

Decision 99-12-039 December 16, 1999

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

In re Application of Atcall, Inc. for Approval,  
Nunc Pro Tunc, of a Corporate Reorganization  
and Transference of Stock.

Application 99-08-049  
(Filed August 26, 1999)

**O P I N I O N**

**1. Summary**

This application seeks retroactive approval under Section 854 of the Public Utilities Code of a corporate reorganization and transfer of control of Atcall, Inc., a non-dominant telecommunications carrier. The application is unopposed. The application is granted.

**2. Description of Applicant**

Atcall, a Delaware corporation with principal offices in Vienna, Virginia, was authorized to provide resold intrastate interexchange services in California pursuant to Decision 96-02-030, 64 CPUC2d 659, issued on February 23, 1996. It is authorized to provide resold intrastate service in 46 states, including California. In addition, Atcall has had authority to resell private lines interconnected to the public switched network for services between the United States and the United Kingdom and between the United States and Canada.

**3. Nature of Application**

Atcall seeks approval of a three-step corporate reorganization in which its current holding company structure was amended by creating a new first-tier holding company. In essence, two subsidiary companies, Atcall and Lifesaver Communications, Inc., a Delaware corporation not regulated by this

Commission, were merged into their common parent company, Indigo Light, Inc., also a Delaware corporation. Indigo, the surviving entity, concurrently changed its name to Atcall, Inc. The new Atcall, which subsumed the Atcall subsidiary, became a wholly owned subsidiary of Atcall Communications, Inc.

The final step of the reorganization involved the sale of 42.87% of the preferred stock of Atcall Communications, Inc., to 18 individual investors, none of whom hold more than 10% of the stock of the corporation. Khaled Alhegelan, who had been the sole shareholder of Indigo Light, retained controlling ownership of the new merged corporation.

Applicant states that there has been no change in the operational management of the Atcall services and no change in the operations or rates of the company. The officers and managers of the company remain the same. Atcall will continue to provide services pursuant to the terms and conditions of its tariff, and only the underlying ownership of the company will change.

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

The principals state that significant financial and competitive benefits are made available to the company through the reorganization of the holding company structure and merger of Atcall and Lifesaver into Indigo to form the new Atcall. Applicants state that the reorganization will enhance the carrier's operational flexibility and efficiency, and will give it the opportunity to strengthen its competitive position. Applicant states that the new Atcall will continue to provide international services without disruption, and that the transactions have been transparent to Atcall's customers.

The new Atcall has supplied a copy of its latest income statement, along with a detailed explanation of the reorganization.

## 5. Retroactive Approval

Applicant requests that approval of the corporate restructuring be made effective, nunc pro tunc, to August 18, 1998, the date of consummation of these transactions. Applicant states that prior approval of the transactions was not sought because no change in operational control was contemplated and, at the time, capital markets were such that a delay in negotiating the equity financing agreement might have jeopardized Atcall's operations.

To the extent required, applicant also asks that the Commission authorize the transfer to the new Atcall of the certificate of public convenience and necessity (U-5566-C).

## 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 reorganization here promises improved services for California consumers. Although the proposed transaction results in a change in the ultimate ownership of Atcall, it does not involve a change in the name under which the company operates, nor a change in the manner in which it provides service in California.

There have been no protests to this application, and the contemplated transfer of control appears to be noncontroversial.

In Resolution ALJ 176-3023, dated September 16, 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 176-3023.

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 § 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 3, 1999.

2. Applicant seeks approval pursuant to Pub. Util. Code § 854 of a corporate reorganization that resulted in a change in the ultimate ownership of Atcall.

3. Atcall is a switchless reseller of telecommunications services in California, and it is authorized to provide resold intrastate telecommunications services in 45 other states.

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

5. Applicant seeks retroactive approval of the corporate reorganization to August 18, 1998, which is the date of consummation 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 should be approved, with approval retroactive to the date of consummation of the reorganization, or August 18, 1998.

4. The new Atcall should be authorized to operate under the certificate of public convenience and necessity, U-5566-C.

## O R D E R

### IT IS ORDERED that:

1. Atcall, Inc. (Atcall), Atcall Communications, Inc., and Indigo Light, 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 Atcall Communications, Inc. will acquire control of Atcall.

2. Atcall 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 this order. A true copy of the instruments of transfer shall be attached to the notification.

3. Atcall shall file new tariffs incorporating any changes in name, rates, services and management authorized in the transfer transaction.

4. Atcall and Atcall Communications, Inc. shall make all books and records available for review and inspection upon Commission staff request.

5. The authority granted herein is made effective nunc pro tunc to the date of August 18, 1998.

6. The certificate of public convenience and necessity granted to Atcall in Decision 96-02-030 is transferred to the newly restructured Atcall entity, which is authorized to continue use of the utility identification number U-5566-C.

A.99-08-049 ALJ/GEW/hkr

7. Application 99-08-049 is closed.

This order is effective today.

Dated December 16, 1999, at San Francisco, California.

RICHARD A. BILAS

President

HENRY M. DUQUE

JOSIAH L. NEEPER

JOEL Z. HYATT

CARL W. WOOD

Commissioners