

Decision 99-11-010 November 4, 1999

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Joint Application of Ionex Telecommunications, Inc., Telecom Resources, Inc., and Advanced Communications Group, Inc. for Approval of Transfer of Control.

Application 99-08-044
(Filed August 24, 1999)

OPINION

1. Summary

This application seeks approval under Section 854 of the Public Utilities Code of a transfer of control of Telecom Resources, Inc., a non-dominant telecommunications carrier, to Ionex Telecommunications, Inc. (Ionex), a Delaware corporation. The application is unopposed. The application is granted. As part of our order today, we also modify Decision (D.) 99-02-037 to give retroactive approval to an earlier transfer of control.

2. Description of Applicants

Telecom Resources, a Texas corporation, was authorized to provide telecommunications services in California as a switchless reseller pursuant to D.98-06-039 issued on June 8, 1998. It is authorized to provide resold intrastate service in 46 states, including California.

Advanced Communications Group, Inc. (ACG) is the parent of Telecom Resources, as authorized in D.99-02-037. A publicly traded Delaware corporation, ACG is a competitive provider of integrated telecommunications services to business customers primarily located in the Midwest. ACG is authorized to provide resold intrastate interexchange or competitive local

exchange services in eight states, but it does not hold any such authorization in California.

Ionex, the transferee, is a Delaware corporation and until recently had been a privately held Delaware limited liability company that was majority owned and controlled by Gilbert Global Equity Partners, L.P., a private equity investment partnership. Applicants state that, prior to closing the transaction in this application, Ionex will be funded with capital of \$49.8 million, in order to acquire Telecom Resources and three other ACG telecommunications subsidiaries not regulated by this Commission. Ionex is led by Mark Baker, former executive vice president of AT&T.

3. Nature of Application

The proposed transfer of control will be accomplished through the purchase of all of the outstanding shares of Telecom Resources by Ionex. Following the transfer of control, Telecom Resources will operate as a wholly owned subsidiary of Ionex. Telecom Resources will continue to provide services pursuant to the terms and conditions of its tariff. Only the underlying ownership of the company will change.

The application states that Telecom Resources will continue to operate under its own name and remain the holder of its California certification. Rates, terms, and conditions available to customers will not change as a result of the transaction. Applicants state that Telecom Resources is not yet serving any customers in California.

Exhibits attached to the application show that Ionex has the financial and business qualifications necessary to continue the operation of Common Concerns.

4. Public Interest

The application states that the transfer of control will serve the public interest in promoting competition by allowing Telecom Resources access to Ionex's financial and technical resources. The parties state that the transaction will enhance the carrier's operational flexibility and efficiency, and will give it the opportunity to strengthen its competitive position.

The parties in the application have attached copies of their financial statements, and they have attached a copy of the stock purchase agreement describing the proposed transfer of control.

5. Modification of Earlier Transfer Decision

In D.99-02-037, issued on February 4, 1999, the Commission granted approval of the acquisition of Telecom Resources by ACG through a 100% stock purchase. Counsel for the parties state that the acquisition closed prior to receipt of the Commission's approval, which under Pub. Util. Code § 854 could make that transfer of control void and of no effect. The error appears to have been inadvertent, and no consumers were affected because Telecom Resources had not begun serving customers in California. Our order today amends D.99-02-037 to make approval of that transfer retroactive to the actual date of consummation of that transaction.

6. Discussion

Pub. Util. Code § 854 requires Commission authorization before a company 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 transfer of control here promises improved services for California consumers. No changes in the existing services of Telecom Resources are proposed. Ionex has the financial qualifications necessary to support the Telecom Resources operation.

In Resolution ALJ 176-3022, dated September 2, 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 determinations in ALJ 176-3022.

There have been no protests to this application, and the contemplated transfer of control appears to be noncontroversial. The application is granted, subject to the terms and conditions set forth below. As discussed above, D.99-02-037 is modified to change the effective date of an earlier approval of a transfer of control.

Findings of Fact

1. Notice of this application appeared in the Commission's Daily Calendar of August 26, 1999.
2. Applicants seek approval pursuant to Pub. Util. Code § 854 of a transaction that will transfer control of Telecom Resources to Ionex.
3. Telecom Resources is a switchless reseller of telecommunications services in California, and it is authorized to provide resold intrastate telecommunications services in 45 other states.
4. Ionex is a Delaware corporation.

5. There will be no change in name, current services or rates provided by Telecom Resources as a result of the transfer of control.

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. An earlier authorization of transfer of control of Telecom Resources, set forth in D.99-02-037, should be modified to make the date of approval retroactive to the date of consummation of that transaction.
4. The application should be approved.

O R D E R

IT IS ORDERED that:

1. Ionex Telecommunications, Inc. (Ionex), Telecom Resources, Inc. (Telecom Resources), and Advanced Communications Group, Inc., are authorized pursuant to Section 854 of the Public Utilities Code to enter into the transaction, as more fully described in the application and its exhibits, by which Ionex will acquire control of Telecom Resources.
2. Ionex and Telecom Resources 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 consummation of such transfer. A true copy of the instruments of transfer shall be attached to the notification.
3. Ionex and Telecom Resources shall file new tariffs incorporating any changes in name, rates, services, and management authorized in the transfer transaction.

4. Ionex and Telecom Resources shall make all books and records available for review and inspection upon Commission staff request.

5. Decision 99-02-037 approving the earlier acquisition of control of Telecom Resources by Advanced Communications Group, Inc., is modified to make the date of approval in Ordering Paragraph 1 effective, nunc pro tunc, as of November 16, 1998.

6. The authority granted herein shall expire if not exercised within one year of the date of this order.

7. Application 99-08-044 is closed.

This order is effective today.

Dated November 4, 1999, at San Francisco, California.

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