

Decision 99-02-093 February 19, 1999

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of Claricom Networks, Inc.,
Application for Approval of an Indirect Change
in Control From Claricom Holdings, Inc. To
Sigma Acquisition Corp.

Application 99-01-010
(Filed January 12, 1999)

O P I N I O N

Introduction

By this decision, we approve the application of Claricom Networks, Inc. (Claricom Networks or Applicant), pursuant to Section 854 of the California Public Utilities (Pub. Util.) Code, for approval of an indirect change in control of Claricom Networks that will occur as a result of the proposed merger of Claricom Holdings, Inc. (Claricom Holdings), the parent corporation of Claricom Networks, with Sigma Acquisition Corp., a newly-formed, wholly owned subsidiary of Staples, Inc.

Claricom Networks, a Delaware corporation in good standing under the laws of that state, is a wholly owned subsidiary of Claricom Holdings, also a Delaware corporation. Claricom Networks currently operates as a switchless reseller of interexchange (toll) telecommunications services in the State of California pursuant to the authority granted in Commission Decision (D.) 97-05-025 in Application 96-10-027 (issued May 6, 1997).

Claricom Networks filed its application, docketed on January 12, 1999, seeking expedited Commission approval of an indirect change in ownership control pursuant to Pub. Util. Code Section 854. Claricom Networks seeks approval of this application by the Commission's Executive Director pursuant to D.86-08-057.

No party has filed a protest to the application.

Description of the Proposed Transaction and Parties Involved

Claricom Holdings owns 100% of the outstanding capital stock of Claricom Networks. Pursuant to a Merger Agreement, Sigma Acquisition Corp., a newly-formed, wholly owned subsidiary of Staples, Inc., will merge with and into Claricom Holdings. Claricom Holdings will be the surviving corporation of the merger. It is anticipated that post-merger, Staples, Inc. will own in excess of 90% of the shares of Claricom Holdings and that no other shareholder of Claricom Holdings will own in excess of 5% of the shares. Claricom Networks will continue to be a wholly owned subsidiary of Claricom Holdings following the merger.

Applicant has provided a copy of the Merger Agreement, attached to the application as Exhibit A, and a copy of the most recently available balance sheet and an income statement for the first three quarters of 1998, also attached as Exhibit B. Applicant has requested that Exhibits A and B be given protection from nondisclosure under General Order 66-C.

Following consummation of the merger, Claricom Networks headquarters will remain at its present address, and will continue to resell the long distance telecommunications services of its underlying carriers pursuant to Claricom Networks' existing tariff provisions, including rates and charges.

Applicant states that the indirect change in control of Claricom Networks resulting from the merger will not adversely affect either Claricom Networks' customers or Claricom Networks' provision of telecommunications services in California. Applicant states that there will be no changes to the services provided by Claricom Networks, or the manner in which those services are provided, as a result of the proposed indirect change in control. Likewise, the Claricom Networks tariff will remain in full force and effect. Substantially all of the personnel who currently comprise the telecommunications resale division of Claricom Networks will remain employees of the corporation. Claricom Networks' current Chief Executive Officer and current Chief Operating Officer/President will continue in these positions following consummation of the merger. Service complaints and responses will be handled in the same manner. Customers will continue to contact the same toll free 800 number to obtain service, make billing inquiries, and report outages. Customers will be able to purchase the same services from Claricom Networks that they currently purchase.

Claricom Networks asks that the Commission process the instant petition on an expedited basis and authorize approval by the Executive Director pursuant to D.86-08-057.

Discussion

As stated above, Claricom Networks is authorized to operate as a switchless reseller of interexchange (toll) telecommunications services in the State of California. Claricom Holdings is not a public utility subject to regulation by the Commission, and, with the exception of Claricom Networks, none of Claricom Holdings' subsidiaries are public utilities subject to regulation by the Commission. Neither Sigma, Staples, Inc. or any of their subsidiaries are public utilities subject to regulation by the Commission. Accordingly, the above

described transaction involves only the merger of a Commission regulated utility's non-Commission regulated parent corporation with another non-Commission regulated corporation.

We find that the proposed merger will not adversely affect the telecommunications service cost or quality currently offered by Claricom Networks, and is in the public interest. The proposed merger of Claricom Holdings and Sigma will benefit both Claricom Networks and its California customers. As a result of the merger, Claricom Networks will have increased capital available for its long distance operations which will enable Claricom Networks to enhance its operations and service and product offerings. The Applicant's request for approval of an indirect change in control of ownership interests is accordingly granted.

In Resolution ALJ 176-3008 dated January 20, 1999, the Commission preliminarily categorized this application as ratesetting, and preliminarily determined that hearings were not necessary. No protests have been received. Given this status public hearing is not necessary and it is not necessary to alter the preliminary determinations made in Resolution ALJ 176-3008.

Findings of Fact

1. Claricom Networks is authorized to operate as a switchless reseller of interexchange (toll) telecommunications services in the State of California, and is owned 100% by Claricom Holdings.
2. Pursuant to a Merger Agreement, Sigma Acquisition Corp., a newly-formed, wholly owned subsidiary of Staples, Inc., seeks to merge with and into Claricom Holdings which will be the surviving corporation of the merger.
3. Claricom Networks will continue to be a wholly owned subsidiary of Claricom Holdings following the merger.

4. After consummation of the proposed merger, Claricom Networks will continue to resell the long distance telecommunications services of its underlying carriers pursuant to Claricom Networks' existing tariff provisions, including rates and charges, with no changes in the cost or quality service provided.

5. The proposed merger transaction involves only the merger of a Commission regulated utility's non-Commission regulated parent corporation with another non-Commission regulated corporation.

6. No protests have been filed.

7. This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Pub. Util. Code Section 311(g)(2), the otherwise applicable 30-day period for public review and comment is being waived.

Conclusions of Law

1. Pursuant to Pub. Util. Code Section 854, no person or corporation shall merge, acquire, or control any public utility organized and doing business in the state without first securing authorization to do so from the Commission.

2. Applicant has duly filed for Commission authorization of an indirect change in control pursuant to Pub. Util. Code Section 854.

3. The proposed indirect change in ownership control of Claricom Networks is in the public interest and should be approved pursuant to D.86-08-057.

O R D E R

IT IS ORDERED that:

1. The proposed indirect change in control of Claricom Networks, Inc. resulting from the merger of Claricom Holdings, Inc. with Sigma Acquisition Corp. is hereby approved pursuant to Public Utilities Code Section 854.

2. This authority will expire if not exercised within 12 months.
3. This application is closed.

This order is effective today.

Dated February 19, 1999, at San Francisco, California.

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