

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of InSite Connect LLC For Authority to Acquire, and of G. Clark Smith for Authority to Transfer, Control of Western States Teleport, Inc. (U 6457 C)

Application 06-12-024
(Filed December 19, 2006)

OPINION AUTHORIZING TRANSFER OF CONTROL**Summary**

This decision grants the application of InSite Connect LLC (InSite Connect) for approval of the transfer of control of Western States Teleport, Inc. (U 6457 C) (WST) to InSite Connect.

Parties to the Transaction

WST is a California corporation.¹ Its principal place of business is located at 2303 Poplar Street, Oakland, California. By Decision (D.) 01-03-023, WST was granted a certificate of public convenience and necessity (CPCN) to operate in California as a limited facilities-based and resale provider of local exchange and interexchange telecommunications services.

InSite Connect is a Delaware limited liability company authorized to do business in California. Its principal place of business is located at 301 N. Fairfax Street, Suite 101, Alexandria, VA 22314.

¹ Geoffrey Clark Smith is the President and sole shareholder of WST.

Proposed Transaction

Pursuant to the transaction, InSite Connect will acquire 80% of the common stock of WST. InSite Connect will own all of the facilities and equipment, all of the assets of WST, and all of WST's liabilities that arise from and after the closing date.

The applicants represent that the transaction will improve WST's access to capital by allowing InSite Connect to directly invest. InSite Connect has ample access to capital through its own assets as well as being a subsidiary of InSite Wireless Group LLC.

The applicants represent that customers will continue to receive service under the same rates and terms after the transaction is approved.

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.)

In a situation where a company that does not possess a CPCN desires to acquire control of a company that 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. Since WST possesses a CPCN to operate as a limited facilities-based and resale provider of local exchange and interexchange telecommunications services within California, we will apply the requirements for such authority to InSite Connect.

The Commission has established two major criteria for determining whether a CPCN should be granted. An applicant who desires to operate as a facilities-based and resale provider of local exchange and interexchange service must demonstrate that it has a minimum of \$100,000 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.

InSite Connect provided a cashier's check in the amount of \$125,000 that demonstrates that it has sufficient resources to meet our financial requirements. In its application, InSite Connect demonstrates it has sufficient technical expertise by relying upon the qualifications of Mr. Weisman who is the principal investor in both InSite Connect and its parent company InSite Wireless Group LLC. Mr. Weisman is currently CEO of InSite Wireless, a company that designs, installs, maintains and operates in-building wireless voice, data, and distributed antenna systems. Prior to his work at InSite Wireless, Mr. Weisman was founder, President, and CEO of Mountain Union Telecom, LLC, which constructed and operated a network of wireless tower sites.

The transaction will improve WST's access to capital. In addition, it will not result in a change to services, rates or charges. Therefore, the proposed transaction is not adverse to the public interest.

As discussed above, InSite Connect has satisfied our financial and experience requirements, and the proposed transaction is not adverse to the public interest. Therefore, we will grant the application.

Motion for Leave to File Under Seal

InSite Connect's December 19, 2006 motion to place under seal confidential information is granted because release of the information would place InSite

Connect at an unfair business advantage. The December 19, 2006, motion of InSite Connect to file under seal information referred to in the motion as confidential Exhibit "A" and confidential Exhibits "C" through "F" is granted to the extent set forth below.

Comments on Proposed Decision

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Pub. Util. Code § 311(g)(2) and Rule 14.6(c)(2) of the Commission's Rules of Practice and Procedure, the otherwise applicable 30-day period for public review and comment is waived.

Categorization and Need for Hearings

In Resolution ALJ 176-3185 dated January 11, 2007, the Commission preliminarily categorized this application as ratesetting, and preliminarily determined that hearings were not necessary. No protests have been received. There is no apparent reason why the application should not be granted. Given these developments, a public hearing is not necessary, and it is not necessary to disturb the preliminary determinations.

Assignment of Proceeding

Rachelle B. Chong is the assigned Commissioner and «GreetingLine» is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. By D.01-03-023, WST was granted a CPCN to operate in California as a limited facilities-based and resale provider of local exchange services, and as a limited facilities-based and resale provider of interexchange services.
2. As a result of the transaction, InSite Connect will own 80% of common stock and, therefore, a controlling interest in WST.

3. Customers will continue to receive service under the same rates, terms, and conditions after the transaction.

4. InSite Connect has sufficient financial resources to meet the Commission's requirements to provide facilities-based and resold local exchange and interexchange services.

5. InSite Connect possesses the necessary technical expertise required by the Commission.

6. Notice of this application appeared on the Commission's Daily Calendar on December 26, 2006.

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 facilities-based and resale provider of local exchange and interexchange telecommunications services within California as it does to an applicant for authority to provide such services.

2. InSite Connect meets the Commission's requirements for the issuance of a CPCN to provide facilities-based and resold local exchange and interexchange telecommunications services.

3. The transaction is not adverse to the public interest.

4. InSite Connect's December 19, 2006 motion to place under seal confidential information is granted because release of the information would place InSite Connect at an unfair business advantage.

5. In order to avoid delaying this transaction, the approval of the application should be made effective immediately.

O R D E R

IT IS ORDERED that:

1. Pursuant to Pub. Util. Code § 854, the joint application of InSite Connect LLC and Western States Teleport, Inc. (U 6457 C) for approval of the indirect transfer of control of Western States Teleport, Inc. to InSite Connect LLC is approved.
2. The financial and business information referred to in the December 19, 2006, motion of InSite Connect LLC as confidential Exhibit "A" and confidential Exhibits "C" through "F" shall remain under seal for a period of two years from the date of this decision and during that period, and the information shall not be made accessible or disclosed to anyone other than Commission staff except on the further order or ruling of the Commission, the assigned Commissioner, the assigned Administrative Law Judge (ALJ), or the ALJ then designated as Law and Motion Judge.
3. If InSite Connect LLC believes that further protection of this information is needed after two years, it may file a motion stating the justification for further withholding the information from public inspection, or for such other relief as the Commission rules may then provide. This motion must be filed no later than 30 days before the expiration of this protective order.
4. Application 06-12-024 is closed.

This order is effective today.

Dated _____, at San Francisco, California.