

Decision 00-06-047 June 16, 2000

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

Joint Application of Telecarrier Services Inc.,  
Certain Shareholders of Telecarrier Services Inc.,  
and eLEC Communications Corporation for  
Approval of Stock Purchase Agreement and  
Related Transactions.

Application 00-04-014  
(Filed April 10, 2000)

**OPINION**

**1. Summary**

This application seeks approval under Pub. Util. Code §§ 851 through 854 of an agreement to sell all issued and outstanding stock of Telecarrier Services Inc. (TSI), a non-dominant telecommunications carrier, to eLEC Communications Corporation (ELEC), a New York corporation. The application is unopposed. The application is granted.

**2. Description of Applicants**

TSI, a Delaware corporation, was authorized to provide telecommunications services in California as a switchless reseller pursuant to Decision 98-05-033 issued on May 18, 1998. TSI operates in California under U-5988-C. Michael Lagana and Zina Hassel, the Chief Executive Officer and Vice President of TSI respectively, collectively own all of the issued and outstanding shares of capital stock of TSI.

ELEC, formerly known as Sirco International Corporation, is a New York corporation publicly traded on the NASDAQ Exchange. ELEC has two active business segments. The first segment involves a competitive local exchange carrier to resell telecommunication services and other bundled services to small

and medium-sized business users through its wholly-owned subsidiaries Essex Communications, Inc. and WebQuill Internet Services LLC. ELEC also has an ownership interest in Access One Communications, Inc., which is a competitive local exchange carrier and reseller of telecommunications services to business and residential customers in the southeastern United States. ELEC's second business segment is a specialty retail business that sells travel products through retail stores and e-commerce sites to professional airline crew members.

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

The applicants propose to sell all issued and outstanding stock of TSI to ELEC. The applicants have entered into an agreement and plan of merger wherein TSI will merge with "Mergeco" (a wholly-owned subsidiary of ELEC). TSI shall be the surviving entity and become a wholly-owned subsidiary of ELEC. According to the agreement, the shareholders of TSI will receive common stock of ELEC in exchange for their shares of TSI capital stock. This agreement will become effective no sooner than the date upon which all necessary orders, consents and approvals by regulatory authorities are received.

Upon consummation of this transfer of control, TSI will continue operating under its current name, and TSI will continue to provide services pursuant to the terms and conditions of its tariff. Rates, terms, and conditions available to customers will not change as a result of the transaction. Only the underlying ownership of the company will change.

The parties in the application have attached copies of the agreement describing the proposed stock purchase agreement and plan of merger, and they have attached ELEC's audited financial statements for 1999.

#### **4. Public Interest**

The application states that the transfer of control will serve the public interest by insuring continued and expanded operation of TSI in its provision of telecommunications service to the public. Applicants state that the transfer of control will not in any way disrupt service or cause inconvenience or confusion to TSI's customers. The applicants state that the transfer of control will be virtually seamless to customers in terms of their services.

#### **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 no changes in the existing services for California consumers, and the transaction promises to be seamless to existing customers. ELEC has the financial qualifications and telecommunications background necessary to support the TSI operation. There have been no protests to this application.

In Resolution ALJ 176-3037, dated April 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 ALJ 176-3037.

The application is granted subject to the terms and conditions set forth below. The Executive Director may grant noncontroversial applications by

nondominant telecommunications carriers to transfer assets or control under Pub. Util. Code §§ 851-854. (D.87-10-035; D.86-08-057.)

### **Findings of Fact**

1. Notice of this application appeared in the Commission's Daily Calendar of April 14, 2000.
2. No protests have been filed.
3. Applicants seek approval pursuant to Pub. Util. Code §§ 851 through 854 of a transaction that will transfer control and sell all issued and outstanding stock of TSI to ELEC.
4. TSI is a switchless reseller of telecommunications services in California.
5. ELEC is a New York corporation.
6. There will be no change in name, current services or rates provided by TSI 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 should be approved subject to the terms and conditions set forth below.

## **O R D E R**

### **IT IS ORDERED** that:

1. Telecarrier Services Inc. (TSI) and eLEC Communications Corporation (ELEC) are authorized pursuant to Pub. Util. Code §§ 851 through 854 to enter into the agreement, as more fully described in the application and its exhibits, by which ELEC will acquire control of TSI.

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2. TSI and ELEC 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. TSI and ELEC shall file new tariffs incorporating any changes in name, rates, services, and management authorized in the transfer transaction.

4. TSI and ELEC shall make all books and records available for review and inspection upon Commission staff request.

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

6. Application 00-04-014 is closed.

This order is effective today.

Dated June 16, 2000, at San Francisco, California.

/s/ WESLEY M. FRANKLIN  
WESLEY M. FRANKLIN  
Executive Director