

Decision 99-10-044 October 19, 1999

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of MVX Communications, LLC
(U-5935-C) for authority to transfer control to
MVX.Com Communications, Inc.

Application 99-09-014
(Filed September 9, 1999)

O P I N I O N

I. Summary

By this order we grant MVX Communications, LLC (MVX) and MVX.Com Communications, Inc. (MVX.Com) authority to transfer the control of MVX to MVX.Com. MVX will be merged with and into MVX.Com pursuant to the terms and conditions set forth in the agreement of merger attached to the application.

II. Categorization

Applicants have requested that this matter be categorized as ratesetting and that no hearings are necessary. By Resolution ALJ 176-3023, dated September 16, 1999, the Commission preliminary determined that this was a ratesetting proceeding, and determined that no hearings were expected. Notice of this application appeared in the Commission's Daily Calendar of September 13, 1999. With no filed protests there is no reason to hold a public hearing and no reason to change the preliminary determinations made in Resolution ALJ 176-3023.

III. Jurisdiction

The application has been filed pursuant to Pub. Util. Code § 854. That code section precludes any person or corporation from transferring the control of

any public utility organized and doing business in this state without first securing authorization to do so from this Commission. The additional criteria needed for authority to transfer control of a utility set forth in subsection (b) and (c) of § 854 are not applicable in this instance because neither MVX nor MVX.Com have gross annual California revenues exceeding \$500 million.

IV. The Parties

MVX, a privately-held Nevada limited liability company, qualified to do business in California, was granted a Certificate of Public Convenience and Necessity (CPCN) to provide inter-local access and transport area (InterLATA) and intra-LATA (IntraLATA) services in California as a non-dominant Interexchange carrier. This authority was granted pursuant to Decision (D.) 98-03-081. That decision also assigned MVX its (U-5935-C) corporate identification number.

MVX was subsequently granted a CPCN to operate as a facilities-based competitive local carrier (CLC) and to offer resold local exchange services within the territories of Pacific Bell and GTE California Incorporated, pursuant to D.98-09-066, dated September 17, 1998.

The principal offices of MVX are located in Novato, California. In addition to the services it provides to California customers, MVX obtained the necessary authority from other jurisdictions to provide intra-state services in the contiguous 48 states and Hawaii, except North Carolina, pursuant to certification, registration, notification, tariff requirements, or on an unregulated basis. MVX is also authorized by the Federal Communications Commission (FCC) to provide domestic interstate and international services as a non-dominant carrier in all 50 states and the District of Columbia.

MVX.Com is a privately held California corporation, whose principal offices are located in Novato, California. MVX.Com, not currently a provider of local and long distance telecommunications services in California, is in the process of obtaining authorization to provide inter-exchange and local exchange service throughout the United States.

V. The Transaction

MVX and MVX.Com seek authority for MVX.Com to acquire control of MVX through a merger of MVX with and into MVX.Com. The application involves only a change in corporate structure of MXV to MVX.Com. Approval of this proposed transaction will enable MVX to pursue its telecommunications marketing and business plan more effectively. It will also provide access to additional working capital.

The transfer of control will be made in a seamless fashion that will not affect the current customers of MVX. This is because the proposed transaction will not result in any change to the officers, directors, or management of MVX. There will be no change in the rates, terms, and conditions of service currently available to the customers of MVX. MVX will continue to operate under the name MVX. Hence, MVX does not intend to modify its currently effective tariffs.

In a situation where a company not possessing a CPCN desires to acquire control of a company that does possess a CPCN, we 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 MXV possesses a CPCN to act as a switchless reseller of Interexchange telecommunications services within California and a CPCN to operate as a facilities-based CLC within Pacific Bell and GTE California Incorporated's service territory, we apply the more stringent competitive local carrier requirements for such authority.

To obtain a facilities-based CLC CPCN, an applicant must possess the requisite managerial qualifications, technical competence, and financial resources consisting of a minimum \$100,000 of cash or cash equivalent.¹

The management qualifications and technical competence requirements have been satisfied given that MVX previously satisfied these requirements upon the grant of its CPCNs and because the proposed transfer of control will not result in a change in officers, directors, or management of MVX. To satisfy the financial resource requirement, MVX.Com submitted a copy of its July 30, 1999 bank statement to demonstrate that it has sufficient resources to meet our financial requirements. Hence, MVX.Com meets the Commission's requirements to provide the requisite service.

No new construction is being proposed. Accordingly, there is no possibility that the proposed transaction contemplated herein may have any significant impact on the environment.

Applicants have requested expedited approval of this application by Executive Director approval. Ordering Paragraph 1 of D.87-10-035 provides in relevant part that the Executive Director may grant noncontroversial applications by nondominant telecommunications carriers and radiotelephone utilities for authority to transfer assets or control under §§ 851-855 of the Public Utilities Code.²

Pursuant to the above-cited decision, the Executive Director on an expedited basis should approve this application because this application is

¹ 60 CPUC2d 611 at 642 (1995).

² 25 CPUC2d 459 at 462 (1987).

noncontroversial and because this application involves nondominant telecommunications carriers.

Findings of Fact

1. Resolution ALJ 176-3023 determined that this was a ratesetting proceeding and determined that no hearings were expected.
2. Notice of this application appeared in the Commission's Daily Calendar of September 13, 1999.
3. No protests were filed.
4. This application has been filed pursuant to Pub. Util. Code § 854.
5. MVX and MVX.Com seek authority for MVX.Com to acquire control of MVX through a merger of MVX with and into MVX.Com.
6. MVX will continue to operate as MVX.
7. MVX.Com meets the Commission's requirements to provide the requisite service.
8. No new construction is being proposed.
9. MVX is a non-dominant telecommunications carrier.
10. The Executive Director may grant noncontroversial applications by nondominant telecommunications carriers for authority to transfer control under Pub. Util. Code §§ 851-854.

Conclusions of Law

1. The proposed transfer of control is not adverse to the public interest.
2. It can be seen with certainty that the proposed transfer will not have an adverse impact on the environment.
3. This application is noncontroversial and should be granted by the Executive Director.

4. Public convenience and necessity require the granting of this application to be effective on the date signed.

5. The application should be granted to the extent provided in the following order.

O R D E R

IT IS ORDERED that:

1. MVX.Com Communications, Inc. (MVX.Com) is authorized to acquire control of MVX Communications, LLC (MVX) in accordance with the terms and conditions described in the application.

2. MVX.Com shall be responsible for prior and future MVX collected and uncollected fees and surcharges applicable to fund the Universal Lifeline Telephone Service (Pub. Util. Code § 879; Resolution T-16245, dated December 3, 1998, California Relay Service and Communications Devices Fund (Pub. Util. Code § 2881; Decision 98-12-073 and Resolution T-16234, December 17, 1998); Commission User Fee (Resolution M-4796); the California High Cost Fund-A (Pub. Util. Code § 739.30; Resolution T-16242, December 3, 1998); and the California Teleconnect Fund (D.96-10-066), including any fees and surcharges which MXV may not have yet collected.

3. The Corporate identification number U-5935-C assigned to MVX shall continue to be used by MVX, which shall be included in all original filings with the Commission and in the titles of other pleadings filed in existing cases.

4. MVX.Com shall file new tariffs incorporating its Corporate identification number U-5935-C in place of its revoked Corporate identification number U-6007-C within 30 days of the effective date of this order.

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5. The application is granted as set forth above and the authority granted shall expire if not exercised within one year of the effective date of this order.

6. Application 99-09-014 is closed.

This order is effective today.

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

/s/ WESLEY M. FRANKLIN

WESLEY M. FRANKLIN
Executive Director