

Decision 99-11-066 November 30, 1999

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Joint Application for approval of acquisition by
U.S. TelePacific Holdings Corp. of U.S.
TelePacific Corp. (U-5721-C).

Application 99-10-022
(Filed October 15, 1999)

O P I N I O N

1. Summary

This application seeks approval under Section 854 of the Public Utilities Code of a transfer of control of U.S. TelePacific Corp., a non-dominant telecommunications carrier, to a holding company. The proposed holding company structure is intended to facilitate financing transactions. The application is unopposed. The application is granted.

2. Description of Applicants

U.S. TelePacific Corp., formerly known as Justice Long Distance Corp., is authorized to provide interstate and intrastate interexchange service in California pursuant to Decision (D.) 96-12-057, 69 CPUC2d 662. In addition, it is authorized to provide local exchange services in California as a facilities-based and resale competitive local carrier. (D.97-12-084, as modified by D.98-07-045.) The company also holds federal authority to provide international facilities-based and resold services.

U.S. TelePacific Holdings Corp. is a Delaware corporation formed for the purpose of establishing the proposed holding company structure.

3. Nature of Application

The proposed holding company structure is being established in connection with a multi-million-dollar loan transaction through which U.S. TelePacific Corp. will receive funding for its expansion in California and other markets. Applicants state that this funding will enable U.S. TelePacific Corp. to enjoy increased efficiencies and lower costs, thus strengthening its position in the competitive marketplace.

The proposed transaction will take place pursuant to a merger agreement dated September 20, 1999, a copy of which is attached as Exhibit B to the joint application. U.S. TelePacific Corp. will be merged with a corporate subsidiary of U.S. TelePacific Holdings Corp. The subsidiary was formed to provide a mechanism for establishing the restructuring and will no longer exist following the merger. Concurrently with the merger, shareholders of U.S. TelePacific Corp. will surrender their shares for equivalent shares in U.S. TelePacific Holdings Corp. According to applicants, ultimate control of the telecommunications system will remain the same.

Applicants state that approval of the proposed transaction is required as part of a larger transaction by which U.S. TelePacific Corp. will obtain significant financing. Applicants state that the transaction will not result in a change of management and will have no impact on any end user or other customer. Applicants state that by enhancing the company's position in the marketplace, the proposed transaction will serve the interests of customers and spur greater competition among carriers, thus serving the public interest. U.S. TelePacific Corp. 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.

4. 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 U.S. TelePacific Corp. are proposed.

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...." (In re Application of California Association of Long Distance Telephone Companies (1986) 21 CPUC2d 549.)

In Resolution ALJ 176-3025, dated October 21, 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.

Findings of Fact

1. Notice of this application appeared in the Commission's Daily Calendar of October 20, 1999.
2. Applicants seek approval pursuant to Pub. Util. Code § 854 of a transaction that will transfer control of U.S. TelePacific Corp. to a holding company.
3. U.S. TelePacific Corp. is a telecommunications company authorized to provide interstate and intrastate service and facilities-based and resale local exchange service in California.
4. U.S. TelePacific Holdings Corp. is a Delaware corporation formed for the purpose of establishing the holding company structure.
5. There will be no change in name, current services or rates provided by U.S. TelePacific Corp. 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. U.S. TelePacific Corp. and U.S. TelePacific Holdings Corp. 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 control of U.S. TelePacific Corp. will be transferred to a holding company structure.

2. U.S. TelePacific Corp. and U.S. TelePacific Holdings Corp. 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. U.S. TelePacific Corp. and U.S. TelePacific Holdings Corp. shall file new tariffs incorporating any changes in name, rates, services and management authorized in the transfer transaction.

4. U.S. TelePacific Corp. and U.S. TelePacific Holdings Corp. 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.

A.99-10-022 ALJ/GEW/hkr

6. Application 99-10-022 is closed.

This order is effective today.

Dated November 30, 1999, at San Francisco, California.

/s/ WESLEY M. FRANKLIN

WESLEY M. FRANKLIN
Executive Director