corporate identification number assigned by this Commission to AT&T-C is U-5002-C.

AT&T provides cellular telecommunications services within California through four of its wireless subsidiaries. These wireless subsidiaries are Airsignal (U-2028), AT&T Wireless Services of California, Inc. (U-2010-C), Redding Cellular Partnership (U-3020), and Santa Barbara Cellular Systems Limited (U-3015-C).

AT&T also provides a wide range of video products, including broadcast stations; national, regional and local cable programming services; premium movie and pay-per-view services; and sports programming services to homes and businesses nationwide through its subsidiary, TCI. AT&T's merger with TCI gave it control over TCI's indirect subsidiary, TCI Telephony Services of California, Inc. (TCI Telephony). TCI Telephony holds a CPCN to operate in California as a competitive local exchange facilities-based carrier, and to provide inter- and intra-local access and transport area services in California as a nondominant interexchange carrier (NDIEC). The corporate identification number assigned by this Commission to TCI Telephony is U-5698-C.

In addition, AT&T's merger with TCG provided AT&T with three additional subsidiaries authorized by this Commission to provide facilities-based and resold local exchange and intrastate interexchange telecommunications services. These subsidiaries are TCG San Francisco (U-5454), TCG Los Angeles (U-5462-C), and TCG San Diego (U-5389-C).

B. Meteor

Meteor, a wholly owned subsidiary of AT&T, was formed by AT&T solely for purposes of effectuating the transaction now before us. A copy of Meteor's articles of incorporation was attached to the application as Exhibit G.

C. MediaOne Group

MediaOne Group, a Delaware corporation, is a broadband communications company that operates primarily through MediaOne, MediaOne International, and MediaOne Multimedia Ventures. MediaOne offers video, Internet access, and phone services in the United States; MediaOne International offers broadband and wireless communications in the international markets in continental Europe, the United Kingdom, and Asia; and MediaOne Multimedia Ventures manages MediaOne Group's interest in Time Warner Entertainment, including Warner Bros. and HBO. A copy of MediaOne Group's certificate of qualification to transact intrastate business in California was attached to the application as Exhibit D.

MediaOne Group provides California telecommunications services through its subsidiaries MediaOne of Delaware, Inc. (MediaOne-Delaware) and MediaOne of Colorado, Inc. (MediaOne-Colorado).

1. MediaOne-Delaware

MediaOne-Delaware, a wholly owned Delaware subsidiary of MediaOne Group, operates MediaOne Group's domestic cable and broadband services. MediaOne-Delaware delivers a wide range of video products, including local broadcasting stations, programming services, premium movie and pay-per-view services, and sports programming services, to homes and businesses in portions of California and the nation. California customers receive

cable television service from MediaOne-Delaware's video subsidiaries and telecommunications services from its subsidiary MediaOne Telecom.

a) MediaOne-Telecom

MediaOne Telecom is authorized to provide facilities-based local, intrastate intraLATA toll, and intrastate interLATA toll telecommunications services in California under the U-5549-C corporate identification number. Currently, MediaOne Telecom provides facilities-based local telephone service to residential customers in Los Angeles, California. Its total California revenue for telecommunications services is under \$500 million.

2. MediaOne-Colorado

MediaOne-Colorado, a Colorado subsidiary of MediaOne Group, has a subsidiary MediaOne TWE. MediaOne TWE, a Delaware corporation, owns a 19% interest in TWT. Time Warner Inc. holds approximately 61% of TWT's common shareholders' voting rights. Another 16% of the common shareholders' voting rights are held by the Advance/Newhouse Partnership. MediaOne TWE has approximately 18.5% of such voting rights, the smallest nonpublic share. The remaining TWT shares are publicly traded.

TWT provides competitive local exchange and exchange access services to large business customers in approximately 20 urban areas through subsidiaries. TWT's California telecommunications services are provided by its subsidiary, TWT-California.

a) TWT-California

TWT-California has the necessary CPCN to provide facilities-based telecommunications services within California. The corporate identification number for TWT-California is U-5549-C. TWT-California currently

operates in the San Diego area in accordance with tariffs approved and regulated by the Commission. Its total California revenue for telecommunications services is under \$500 million.

V. Pending Motion

Concurrent with the filing of their joint application, Applicants filed a motion for authority to file financial and customer information under seal pursuant to Rule 45 of the Commission's Rules of Practice and Procedure. A copy of the confidential information was attached to the motion as Exhibit A.

Applicants represent that the financial and customer information tendered under seal contains confidential and sensitive information not currently available to the general public and applicant's competitors and, if revealed, would place Applicants at an unfair business disadvantage. However, Applicants also represent that the sealed information would be made available to those interested parties with a need to review such data upon the signing of a non-disclosure agreement. In this regard, Applicants request that the Commission adopt their nondisclosure agreement attached to the motion as Exhibit B. There was no filed opposition to applicant's motion to place the financial and customer information under seal.

Applicants have stated grounds, under General Order 66-C and authority therein cited, to submit the financial and customer information under seal. Good cause appearing, the financial and customer information placed under seal should remain under seal for a period of one year from the date of this order. The sealed information should not be accessible or disclosed to anyone other than Commission staff during the one year time period. However, the sealed information may be disclosed upon the execution of a mutually accepted nondisclosure agreement or on further order or ruling of the Commission, the

Administrative Law Judge (ALJ) then designated as the Law and Motion Judge, the assigned ALJ, or the assigned Commissioner.

VI. Request

Applicants AT&T, Meteor, and MediaOne Group seek authority to transfer control of MediaOne Telecom from MediaOne Group to AT&T. With regard to this transfer of control that will occur indirectly as a result of AT&T's merger with MediaOne Group, Applicants request that the Commission exercise its power under § 853 to exempt the acquisition from § 854(b) and (c). Alternatively, Applicants request a determination that the proposed transaction is not subject to § 854(b) and (c).

Applicants also seek a determination that § 852 does not apply to AT&T's indirect acquisition of MediaOne TWE's minority interest in TWT which wholly owns TWT-California. Alternatively, Applicants seek a determination that the Commission exercise its power under § 853 to exempt the indirect ownership change from § 852.

VII. The Transaction

Pursuant to the Agreement, MediaOne Group will merge into Meteor, a wholly owned subsidiary of AT&T, and MediaOne Group will cease to exist. The shareholders of MediaOne Group will receive 0.95 shares of AT&T Common Stock and \$30.85 in cash for each MediaOne Group share. These shareholders also have the option of converting their MediaOne Group shares into cash.

Meteor will be the surviving company of the merger, continuing to be wholly owned by AT&T and succeeding to all the assets, liabilities, and business of MediaOne Group. The authorizations and licenses held by MediaOne Group subsidiaries will continue to be held by those subsidiaries, and controlled indirectly by AT&T. Similarly, MediaOne of Colorado will continue to hold its

19% stock interest in TWT through its subsidiary MediaOne TWE. Hence, Applicants seek a determination that Commission approval is not necessary for AT&T to acquire indirectly MediaOne Group's minority interest in TWT and, in the alternative, approval of this transfer.

After the proposed transfer of control is approved, the California affiliates will continue to offer their local exchange service customers a choice of long distance carriers in compliance with their obligations under § 251(b)(3) of the Telecommunications Act of 1996.

Applicants represent that the transfer of control will result in a change in the ultimate owners of MediaOne Telecom and other MediaOne Group subsidiaries. However, it will not involve any immediate change in the manner in which MediaOne Telecom, AT&T-C, TCG San Francisco, TCG Los Angeles, TCG San Diego, TCI Telephony, and AT&T Wireless (collectively the California affiliates) provide service to California customers. Following the proposed transfer of control, the California affiliates will continue to be led by a team of qualified telecommunications managers and will continue to provide services pursuant to tariffs on file with this Commission.

Applicants further represent that the proposed transaction furthers every element of the Commission's public interest review. This is because AT&T's acquisition of MediaOne Group is financially feasible and will provide increased competition in the California telecommunications market.

Applicants conclude that AT&T is qualified to operate the combined businesses and that the merger offers a broad range of additional public benefits, as identified in the joint application.

VIII. Protests

Protests to the proposed change in control were filed by The Utility Reform Network (TURN), and jointly by GTE Internetworking Incorporated and GTE Media Ventures Incorporated (collectively GTE), on September 9, 1999, pursuant to Rule 44. As addressed in our prior Categorization discussion, neither TURN nor GTE addressed the proposed category as required by Rule 6(a)(2).

A. TURN's Protest

TURN opposes the proposed change on the basis that the Applicants did not address the impact of the same cable facilities being used by MediaOne to provide local telephone service for residential high-speed Internet access via cable modems.

TURN contends that "it is entirely possible" that the Commission would soon be able to exercise jurisdiction over Internet access provided over cable networks. Hence, upon obtaining such jurisdiction, it would be this Commission's duty to ensure that this market is developing in a fashion that best meets California's goals of promoting lower prices and the ubiquitous availability of a wide choice of state-of-the-art services.

TURN concludes that any final approval of the application should be conditioned upon a subsequent review of the effect that the merger would have on residential high-speed Internet access, competition, choice, and price. Given AT&T's policy of closed access to its transmission facilities, TURN further recommends that the Commission require AT&T to provide nonaffiliated Internet Service Providers (ISPs) nondiscriminatory access to AT&T's transmission facilities for residential cable modem service as a condition of final approval of the merger.

B. GTE's Protest

GTE opposes the proposed merger between AT&T and MediaOne Group on the basis that it poses a threat to competition in the broadband Internet services emerging market. This is because AT&T would acquire control of MediaOne's high-speed cable Internet service, Road Runner. GTE asserts that this acquisition, coupled with AT&T's previously acquired TCI high-speed cable Internet service Excite@Home through a prior merger, would provide AT&T with access to over 80% of the broadband market. GTE further asserts that the proposed merger should be denied because Applicants failed to satisfy the requirements of § 854(a), (b)(3), and (c) that the proposed merger not adversely affect competition, that the impacts on the resultant entity be assessed, and that it be in the public interest.

GTE concludes that this statutory test would not be met because the proposed acquisition would severely harm competition by giving AT&T control of a large broadband customer base, and the ability to keep customers within the confines of its own network. GTE does not believe that an assessment of the resultant entity can be made at this time because the Commission cannot assess the resultant entity's probable financial condition, quality of service, quality of management, effects on employees and shareholders, state and local economies, or the Commission's jurisdiction. Even if § 854(b)(3) and (c) were found to not apply to the transaction before us, GTE believes the application must be denied because Applicants failed to satisfy the "public interest" criteria.

Alternatively, GTE proposes that the merger could be approved if the broadband Internet service market anticompetitive impact is resolved in this proceeding. In this regard, GTE recommends that AT&T and MediaOne Group be required to adopt specific conditions prior to any approval of the change in

control. These conditions would require AT&T, MediaOne Group, and any other cable provider contractually affiliated with Excite@Home or Road Runner to allow any ISP to interconnect with their networks on nondiscriminatory equivalent terms, conditions, and access rates, and further, that Excite@Home and Road Runner continue to be maintained as distinctly separate subsidiaries.

C. Applicant's Reply to Protests

On October 1, 1999, Applicants filed a response to TURN's and GTE's protests. Applicants contend that the protests lack merit because Applicants merely seek Commission approval for the change of control of a lower tier MediaOne group subsidiary, MediaOne Telecom, not its cable operations. Hence, Protestants' alleged impacts on broadband Internet and other cable service do not flow from and bear no nexus to the transfer of control of MediaOne Telecom.

Although Protestants are concerned about the impact of open access to ISPs over cable, Applicants assert that open access is not a valid issue because the Commission has no jurisdiction over either cable or the Internet. Even if the Commission had jurisdiction to act, Applicants conclude that the only alleged impacts on broadband Internet service competition linked to the merger, are those GTE issues based on an assumed merger of AT&T's Excite@Home subsidiary with Road Runner.

D. Discussion of Protests

A protest must state facts constituting the grounds for the protest, the effect of the application on the protestant, and the reasons the protestant believes the application, or a part of it, is not justified. Pursuant to Rule 6(a)(2), any person protesting an application is also required to state in the protest any comments or objections regarding applicant's statement on the proposed

category, need for hearing, issues to be considered, and proposed schedule. The proposed category of this proceeding was addressed in our prior Categorization discussion.

Only GTE requested that an evidentiary hearing be held. Upon the grant of an evidentiary hearing GTE planned to submit testimony regarding the competitive and public interest effects of the proposed merger to demonstrate that the merger would severely harm competition, and that it should be denied.

However, a protestant's request for an evidentiary hearing does not ensure that an evidentiary hearing will be held. The decision on whether an evidentiary hearing should be held is based on the content of the protest. (Rule 44.4.) Having carefully read and considered the application, the protests, and the reply to the protests, we find that the proposed transaction is subject to scrutiny under § 854(a). We also conclude that there is sufficient information in the record to determine whether the application complies with the requirements of §§ 851-854 as asserted by Applicants, and whether the application should be approved. Hence, the application can be adequately addressed in the following discussion of the application's compliance with §§ 852, 854(b)(3) and (c), and 854(a). An evidentiary hearing is not necessary in this matter.

IX. Discussion of § 852

Applicants seek a determination that the TWT transaction is not subject to § 852.² Alternatively, Applicants seek an exemption from § 852 for the indirect

² Section 852 declares that:

"No public utility, and no subsidiary or affiliate of, or corporation holding a controlling interest in, a public utility, shall purchase or acquire, take or hold, any part of the capital stock of any other public utility, organized or

Footnote continued on next page

ownership change in MediaOne TWE's minority (19%) interest in TWT, whose subsidiary TWT-California provides facilities-based telecommunications services in California as a competitive local carrier (CLC).

Applicants recognize that AT&T is subject to § 852 for this segment of the transaction because the statute describes the acquiring entity expansively to include not only a "public utility" but also a subsidiary, affiliate or corporation holding a controlling interest in a public utility. However, Applicants contend that § 852 is restricted to the stock acquisition of a public utility "organized or existing under or by virtue of the laws of this state." Because the transaction does not involve the direct purchase of TWT-California stock, Applicants conclude that this segment of the transaction is not subject to § 852.

Alternatively, to avoid unnecessary controversy, Applicants request that if § 852 is for any reason deemed to apply to the proposed MediaOne Group merger, that the Commission exempt it from review because the review is not necessary in the public interest under § 853.

Although the transaction does not involve the direct purchase of TWT-California stock, the transaction does meet the criteria set forth in § 852. Specifically, the transaction would provide for AT&T to "acquire, take or hold, [any] part of the capital stock of any other public utility, organized or existing under or by virtue of the laws of this state." Hence, the indirect acquisition of

existing under or by virtue of the laws of this state, without having been first authorized to do so by the commission; provided, however, that the commission may establish by order or rule categories of stock acquisitions which it determines will not be harmful to the public interest, and purchases within those categories are exempt from this section...."

TWT-California through the acquisition of a minority interest in TWT is subject to § 852.

We now address Applicants' § 852 exemption request. Applicants contend that a § 852 exemption is appropriate because the indirect transfer of a minority interest in TWT, whose subsidiary TWT-California, a small CLC with California operations limited to serving businesses in San Diego, will have no meaningful effect on the CLC's control or operations. Applicants further contend that there is no legitimate § 852 issue because the key question in a § 852 transfer proceeding is whether the acquiring party is financially capable of the acquisition and satisfactory operation thereafter. Applicants conclude that an exemption should be granted because AT&T will not gain control of TWT-California given that this portion of the transaction involves only a minority interest.

Pursuant to § 852, an exemption is available if the proposed transaction falls within categories of stock acquisitions that are determined by the Commission not to be harmful to the public interest. Although this particular segment of the transaction may not be harmful to the public interest, the Applicants have not identified this segment as falling within a category of stock acquisitions that have been determined by the Commission not to be harmful to the public interest. We are not inclined to identify in this proceeding those categories of stock acquisitions which are not harmful to the public interest. That determination should be made on a case-by-case basis as each situation arises.

However, § 853(b) does provide us with the authority to exempt any public utility or class of public utility from § 852 if we find that the "application

with respect to the public utility...is not necessary in the public interest.”³ In this regard, we find that Applicants have substantiated that the indirect transfer of a minority interest in TWT, whose subsidiary TWT-California, serves businesses in San Diego, will have no meaningful effect on TWT-California’s control or operations. Hence, the indirect ownership change resulting from MediaOne TWE’s minority interest in TWT should be exempted from § 852 pursuant to § 853.

X. Discussion of §§ 854(b)(3) and (c)

We must first determine whether §§ 854(b) and (c) are applicable to this proceeding before we discuss whether the proposed change of control satisfies these requirements. In prior change of control proceedings, we have granted an

³ Section 853(b) declares that:

“The commission may from time to time by order or rule, and subject to those terms and conditions as may be prescribed therein, exempt any public utility or class of public utility from this article if it finds that the application thereof with respect to the public utility or class of public utility is not necessary in the public interest. The commission may establish rules or impose requirements deemed necessary to protect the interest of the customers or subscribers of the public utility or class of public utility exempted under this subdivision. These rules or requirements may include, but are not limited to, notification of a proposed sale or transfer of assets or stock and provision for refunds or credits to customers or subscribers.”

exemption from § 854(b) and (c) on a case-by-case basis, pursuant to § 853(b) and § 854(a)⁴ if the three basic principles developed in D.97-05-092 are met.⁵

The first principle for exemption was that the application did not involve putting together two traditionally regulated telephone systems. Both AT&T and the MediaOne Group subsidiaries operate in the local and long distance markets as CLECs and NDIECs. Hence, the first principle for exemption is satisfied.

The second principle for exemption was that the Commission has the ratemaking authority that is contemplated in § 854(b) to jurisdictionally permit the allocation of benefits from the merger to the ratepayers. Section 854 (b)(2) requires the Commission to equitably allocate, where the Commission has ratemaking authority, the total short-term and long-term forecasted economic benefits of the proposed merger between shareholders and ratepayers, with ratepayers receiving not less than 50% of those benefits.

Not only are AT&T and MediaOne Group both operating NDIECs, they also operate CLECs which are not subject to the same degree of rate regulation as are incumbent local exchange carriers. The Internet services at issue in this application are offered in an arena generally unregulated by this Commission or any other State or Federal regulatory body. Therefore, in the application before us, the Commission does not exercise the ratemaking authority referenced in § 854(b) to jurisdictionally permit the Commission to allocate the benefits from the merger to the ratepayers. The second principle for exemption is satisfied.

⁴ As explained in our prior jurisdiction discussion, this code section precludes the transfer of control of any California public utility without first securing this Commission's authorization.

⁵ See RE: MCI Communications Corporation and British Telecommunications plc for change in control, D.97-05-092 (1997) [72 CPUC2d 656, 664-665], and WorldCom, Inc and MCI Communications Corporation for transfer of control, D.98-08-068 (1998).

The third and final principle for exemption was recognition that the requirements in § 854(b)(1) and (2) for a finding of merger benefits and an allocation of benefits to ratepayers did not fit because each of the exempted entities had grown under competitive forces at the sole risk of shareholders. Applicants do not have a captive ratepayer base or monopoly franchise to buffer risk and reward.⁶ Hence, the third principle for exemption is satisfied.

We conclude that the unique facts and circumstances of this application meet the Commission's criteria for an exemption from the requirements of § 854(b) and (c) pursuant to the Commission's authority under §§ 853(b) and 854(a). Hence, this application is exempt from the requirements of § 854(b) and (c).

XI. Discussion of § 854(a)

The primary question to be determined in a transfer of control proceeding under § 854(a) is whether the proposed transfer would be adverse to the public interest. Questions relating to public convenience and necessity usually are not relevant to the transfer proceeding because they were determined in the proceeding in which the certificate was granted."⁷ We have a longstanding Commission policy against the re-litigation of public convenience and necessity issues in transfer applications.⁸ Thus we carry out our responsibility to insure

⁶ Although AT&T was once more heavily regulated as a dominant carrier it is now classified as a NDIEC.

⁷ M. Lee (Radio Paging Co.), 65 CPUC 635, 637 (1966).

⁸ BellSouth Corporation, D.86-12-090, [23 CPUC2d 82] (1996).

that our proceedings are not abused by regulated companies as a means to destroy or harass competitors.⁹

As stated in D.97-07-060,¹⁰ our decisions over the years have laid out a number of factors that should be considered in making the determination of whether a transaction is adverse to the public interest. Antitrust considerations are also relevant to our consideration of the public interest.¹¹ In transfer applications we require an applicant to demonstrate that the proposed utility operation will be economically and financially feasible.¹² Part of this analysis is a consideration of the price to be paid considering the value to both the seller and buyer.¹³ We have also considered efficiencies and operating costs savings that should result from the proposed merger.¹⁴ Another factor is whether a merger would produce a broader base for financing with more resultant flexibility.¹⁵ As noted in Union Water Co. of California:¹⁶

"The Commission is primarily concerned with the question of whether or not the transfer of this property from one ownership to another...will serve the best interests of the public. To determine this, consideration must be given to whether or not the proposed

⁹ *Id.*

¹⁰ MCI Communications Corporation and British Telecommunications change in control application.

¹¹ M. Lee (Radio Paging Co.), 65 CPUC at 637, n.1.

¹² R. L. Mohr (Advanced Electronics), 69 CPUC 275, 277 (1969). See also, Santa Barbara Cellular, Inc. 32 CPUC2d 478 (1989).

¹³ Union Water Co. of California, 19CRRC 199, 202 (1920).

¹⁴ Southern Counties Gas Co. of California, 70 CPUC 836, 837 (1970).

¹⁵ Southern California Gas Co. of California, 74 CPUC 30, 50, modified on other grounds, 74 CPUC 259 (1972).

¹⁶ 19 CRRC 199, 202 (1920).

transfer will better service conditions, effect economies in expenditures and efficiencies in operation."¹⁷

We have also ascertained whether the new owner is experienced, financially responsible, and adequately equipped to continue the business sought to be acquired.¹⁸ We also look to the technical and managerial competence of the acquiring entity to assure customers of the continuance of the kind and quality of service they have experienced in the past.¹⁹

A. Assessment of Public Interest Factors

As we did in D.97-07-060, we assess the relevant factors under § 854(c) in our analysis of the public interest.²⁰ However, outside the mandates of that statute, consideration of the public interest factors must have some nexus to rates and service in order to pass muster under the doctrine prohibiting our unnecessary intermeddling into management affairs.²¹ After our assessment of the public interest is made, we may impose any necessary conditions on a

¹⁷ *Id.*

¹⁸ City Transfer and Storage Co., 46 CRRC 5, 7 (1945).

¹⁹ Communications Industries, Inc. 13 CPUC2d 595, 598 (1993).

²⁰ The Public interest factors enumerated under this code section are whether the merger will: (1) maintain or improve the financial condition of the resulting public utility doing business in California; (2) maintain or improve the quality of service to California ratepayers; (3) maintain or improve the quality of management of the resulting utility doing business in California; (4) be fair and reasonable to the affected utility employees; (5) be fair and reasonable to a majority of the utility shareholders; (6) be beneficial on an overall basis to state and local economies and communities in the area served by the resulting public utility; and (7) preserve the jurisdiction of the Commission and our capacity to effectively regulate and audit public utility operations in California.

²¹ See, Stepak v. AT&T, 186 Cal.App.3rd 636, (1986) and Pacific Telephone & Telegraph Co. v. Public Utilities Commission, 34 Cal.2d 282 (1950).

transfer.²² Additionally, although we have granted the Applicants an exemption from §§ 854(b) and (c), we may impose conditions we deem necessary under § 853(b).

1. Maintain or Improve the Financial Condition

A review of the financial data from the Applicants disclosed that the transfer of control is economically and financially feasible. This transaction does not involve the issuance of any new debt. As shown in their respective annual reports and Form 10-Ks attached to the application, both entities are financially healthy. With AT&T acquiring control of MediaOne Group's operations, AT&T's family of telecommunications entities under our jurisdiction will have available to itself additional financing options for improving infrastructure and technology in an increasing competitive market.

2. Maintain or Improve the Quality of Service

The Agreement is structured to be a seamless transaction transparent to the telephone customers. Such customers will not face unexpected changes in charges, services provided, or quality of service. After the proposed transaction is completed, the California utilities will continue to offer their local exchange service customers a choice of long distance carriers. The transaction will also enable AT&T to bring facilities-based local exchange competition to customers who have few facilities-based alternatives to their incumbent local telephone provider and to expand its provision of local exchange service in California. Thus, this proposed transaction would have no adverse impact on the quality of service.

²² Outingdale Water Co., 70 CPUC 639, 640-41, (1970).

3. Maintain or Improve the Quality of Management of the Resulting Utility Doing Business in California

The proposed transfer of control will have no immediate impact on management of the California telephone utilities. AT&T previously provided the qualifications and experience of its management to transact intrastate business in California in Exhibit B to Application No. 93-08-035. AT&T's Form 10-K attached to the application as Exhibit E updates the qualification and telecommunications experience of its officers and managers.

Following the proposed transfer of control, the California utilities would continue to be led by a team of qualified telecommunications managers. The combining of experienced managers of both entities, would enable AT&T to maintain and improve the quality of its management of its California telecommunications utilities. Hence, the criterion of quality of management of the resulting utility doing business in California is satisfied.

4. Fair & Reasonable to the Affected Utility Employees

The proposed transaction will not have any impact on the affected utility employees. It involves only a change in the underlying ownership of the facilities. Applicants do not anticipate any overall employee reductions in the California public utility work force or any change in the union status of these employees. And, although AT&T is not required to continue the employment of any specific person or continue any specific employee plan or benefit arrangement, it is committed to honoring the terms of all MediaOne Group's employee plans and benefit arrangements. As substantiated in the Agreement, the proposed transaction is fair and reasonable to the affected utility employees.

5. Fair & Reasonable to a Majority of Utility Stockholders

The ultimate shareholders of the affected California telecommunications entities are the parent companies and Applicants. AT&T and MediaOne Group have sophisticated and experienced financial managers who have determined the proposed transaction is fair and reasonable. This judgement determination has been affirmed by the opinions of investment bankers for the principals to this transaction.

Under the Agreement, MediaOne Group's shareholders will receive 0.95 shares of AT&T Common Stock and \$30.85 in cash for each share of MediaOne Group representing an interest in both its California utility operations and its other operations. The cash portion of this transaction is subject to an upward adjustment to offset any decline of up to 10% from AT&T's closing price of \$57 per share on April 21st, to maintain an \$85 per share value to MediaOne Group shareholders. To the extent that any of MediaOne Group shareholder's dissent, that shareholder may request an appraisal of the holder's shares in accordance with Delaware law.

Based on a review of MediaOne Group's 1998 Form 10-K and the Agreement, we find that shareholders of the California utilities being transferred to AT&T are receiving a very reasonable price for the California utility operations.

6. Beneficial on an Overall Basis

AT&T's proposed acquisition of the California telecommunications utilities will enable AT&T to expand and accelerate its ability to compete with local exchange carriers in residential local exchange markets where MediaOne Group does business. It will also provide increased competition in the California market for telecommunications services. This

competition will bring to California customers a broad range of telecommunications service benefits through competition among facilities-based local exchange carriers.

The coordination of financial resources, complementary managerial skills, network facilities and market capabilities of AT&T and MediaOne Group will also enhance AT&T's ability to provide telecommunications services to a broad range of customers in California. With this ability to enhance competition within the California telecommunications market comes the ability to develop new and expanded telecommunications services, a benefit to the state and local economies.

7. Preserve the Jurisdiction of the Commission

Approval of this change in control will have no adverse impact on the Commission's jurisdiction over AT&T's current telecommunications companies under our jurisdiction, or over MediaOne Telecom and TWT-California being acquired from MediaOne Group. The California telecommunications utilities are all nondominant carriers. Each of the California utilities subject to this application are currently under our jurisdiction and will continue to be under our jurisdiction. Hence, the proposed transaction would not affect the Commission's ability to effectively regulate and audit the California public utility operations.

8. Antitrust Considerations

The final aspect of the public interest determination we must make under § 854(a) is whether the proposed transaction raises any antitrust concerns.²³

"By considering antitrust issues, the Commission merely carries out its legislative mandate to determine whether the public convenience and necessity require a proposed development. That task does not impinge upon the jurisdiction of the federal courts in federal antitrust cases. The Commission may approve projects even though they would otherwise violate the antitrust laws; it may also disprove projects that do not violate such laws. Its consideration of antitrust problems is for purposes quite different from those of the courts; it does not usurp their function."²⁴

Although Applicants represent that the proposed transaction does not raise any antitrust concerns, both TURN and GTE contend that approval of the transaction, as requested, will inflict anticompetitive harm on California consumers, competitors, and other providers of Internet content and applications. The Protestants also contend that approval of the transaction is contrary to the public interest because it will allow AT&T to dominate the broadband Internet service market. The Protestants assert that this anticompetitive issue must be resolved prior to any approval of the proposed transaction.

²³ RE: Northern California Power Agency v. Public Utilities Commission, 5 Cal.3d 370, 379 (1971).

²⁴ *Id.*, at 378.

Applicants counter that broadband Internet service is not part of this application. Applicants represent that they only seek approval for a change in control of MediaOne Telecom and, if found necessary, a minority interest in TWT. They also explain that AT&T and MediaOne Group taken together provide only a small fraction of residential local exchange and exchange access services in California. This is because all of the relevant service areas are dominated by incumbent local exchange carriers that have more than 90% of the customers and revenue where AT&T or MediaOne Group provide local telephone service. Furthermore, there is no location in California where both AT&T and MediaOne Group provide residential local telephone service.

Applicants conclude that approval of the proposed transaction would promote competition in the provision of local residential telephone service in areas where MediaOne Group has existing network infrastructure.

We do not have before us a request to approve any change in control of broadband, cable, or Internet services. Even if such a request were made, we have no authority to address a change in control of broadband, cable or Internet services. The Cable Act prohibits the regulation of a cable system as a common carrier or utility by reason of providing any cable services.²⁵ Further, no part of the Cable Act authorizes us to dictate who the providers of Internet services should be over the cable systems.

Our concern in this application is the telecommunications markets over which we have jurisdiction. In those markets, no valid issue has been raised about adverse impacts flowing from the acquisition of MediaOne Telecom or the minority interest of TWT.

²⁵ 47 U.S.C. § 541 (c).

Protestants' concern about the acquisition's effect on the broadband, cable, and Internet markets involve issues outside our jurisdiction. Although TURN acknowledged the fact, its protest nevertheless requests that we act because:

"... it is entirely possible that the California Public Utilities Commission (CPUC) will soon be able to exercise jurisdiction over Internet access provided over cable networks and that it will become a duty of this Commission to ensure that this market is developing in a fashion that best meets California's goals of promoting lower prices and the 'ubiquitous availability of a wide choice of state-of-the-art services.'"

We have previously considered and concluded on several occasions that we have no jurisdiction to address or condition the use of broadband, cable, and Internet access. In D.98-10-058,²⁶ we concluded that we should not impose an obligation to provide access to telecommunications carriers upon the cable companies because cable companies are not public utilities as defined in § 216(a), and that our jurisdiction is limited to the regulation of public utilities.

We considered and concluded in D.98-08-068²⁷ that Internet services are offered in an arena unregulated by this Commission or any other State or Federal regulatory body. Subsequently, in D.99-03-019²⁸ we again concluded that Internet services are offered in an arena unregulated by this Commission or any other State or Federal regulatory body. We also concluded

²⁶ RE: Investigation into Competition for Local Exchange Service, I.95-04-044, (1995).

²⁷ RE: WorldCom and MCI, 1998 Cal PUC LEXIS 912.

²⁸ RE: AT&T-TCI, 1999 Cal PUC LEXIS 382.

that we await whatever action the Federal Communications Commission, local cable authorities and the courts may ultimately take in connection with it. We decline to impose and exercise our jurisdiction on those entities on the basis that we may soon be given authority to regulate Internet access provided over cable networks. Should the time come that Internet access over cable networks becomes a part of our jurisdiction, we will take the appropriate steps²⁹ to assess whether anticompetitive matters exist and, if so, resolve those anticompetitive matters to protect the public interest.

Our task in this application is to balance the benefits of this merger against any anticompetitive effects of the MediaOne Telecom and minority interest in TWT merger, and to determine whether the benefits outweigh the anticompetitive effects to make this merger consistent with the public interest.³⁰ In so doing, we are not strictly bound by the dictates of the antitrust laws. We can approve actions that violate antitrust policies when other economic, social, or political considerations are found to be of overriding importance.³¹ We need not choose another course of action if our proposed course has anti-competitive effects, as long as our course of action is in the public interest.³² Consistent with this identified task we conclude that the proposed transaction does not raise any antitrust or anticompetitive issues requiring our intervention and that the proposed transaction is in the public interest because it

²⁹ For example issue a Rulemaking, Investigation or other form of generic proceeding.

³⁰ Pacific Southwest Airlines, 75 CPUC 1, 19 (1973).

³¹ SCEcorp, 40 CPUC2d at 179 (1991).

³² Pacific Gas & Electric Co. D.93-02-018, [48 CPUC2d 162] (1993).

will bring more facilities-based competition to the local business market in California.

XII. Environmental Assessment Discussion

The application involves only a proposed change in the underlying ownership of facilities. Accordingly, there is no possibility that the transaction contemplated herein may have a significant effect on the environment. This application should be approved. Our approval of this application should not be construed to be a finding of the value of the rights and property to be transferred.

XIII. Comments on Draft Decision

The Administrative Law Judge's draft decision in this matter was mailed to the parties of record in accordance with § 311(g) and Rule 77.1. Comments were received from GTE and reply comments from AT&T. These comments were carefully reviewed and considered. However, the comments did not result in any changes to the draft decision.

Findings of Fact

1. This application is filed pursuant to §§ 851-854.
2. Applicants request that this application be categorized as a ratesetting proceeding.
3. The Commission preliminarily determined that this matter was a ratesetting proceeding and determined that no hearings were necessary.
4. Notice of this application appeared in the Commission's Daily Calendar of August 10, 1999.
5. Protestants did not address the categorization of this proceeding as required by Rule 6(a)(2).

6. Meteor was formed by AT&T solely for the purpose of effectuating the transaction now before us.

7. MediaOne Telecom is authorized to provide facilities-based local, intrastate intraLATA toll, and intrastate interLATA toll telecommunications services in California.

8. MediaOne TWE owns a 19% interest in TWT, which, in turn, wholly owns a subsidiary named TWT-California.

9. TWT-California is authorized to provide facilities-based telecommunications services within California.

10. Applicants' motion for authority to file financial and customer information under seal pursuant to Rule 45 is unopposed.

11. Applicants seek authority to transfer control of MediaOne Telecom from MediaOne Group to AT&T.

12. Applicants seek a determination that Commission approval is not necessary for AT&T to acquire indirectly MediaOne Group's minority interest in TWT, and in the alternative, seek an exemption from § 852.

13. Applicants entered into a May 6, 1999 Agreement for the transfer of control being requested by this application.

14. After the merger, Meteor will be the surviving company continuing to be wholly owned by AT&T and succeeding to all the assets, liabilities and businesses of MediaOne Group.

15. The authorizations and licenses held by MediaOne Group subsidiaries will continue to be held by those subsidiaries, and controlled indirectly by AT&T.

16. TURN and GTE filed protests to the application on the basis that any approval of the requested change in control could adversely impact competition in the broadband Internet market.

17. GTE also raised the issue of whether the proposed merger satisfies § 854(a), (b)(3), and (c).

18. Applicants filed a response to the protests on October 1, 1999.

19. The decision on whether an evidentiary hearing should be held is based on the content of the protest.

20. The transaction would provide for AT&T to acquire or hold indirectly part of the capital stock of TWT-California.

21. TWT-California is a small CLC with California operations limited to serving businesses in San Diego.

22. Section 853 provides us with authority to exempt any public utility or class of public utility from § 852 if we find that the application thereof with respect to the public utility is not necessary in the public interest.

23. We have previously granted an exemption from compliance with § 854(b) and (c) on a case-by-case basis, pursuant to §§ 853(b) and 854(a) if the three principles developed in D.97-05-092 are met.

24. AT&T and MediaOne Group subsidiaries operate in the local and long distance markets as CLECs and NDIECs.

25. Section 854 requires the Commission to equitably allocate, where the Commission has ratemaking authority, the total short-term and long-term forecasted economic benefits of the proposed merger between shareholders and ratepayers, with ratepayers receiving not less than 50% of those benefits.

26. AT&T and MediaOne are not subject to the same degree of rate regulation as are incumbent local exchange carriers.

27. The Internet services at issue in this application are offered in an arena unregulated by this Commission or any other State or Federal regulatory body.

28. Section 854(b)(1) and (2) require a finding of merger benefits and an allocation of benefits to ratepayers.

29. D.97-07-060 identified a number of factors that should be considered in determining whether a transaction is adverse to the public interest.

30. Antitrust considerations are relevant to our consideration of public interest.

31. This transaction does not involve the issuance of any new debt.

32. Customers will not face unexpected changes in charges, services provided, or quality of service.

33. The California utilities will continue to offer their local exchange service customers a choice of long distance carriers.

34. The proposed transfer of control will have no immediate impact on management of the California telephone utilities.

35. Applicants do not anticipate any overall employee reductions in the California public utility work force or any change in the union status of these employees.

36. The ultimate shareholders of the affected California telecommunications entities are the parent companies and Applicants.

37. MediaOne Group's shareholders will receive 0.95 shares of AT&T Common Stock and \$30.85 in cash for each share of MediaOne Group.

38. The cash portion of this transaction is subject to an upward adjustment to offset any decline of up to 10 percent from AT&T's closing price.

39. Each of the California utilities subject to this application are currently under our jurisdiction and will continue to be under our jurisdiction upon completion of the proposed transaction.

40. Applicants only seek approval for a change in control of MediaOne Telecom and, if found necessary, a minority interest in TWT.

41. There is no request before us to approve any change in control of broadband, cable or Internet services.

42. The Cable Act prohibits the regulation of a cable system as a common carrier or utility.

43. No part of the Cable Act authorizes us to dictate who the providers of Internet services should be over cable systems.

44. D.98-10-058 concluded that we should not impose an obligation to provide access to telecommunications carriers upon the cable companies because cable companies are not public utilities as defined in § 216(a), and our jurisdiction is limited to the regulation of public utilities.

45. D.98-08-068 and D.99-03-019 concluded that Internet services are offered in an arena unregulated by this Commission or any other State or Federal regulatory body.

46. Considering all the relevant public interest factors, this transaction is in the public interest.

Conclusions of Law

1. This proceeding is a ratesetting proceeding.
2. Applicant's motion to place financial and customer information under seal should be granted.
3. The proposed transaction is subject to scrutiny under § 854(a).
4. The application and issues raised by Protestants can be adequately addressed without the holding of an evidentiary hearing.
5. The indirect acquisition of TWT-California through the acquisition of a minority interest in TWT is subject to § 852.
6. The indirect ownership change in MediaOne TWE's minority interest in TWT, whose subsidiary TWT-California provides facilities-based telecommunications services in California, should be exempted from § 852 pursuant to § 853.

7. Applicants are not traditionally regulated local exchange carriers.
8. The Commission does not exercise the ratemaking authority referenced in § 854(b) to jurisdictionally permit the Commission to allocate benefits from the proposed merger to ratepayers.
9. Applicants do not have a captive ratepayer base or monopoly franchise to buffer risk and reward.
10. The unique facts and circumstances of this application meet the Commission's criteria for an exemption from the requirements of § 854(b) and (c) pursuant to §§ 853(b) and 854(a).
11. We have no authority to address a change in control of broadband, cable, or Internet services.
12. We decline to impose and exercise on entities our jurisdiction on the basis that we may soon be given authority to regulate Internet access provided over cable networks.
13. The proposed transaction does not have any antitrust or anticompetitive issues which require our intervention.
14. The proposed transaction is in the public interest.
15. Because the proposed transaction involves only a change in the underlying ownership of facilities, it can be seen with certainty that the merger between AT&T and MediaOne Group will not have a significant effect upon the environment.
16. The approval set forth herein is not a determination of the value of the rights and property to be transferred.
17. To permit prompt consummation of the proposed change of control, this decision should be effective immediately.
18. The application should be granted to the extent provided in the following order.

O R D E R

IT IS ORDERED that:

1. On or after the effective date of this order, AT&T Corp. (AT&T), Meteor Acquisition Inc., and MediaOne Group, Inc. (MediaOne Group) are authorized to transfer control of MediaOne Telecommunications of California, Inc. from MediaOne Group to AT&T. The transfer of control shall be in accordance with the terms set forth in Application (A.) 99-08-013.

2. The indirect ownership change in MediaOne TWE Holdings, Inc.'s minority interest in Time Warner Telecom Inc., whose subsidiary Time Warner Telecom of California L.P. provides facilities-based telecommunications services in California, from MediaOne Group to AT&T is exempted from Pub. Util. Code § 852 pursuant to Pub. Util. Code § 853.

3. The financial and customer information placed under seal shall remain under seal for a period of one year from the date of this order. The sealed information shall not be accessible or disclosed to anyone other than Commission staff during the one year time period. However, the sealed information may be disclosed upon the execution of a mutually accepted nondisclosure agreement or on further order or ruling of the Commission, the Administrative Law Judge (ALJ) then designated as the Law and Motion Judge, the assigned ALJ, or the assigned Commissioner.

4. Within 30 days after the change of control authorized herein has taken place, AT&T shall file with the Commission's Docket Office, for inclusion in the formal file of A.99-08-013, written notice that said change of control has taken place.

5. In the event that the books of the Applicants, or any affiliates thereof, are required for inspection by the Commission or its staff, Applicants shall either produce such records at the Commission's offices, or reimburse the Commission for the reasonable costs incurred in having Commission staff travel to any of Applicants' offices.

6. The application is granted as set forth above and the authority granted shall expire if not exercised within one year of the effective date of this order.

7. A.99-08-013 is closed.

This order is effective today.

Dated May 4, 2000, at San Francisco, California.

LORETTA M. LYNCH

President

HENRY M. DUQUE

JOSIAH L. NEEPER

RICHARD A. BILAS

CARL W. WOOD

Commissioners

I will file a concurrence.

/s/ LORETTA M. LYNCH

Commissioner

APPENDIX A
TABLE OF ACRONYMS AND ABBREVIATIONS

Agreement	Agreement and Plan of Merger
AT&T	AT&T Corp.
AT&T-C	AT&T Communications of California
CPCN	Certificate of Public Convenience and Necessity
GTE	GTE Internetworking Incorporated and GTE Media Ventures Incorporated
ISPs	Internet Service Providers
MediaOne-Colorado	MediaOne of Colorado, Inc.
MediaOne-Delaware	MediaOne of Delaware, Inc.
MediaOne Group	MediaOne Group, Inc.
MediaOne Telecom	MediaOne Telecommunications of California, Inc.
MediaOne TWE	MediaOne TWE Holdings, Inc.
Meteor	Meteor Acquisition Inc.
Rules	Rules of Practice and Procedure
TCI Telephony	TCI Telephony Services of California, Inc.
TURN	The Utility Reform Network
TWT	Time Warner Telecom Inc.
TWT-California	Time Warner Telecom of California L.P.

(END OF APPENDIX A)