

Decision 99-06-016 June 3, 1999

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In Matter of Interoute Telecommunications, Inc.,
Transferee, American International Telephone,
Inc., Transferor, Application for Approval of
Transfer of Control of Authorized Carrier.

Application 99-03-015
(Filed March 9, 1999)

OPINION

1. Summary

Interoute Telecommunications, Inc. (Interoute) and American International Telephone, Inc. (AIT) seek approval of a transfer of control of AIT, a certificated interexchange carrier, to Interoute through acquisition of AIT's stock. Granted.

2. Nature of Application

Interoute is a privately held Delaware corporation that is in the process of entering the interexchange market, providing both residential and business services. Interoute is authorized by the Federal Communications Commission to provide interstate and international telecommunications service as a nondominant common carrier.

AIT is a privately held Delaware corporation authorized by this Commission to operate as a reseller of interexchange services within California. (Decision (D.) 96-08-001, 67 CPUC2d 206.) AIT also provides interstate and international telecommunications services as a nondominant common carrier.

On September 10, 1998, H. Bruce Bronson, Jr. and AIT entered into a letter agreement with Interoute in which Interoute agreed to acquire AIT by purchasing all outstanding shares from AIT shareholders. The agreement

provided for an immediate sale of 26% of the shares of AIT (all the shares owned by Bronson and certain other shareholders) to Interoute.

Subsequently, on December 17, 1998, shareholders owning approximately 46% of the common stock and all of the preferred stock of AIT and Randall S. Appel, individually and as an agent for other shareholders, entered into a stock purchase agreement in which Interoute on January 12, 1999, acquired these additional shares for a cash payment.

As the final phase of the overall transaction, Interoute intends to purchase the remaining 28% of outstanding shares at a future date.

Since the two completed transactions entailed a transfer of majority ownership and control, applicants ask that approval of these transactions be granted retroactively, or nunc pro tunc, lest the transactions be deemed void under Pub. Util. Code § 851 for want of Commission approval.

Applicants state that for the foreseeable future both Interoute and AIT will continue operating their respective telecommunications businesses under their current names. Because of this, they state, the transfer of control will not disrupt service or cause confusion to customers of AIT. Applicants state that the change will be virtually seamless to retail customers in terms of the services they receive, but the transfer may make additional products and services available to customers of both Interoute and AIT.

3. Retroactive Approval

Applicants seek Commission approval nunc pro tunc for authority for this transaction, thereby transferring control of AIT to Interoute effective January 12, 1999. Applicants state that they originally filed an application for approval of this transaction on November 17, 1998, in advance of the January closing date. Applicants state that because of their delay in obtaining and supplying

additional information requested by Commission staff, the application was returned on February 22, 1999 before the requested information was supplied.

Applicants state that this application is an updated resubmission of their November 16, 1998 filing, and that it includes all of the information previously requested by staff. Applicants urge that their temporary noncompliance with the Commission's rules is mitigated by their original November 1998 filing, which was a good faith attempt to secure approval prior to the January 1999 closing.

4. Public Interest

Applicants state that the proposed transaction will serve the public interest and will promote competition by enabling Interoute and AIT to combine financial resources, complementary services, facilities and expertise. The transaction also gives AIT access to the larger capital base of Interoute, its prospective new parent company. Applicants state that combining the resources of the companies will allow each to offer a broader array of new products and services.

Applicants have attached copies of their financial statements and their stock purchase agreement as exhibits to their application.

5. Discussion

Pub. Util. Code § 854 requires Commission authorization before a utility 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 merger here promises improved products and services for California consumers. No change in the name or services of the California carrier

is proposed. Interoute has the technical, managerial and financial qualifications necessary to continue operating AIT.

There have been no protests to this application, and the contemplated corporate reorganization appears to be noncontroversial. Applicants have shown that they sought timely approval of the transfer of control, and their request for retroactive approval is made in good faith. We have in the past granted such retroactive approval where the failure to obtain prior consent was deemed inadvertent and where our examination of the transfer revealed no prejudice to ratepayers. (See, e.g., Local Exchange Service, D.97-01-015; WinStar Communications (1995) 59 CPUC2d 635.) We are persuaded that retroactive approval here is reasonable.

In Resolution ALJ 176-3012, dated March 18, 1999, 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 determination in ALJ 176-3012.

The application is granted, subject to the terms and conditions set forth below.

6. Comments on Draft Decision

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

Findings of Fact

1. Notice of this application appeared in the Commission's Daily Calendar of March 15, 1999.

2. Interoute and AIT seek authority pursuant to Pub. Util. Code § 854 of a transfer of control by which Interoute intends to acquire all outstanding shares of AIT.

3. Interoute is a nondominant common carrier authorized to provide interstate and international telecommunications service.

4. AIT was authorized in D.96-08-001 to operate as a reseller of interexchange services in California.

5. There will be no change in the names or current services provided by the companies as a result of the transfer of control.

6. Applicants filed for prior approval of the transfer in November 1998, but their application was returned pending a request for further information.

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 request for nunc pro tunc approval is reasonable and presents no prejudice to ratepayers.

4. The application should be approved.

O R D E R

IT IS ORDERED that:

1. Interoute Telecommunications, Inc. (Interoute) and American International Telephone, Inc. (AIT) are authorized pursuant to Section 854 of the Public Utilities Code to enter into the stock acquisition agreements, as more fully described in the application and its exhibits, by which Interoute will acquire control of AIT.

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2. The approval of this application is granted nunc pro tunc as of January 12, 1999, the date on which transfer of control was consummated.

3. 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 this order. A true copy of the instruments of transfer shall be attached to the notification.

4. AIT shall file new tariffs incorporating any changes in rates, services and management authorized in the transfer transaction.

5. Interoute and AIT shall make all books and records available for review and inspection upon Commission staff request.

6. Application 99-03-015 is closed.

This order is effective today.

Dated June 3, 1999, at San Francisco, California.

RICHARD A. BILAS
President
HENRY M. DUQUE
JOSIAH L. NEEPER
LORETTA M. LYNCH
TAL C. FINNEY
Commissioners