

Decision 99-09-025 September 2, 1999

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of Axces, Inc.
d/b/a Long Distance Axces and Gemini II, Inc.
for Authority to Transfer the Stock of Axces, Inc.
d/b/a Long Distance Axces, an NDIEC operating
in California, to Gemini II, Inc .

Application 99-06-030
(Filed June 18, 1999)

O P I N I O N

Summary

This decision grants the joint application of Axces, Inc. d/b/a Long Distance Axces (Axces), a nondominant interexchange carrier (NDIEC), and Gemini II, Inc. (Gemini), which requested approval for Gemini to acquire 100% of the issued and outstanding shares of stock of Axces. This results in Axces becoming a wholly-owned subsidiary of Gemini. Axces is currently a wholly-owned subsidiary of MTM Holdings Corporation (MTM).

Parties to the Transaction

MTM is a Texas corporation authorized to do business in California. Its principal place of business is 2500 Wilcrest, Suite 540, Houston, Texas 77042. MTM does not operate as a public utility within California or any other State.

Axces is a Delaware corporation authorized to do business in California. Its principal place of business is the same as MTM's. By Decision (D.) 96-10-015, Axces was granted a certificate of Public Convenience and Necessity (CPCN) to operate in California as an NDIEC (U-5694-C). Axces operates as a switchless reseller.

Gemini is a Delaware corporation authorized to do business in California. Its principal place of business is 1770 Motor Parkway, Suite 300, Hauppauge, New York 11788.

Procedural Background

In Resolution ALJ 176-3018, dated June 24, 1999, the Commission preliminarily categorized this application as ratesetting, and preliminarily determined that hearings were not necessary. No protests have been received. Therefore, a public hearing is not necessary, and it is not necessary to alter the preliminary determinations.

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

Proposed Transaction

Pursuant to the agreement executed by the parties, Gemini will acquire 100% of the issued and outstanding stock of Axces from MTM. Axces will then become a wholly-owned subsidiary of Gemini. Gemini does not wish to acquire Axces' CPCN. Axces will continue to operate under its current name and tariffs.

Discussion

In a situation where a company which does not possess a CPCN desires to acquire control of a company that does possess a CPCN issued by this Commission, we will apply the same requirements as in the case of an applicant seeking a CPCN to exercise the type of authority held by the company being acquired. Since Axces possesses a CPCN to act as a reseller of interexchange telecommunications services within California, we will apply the requirements for such authority to Gemini.

The Commission has established two major criteria for determining whether a CPCN should be granted. An applicant who desires to act as a

switchless¹ reseller must demonstrate that it has a minimum of \$25,000 in cash or cash equivalent (as described in D.91-05-010, 41 CPUC2d 505 at 520 (1991)), reasonably liquid and readily available to meet the firm's start-up costs. In addition, the applicant is required to make a reasonable showing of technical expertise in telecommunications or a related business.

Gemini, as part of this application, provided an unaudited balance sheet which demonstrated that it has sufficient resources to meet our financial requirements.

Gemini provided biographical information on its principal officers which, along with the fact that Axces' current management will be involved in management of Axces after the acquisition, demonstrated that it has the required expertise..

We will grant the application.

Findings of Fact

1. Axces and Gemini seek Commission approval of an agreement for Gemini to acquire one hundred percent (100%) of the issued and outstanding stock of Axces, the holder of a CPCN issued by this Commission authorizing it to act as a reseller of interexchange telecommunications services within California.

¹ D.93-05-010 defines a switchless reseller as an NDIEC with the following characteristics: it uses the switch of another carrier; it usually, but not always, uses access circuits that the underlying carrier purchases from a local exchange carrier; it provides service in its own name, and its customers view it as their telephone company for interLATA and interstate calls. D.96-06-069 noted that it is possible to control, operate, or manage telephone lines without owning them. The decision also notes that resellers which do not own or directly operate their own telephone wires may still have plant which is owned, controlled, operated, and/or managed in order to facilitate communication by telephone.

2. Gemini will not acquire the CPCN held by Axces, and Axces will continue to provide, under its current name and tariffs, the services authorized by its CPCN as a wholly-owned subsidiary of Gemini.

3. Gemini has sufficient financial resources to meet the Commission's requirements for an NDIEC.

4. Gemini possesses the necessary technical expertise required by the Commission.

5. The acquisition of control of Axces by Gemini will not have an adverse impact on the public interest.

6. Notice of this application appeared on the Commission's Daily Calendar on June 23, 1999.

7. There were no protests to this application.

8. No hearings are necessary.

Conclusions of Law

1. The Commission will apply the same requirements to a request for approval of an agreement to acquire control of a reseller of interexchange telecommunications services within California as it does to an applicant for authority to provide such services.

2. Gemini meets the Commission's requirements for the issuance of a CPCN to provide such services.

3. The application is not adverse to the public interest.

4. The application should be granted and made effective immediately.

5. After the acquisition of control, Axces will be a wholly-owned subsidiary of Gemini, and will continue to exercise, under its current name and tariffs, the authority granted by its CPCN.

O R D E R

IT IS ORDERED that:

1. The joint application of Axces, Inc., d/b/a Long Distance Axces (Axces), and Gemini II, Inc. (Gemini), requesting approval of an agreement for Gemini to acquire 100% of the issued and outstanding stock of Axces is approved.
2. Following acquisition of Axces's stock by Gemini, Axces will become a wholly-owned subsidiary of Gemini.
3. The Certificate of Public Convenience and Necessity (CPCN) currently held by Axces is not acquired by Gemini.
4. Axces will continue to provide, under its own name and tariffs, the services authorized by its CPCN.
5. This application is closed.

This order is effective today.

Dated September 2, 1999, at San Francisco, California.

RICHARD A. BILAS
President
HENRY M. DUQUE
JOSIAH L. NEEPER
JOEL Z. HYATT
CARL W. WOOD
Commissioners