

Decision 99-10-052 October 21, 1999

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of A.R.C.
Networks, Inc., Arc Networks, Inc., Technology
Acquisitions, Ltd. and Omnilynx
Communications Corporation for Approval of a
Transfer of Control and Merger.

Application 99-07-036
(Filed July 22, 1999)

OPINION

Summary

This decision grants the joint application of A.R.C. Networks, Inc. (A.R.C.), Arc Networks, Inc. (Arc), Technology Acquisitions, Ltd. (Technology), and Omnilynx Communications Corporation (Omnilynx). The application requests approval for Technology, to acquire 67% of the outstanding common stock of Arc, the parent company of A.R.C., and the merger of an acquisition subsidiary of Omnilynx with Arc. This results in A.R.C. becoming a wholly-owned subsidiary of Omnilynx.

Parties to the Transaction

Technology is a Bermuda corporation. Its address is c/o Benchmark Equity Group, 700 Gemini, Houston, Texas 77058. It is a stand-alone corporation created for this acquisition, as well as others, and following the merger, will be a shareholder of Omnilynx.

A.R.C. is a New York corporation authorized to do business in California. Its principal place of business is 1770 Motor Parkway, Hauppauge, New York 11788. By Decision (D.) 96-09-076, A.R.C. was granted a certificate of Public

Convenience and Necessity (CPCN) to operate in California as an interexchange reseller (U-5686-C).

Omnilynx is a Delaware corporation. Its principal place of business is c/o Benchmark Equity Group, 700 Gemini, Houston, Texas 77058. It does not possess any federal or state authorizations to provide communications services.

Procedural Background

In Resolution ALJ-176-3021, dated August 5, 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

The transaction will take place as follows. First, Technology will purchase 67% of the outstanding common stock of Arc. Contemporaneously, an acquisition subsidiary of Omnilynx will merge with Arc. As a result, A.R.C. will become a wholly-owned subsidiary of Omnilynx. Following the merger, Technology will become a shareholder of Omnilynx. A.R.C. 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 which does possess a CPCN, 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. A.R.C. possesses a CPCN

to act as a reseller of interexchange telecommunications services within California. We will apply the requirements for such authority to Omnilynx because the ultimate result of the transaction is that A.R.C. will become a wholly-owned subsidiary of Omnilynx.

The Commission has established two major criteria for determining whether a CPCN should be granted. An applicant who desires to act as a reseller must demonstrate that it has a minimum of \$25,000 in cash or cash equivalent, 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.

Omnilynx, as part of this application, provided a balance sheet that demonstrated that it has sufficient resources to meet our financial requirements.

The current management of A.R.C. will be involved in the management of A.R.C. after the acquisition. A.R.C. will, therefore, continue to have the required expertise.

We will grant the application.

Findings of Fact

1. A.R.C., Arc, Technology and Omnilynx seek approval for Technology to acquire 67% of the outstanding common stock of Arc, and the merger of a subsidiary of Omnilynx with Arc such that A.R.C., the holder of a CPCN authorizing it to act as a reseller of interexchange telecommunications services within California, will become a wholly-owned subsidiary of Omnilynx.

2. Omnilynx will not acquire the CPCN held by A.R.C., and A.R.C. will continue to provide, under its current name and tariffs, the services authorized by its CPCN.

3. Omnilynx has sufficient financial resources to meet the Commission's requirements for a reseller of interexchange services.
4. Omnilynx possesses the necessary technical expertise required by the Commission.
5. The acquisition of control of A.R.C by Omnilynx will not have an adverse impact on the public interest.
6. Notice of this application appeared on the Commission's Daily Calendar on July 28, 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. Omnilynx 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, A.R.C. will be a wholly-owned subsidiary of Omnilynx, 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 A.R.C. Networks, Inc. (A.R.C.), Arc Networks, Inc. (Arc), Technology Acquisitions, Ltd. (Technology) and Omnilynx Communications Corporation (Omnilynx), requesting approval of the acquisition of 67% of the outstanding stock of Arc by Technology, and the merger of a subsidiary of Omnilynx with Arc is approved.
2. Following the transaction, A.R.C. will become a wholly-owned subsidiary of Omnilynx.
3. The Certificate of Public Convenience and Necessity (CPCN) currently held by A.R.C. is not acquired by Omnilynx.
4. A.R.C. 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 October 21, 1999, at San Francisco, California.

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