

Decision 99-11-035 November 4, 1999

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Joint Application and Request for Expedited Ex Parte Treatment by Econophone Services, Inc. (U-5679-C) and Viatel, Inc. for Approval of Agreement and Plan of Merger.

Application 99-09-045  
(Filed September 22, 1999)

**O P I N I O N****1. Summary**

This application seeks approval under Sections 851-854 of the Public Utilities Code of a transfer of control of Econophone Services, Inc. (Econophone), a non-dominant telecommunications carrier, to Viatel, Inc., an international communications company providing long distance communication and data services primarily in Western Europe. The application is unopposed. The application is granted.

**2. Description of Applicants**

Econophone, a Delaware corporation with headquarters in Paramus, New Jersey, is a wholly owned subsidiary of Destia Communications, Inc. (Destia). Econophone was authorized in Decision (D.) 96-09-070, 68 CPUC2d 133, to provide intrastate interexchange services as a switched-based reseller throughout California.<sup>1</sup> Econophone provides intrastate interexchange services

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<sup>1</sup> Applicant states that it advised the Commission by letter on June 17, 1998, that Econophone, Inc., would be transferring its certificate of public convenience and necessity to its wholly owned subsidiary, Econophone Services, Inc. Applicant states that it intends to file an advice letter with Commission in the near future to ensure that the pro forma transfer has been formally approved.

on either a facilities-based or resale basis in 48 states and the District of Columbia.

Destia, a Delaware corporation, is a facilities-based provider of domestic and international telecommunications services in North America and Europe. Destia provides services in many metropolitan markets in the United States, Canada, the United Kingdom, Belgium, France, Germany, and Switzerland.

Viatel, a Delaware corporation with headquarters in New York City, is not certificated to provide telecommunications services in California and does not at this time intend to provide service other than through its indirect subsidiary Econophone. Viatel currently operates one of Europe's largest pan-European networks, with points of presence in 45 cities. The company is constructing the Circe Network, a series of interconnected fiber optic rings that will connect major cities in six Western European countries. Viatel's most recent financial statement (Exhibit 6) shows that for the six months ended June 30, 1999, the company's revenues exceeded \$130 million and assets were worth \$1.6 billion.

### **3. Nature of Application**

The proposed transfer of control will be accomplished through a transaction in which Viatel will acquire all of the outstanding capital stock of Destia, the parent of Econophone, through a merger of Viatel Acquisition Corp., a Viatel subsidiary, with and into Destia. Following the transfer of control, Econophone will operate as an indirect, wholly owned subsidiary of Viatel. Econophone will continue to provide services in California pursuant to the terms and conditions of its tariff, and only the underlying ownership of the company will change.

The application states that Econophone 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.

Exhibits attached to the application show that Viatel has the financial and business qualifications necessary to continue the operation of Econophone.

#### **4. Public Interest**

The application states that the transfer of control will serve the public interest in promoting competition by combining the financial resources and complementary operating, technical, and managerial strengths of Viatel and Destia. The parties state that the transaction will enable Econophone to strengthen its competitive position in California, which will inure to the benefit of consumers through improved service.

The parties have attached copies of their financial statements as part of the application, and they have attached a copy of the agreement and plan of merger describing the proposed transfer of control.

#### **5. 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 Econophone are

proposed. Viatel has the financial qualifications necessary to support the Econophone operation.

There have been no protests to this application, and the contemplated transfer of control appears to be noncontroversial. The application requests expedited approval of the application. Expedited approval may be granted by the Executive Director pursuant to authority delegated to him by the Commission to grant "noncontroversial applications for authority to transfer assets or control under [Pub. Util.] Code §§ 851-855..." (CAWC, Inc., Decision (D.) 87-04-017 (1987).)

In Resolution ALJ 176-3024, dated October 7, 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.

The application is granted, subject to the terms and conditions set forth below.

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Pub. Util. Code Section 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 September 27, 1999.
2. Applicants seek approval pursuant to Pub. Util. Code §§ 851-854 of a transaction that will transfer control of Econophone to Viatel.

3. Econophone is a switched-based reseller of intrastate telecommunications services in California, and it is authorized to provide facilities-based or resold intrastate telecommunications services in 48 states and the District of Columbia.

4. Destia is a facilities-based provider of domestic and international telecommunications services in North America and Europe.

5. There will be no change in name, current services, or rates provided by Econophone 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. The application is noncontroversial and may be granted by the Executive Director pursuant to authority delegated by the Commission.

4. The application should be approved.

## **O R D E R**

### **IT IS ORDERED that:**

1. Econophone Services, Inc. (Econophone), Destia Communications, Inc., and Viatel, Inc. (Viatel) are authorized pursuant to Sections 851-854 of the Public Utilities Code to enter into the transaction, as more fully described in the application and its exhibits, by which Viatel will acquire control of Econophone.

2. Econophone and Viatel 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. Econophone and Viatel shall file new tariffs incorporating any changes in name, rates, services, and management authorized in the transfer transaction.

4. Econophone and Viatel shall make all books and records available for review and inspection upon Commission staff request.

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

6. Application 99-09-045 is closed.

This order is effective today.

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

/s/WESLEY M. FRANKLIN

WESLEY M. FRANKLIN  
Executive Director