

ALJ/GEW/mrj

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Decision 99-10-007 October 7, 1999

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Fiber Link, L.L.C.
(U-6028-C) for Approval of a Pro Forma
Change of Control and Transfer of a CPCN
Under Section 854 of the Public Utilities Code

Application 99-06-015
(Filed June 14, 1999)

OPINION

1. Summary

Pacific Fiber Link, L.L.C., a facilities-based nondominant interexchange carrier, seeks approval of a change in control and approval of a transfer of Pacific Fiber Link's certificate of public convenience and necessity (CPCN) to its successor organization, Worldwide Fiber Networks, Inc. The application is granted.

2. Nature of Application

Pacific Fiber Link, a Washington limited liability company, was granted its CPCN in Decision (D.) 98-07-057, issued on July 20, 1998. In March 1999, Pacific Fiber Link was absorbed into Pacific Fiber Link Por-Sac, Inc., a sister company wholly owned by Pacific Fiber Link's parent, Leducor. As part of the transaction, the name of the resulting unified company was changed to Worldwide Fiber Networks, Inc. Worldwide Fiber Networks is a Nevada corporation authorized to do business in California.

Applicant states that the corporate restructure and change in name has no substantive effect on the personnel or operations of the company. Applicant states that the only change is that Pacific Fiber Link's operations will now be carried out under the name Worldwide Fiber Networks. All funds for the

company's operation will be provided by Ledcor, its parent corporation. Because of the restructuring, applicant states that Worldwide Fiber Networks will have access to greater capital funding.

Since the restructuring entailed a transfer of control, applicant asks that approval of these transactions be granted retroactively, or nunc pro tunc, lest the transactions be deemed void under Pub. Util. Code § 854 for want of Commission approval.¹

3. Retroactive Approval

Applicant seeks Commission approval nunc pro tunc for authority for the transfer of control in March 1999. Applicant states that, due to an oversight, Pacific Fiber Link did not seek authority from this Commission prior to completing the restructuring because it was thought, erroneously, that the restructuring amounted to nothing more than a name change. Applicant states that its Nevada counsel handling the corporate filing was not aware that the restructuring could affect Pacific Fiber Link's status as a certificated carrier in California. The company's California counsel became aware of the restructuring after its completion and promptly filed this application.

4. Public Interest

Applicant states that the transactions here will serve the public interest and will promote competition by improving the financial strength of the entity providing service to customers in California. By restructuring operations so that one company, Worldwide Fiber Networks, holds both the California certificated

¹ We take official notice that Pacific Fiber Link on August 10, 1999, filed another application seeking modification of its Certificate of Public Convenience and Necessity to obtain environmental review that would permit the company to continue construction of a fiber optic and conduit system. (See Application 99-08-021.)

carrier (formerly Pacific Fiber Link) and the Nevada certified carrier (formerly Pacific Fiber Link Por-Sac), applicant states that the overall efficiency of the company will be enhanced.

Applicant has attached copies of its financial statements and the restructuring agreement as exhibits to the 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 corporate restructuring here promises improved service for California consumers. No change in the operations of the California carrier is proposed. Worldwide Fiber Networks has the technical, managerial, and financial qualifications necessary to continue operating the restructured company. The transfer of CPCN authority to the reorganized Worldwide Fiber Networks corporate entity should not be a matter of confusion to end users.

There have been no protests to this application, and the corporate reorganization appears to be noncontroversial. Applicant has shown that its failure to seek timely approval of the transfer of control was inadvertent, and the 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 176-3018, dated June 24, 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 176-3018.

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 June 16, 1999.
2. Applicant seeks authority pursuant to Pub. Util. Code § 854 of a transfer of control brought about by a corporate restructuring, and a change in name to Worldwide Fiber Networks.
3. Applicant seeks authorization for a transfer of Pacific Fiber Link's operating authority to Worldwide Fiber Networks.
4. Pacific Fiber Link is a facilities-based nondominant common carrier authorized to provide interstate and international telecommunications service in California.
5. There will be no change in the services provided by applicant as a result of the transfer of control.

6. The transfer of control took place in March 1999.

7. Applicant states that its failure to obtain prior approval of the transfer of control was inadvertent.

Conclusions of Law

1. The proposed transfer of operating authority 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. Pacific Fiber Link, L.L.C., is authorized pursuant to Section 854 of the Public Utilities Code to enter into the corporate reorganization, as more fully described in the application and its exhibits, changing control of the company and changing its name to Worldwide Fiber Networks, Inc.

2. The approval of this application is granted nunc pro tunc as of March 1, 1999, a date preceding the actual date in which transfer of control was consummated.

3. Worldwide Fiber Networks, Inc., is authorized to do business under the utility identification number U-6028-C, the number previously assigned to Pacific Fiber Link, L.L.C.

4. Applicant 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.

5. Worldwide Fiber Networks, Inc., shall continue to be subject to the same terms and conditions that the Commission placed on its predecessor company in granting the certificate of public convenience and necessity to operate as a facilities-based nondominant interexchange carrier.

6. Worldwide Fiber Networks, Inc., shall file new tariffs incorporating the change in name and any changes in rates, services, and management authorized in the transfer transaction.

7. Worldwide Fiber Networks, Inc., shall make all books and records available for review and inspection upon Commission staff request.

8. The authority granted in this order shall expire if not exercised within 12 months after the effective date of this order.

9. Application 99-06-015 is closed.

This order is effective today.

Dated October 7, 1999, at Los Angeles, California.

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