

Decision 07-11-029 November 16, 2007

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Yipes Enterprise Services, Inc. (U6357C) and FLAG Telecom Group Services Limited for Approval of a Change in Ownership of an Authorized Telecommunications Provider.

Application 07-08-003
(Filed August 21, 2007)

OPINION GRANTING TRANSFER OF CONTROL

1. Summary

This decision authorizes the transfer of control of Yipes Enterprise Services, Inc. (Yipes) to FLAG Telecom Group Services Limited (FLAG) (collectively, Applicants) in connection with the acquisition of the capital stock of Yipes by FLAG. This proceeding is closed.

2. The Application

Pursuant to Pub. Util. Code §§ 851-854, Applicants request Commission approval to transfer control of Yipes in connection with the acquisition of 100% of the issued and outstanding shares of capital stock of Yipes through its Holding Company (Yipes Holdings Inc.) by FLAG pursuant to a merger of a wholly-owned FLAG subsidiary into Yipes.

2.1. Yipes Enterprise Services, Inc.

Yipes is a privately-held Delaware corporation headquartered at 114 Sansome Street, 11th Floor, San Francisco, CA 94104. Yipes is a provider of managed Ethernet and application delivery services for enterprise customers. Yipes is a wholly-owned subsidiary of Yipes Holdings Inc. (Yipes Holdings), a

privately-held Delaware corporation headquartered at 114 Sansome Street, 11th Floor, San Francisco, CA 94104. Yipes Holdings was founded in July 2002 when it acquired the assets of Yipes Transmission, Inc.¹ Yipes Holdings is a venture backed, privately-held company, primarily owned by a number of institutional investors, the largest of which include Norwest Venture Partners, JP Morgan Partners Investing Funds, and Sprout Group (a venture capital affiliate of Credit Suisse).²

Yipes provides private data communications transport services. Yipes uses Ethernet services technology to offer businesses flexible, high-speed data links to connect their Local Area Networks (LANs) to the Internet. Yipes' customers connect to Yipes' network via a standard Ethernet interface, and Yipes ensures that its customers' traffic reaches its destination as efficiently as possible. Yipes provides network connectivity and management operations to business customers.³ In connection with the provision of these services in California, Yipes is authorized to provide limited facilities-based and resold competitive local exchange services pursuant to Decision 03-03-019, issued on March 13, 2003. Yipes is also authorized by the Federal Communications Commission (FCC) to provide domestic interstate and facilities-based and resold international telecommunications services.

¹ The sale was accomplished by implementation of the Plan of Reorganization that was approved by the Bankruptcy Court for the Northern District of California on November 8, 2002 in connection with Case No. 02-30750-DM.

² The investors do not act in concert and none of the entities exercise control over the day-to-day operations of Yipes Holdings.

2.2. FLAG Telecom Group Services Limited

FLAG is a privately-held Bermuda corporation headquartered at Milner House, 18, Parliament Street, Hamilton HM 12, Bermuda, and is a wholly-owned direct subsidiary of FLAG Telecom Group Limited (together with its subsidiaries, FLAG Telecom). Established in 1993, FLAG is a provider of international network transport and data services to telecommunications operators, content providers and ISPs, with operations in 19 countries. FLAG owns and manages a high-speed fiber-optic and MPLS/IP based network that connects key business markets in Asia, Europe, the Middle East and the USA.

FLAG Telecom holds submarine cable landing licenses from the FCC, as do other FLAG affiliates. Reliance Communications, Inc., a FLAG affiliate, holds an international Section 214 authorization from the FCC.

FLAG is part of Reliance Communications which is, in turn, part of the Reliance Group. The Reliance Group is the largest business group in India, with a market capitalization of over US \$41 billion. Ownership details for FLAG are provided in the application.

3. Description of the Transaction

Pursuant to an agreement dated July 14, 2007, between FLAG, Flag Telecom USA Ltd. (Merger Subsidiary) and Yipes Holdings, Merger Subsidiary, a wholly-owned subsidiary of FLAG, will merge into Yipes Holdings. Yipes will continue as the surviving corporation, wholly-owned through Yipes Holdings by FLAG.

³ Yipes provides only dedicated services, not presubscribed services. As such, anti-slamming and similar measures applicable to traditional voice-oriented services generally are not applicable to Yipes.

Applicants state that the proposed transaction does not involve the transfer of any operating authority, assets or customers. There will be no transfer of certifications to provide service. Although Yipes' ownership will change, its operations and customers likewise will not be affected by the transaction. Immediately following the closing, Yipes will continue to offer its customers the same services at the same rates, terms and conditions as at present pursuant to existing authorizations, tariffs, contracts, and published rates and charges. The only change expected in connection with the consummation of the transaction will be that Yipes will be owned by FLAG.

4. Financial Showing

Applicants furnished under seal, as Exhibit E to the application, the most recent financial statement for FLAG. This document shows that FLAG meets the Commission's financial standards applicable to parties seeking control of facilities-based carriers.

5. Motion for Protective Order

Pursuant to Pub. Util. Code § 583 and General Order 66-C, Applicants request that the financial information submitted in the application be kept under seal. Applicants represent that the information is proprietary and sensitive and the information, if revealed, would place FLAG at an unfair business disadvantage. We have granted similar requests in the past and will do so here.

6. Public Interest Considerations

The sole issue in this proceeding is whether, upon the change of control, Yipes will continue to have requisite managerial, financial and technical support to provide service, and whether granting this application is otherwise consistent with the public interest.

Applicants state that the proposed transaction will serve the public interest. After consummation of the transaction, Yipes will continue to offer services under the same name and operating authority as at present in California. The transaction involves no change in entities offering service to consumers, or the services, rates, terms and conditions of such service. All existing tariffs will remain in place at this time. Any future changes will be made in accordance with applicable Commission requirements. According to Applicants, the transaction will be transparent to consumers in California and will not have any adverse impact on them. The only change will be the ownership of Yipes.

Further, Applicants state that the transaction will serve the public interest because enterprise customers in California will benefit from the ability of FLAG Telecom to expand and improve its services in the US. Further, the combination of Yipes' Ethernet services with FLAG Telecom's network will allow Yipes to achieve global expansion, which Yipes views as critical in today's marketplace. Yipes expects to leverage FLAG Telecom's global assets and expertise to achieve this goal. For example, Yipes' Ethernet services will be overlaid on FLAG Telecom's global next-generation network, allowing Yipes to expand its reach worldwide. Customers in California will benefit from the increased services and capabilities of Yipes.

Finally, Applicants state that the proposed transaction does not present any anticompetitive issues. The transaction will not eliminate a provider of competitive telecommunications services in California and, therefore, the total amount of competitive service offerings will not change. Yipes operates as a competitive provider of its telecommunications services and will continue to do so. According to Applicants, the transaction will strengthen Yipes' ability to

provide customers with the same competitive high quality, reliable and cost-effective services that it is known for, and allow its scope and innovation to expand to bring benefits to consumers in California.

7. Discussion

Applicant seeks approval of the proposed transfer of control pursuant to Pub. Util. Code §§ 854(a) which, in relevant part, states:

No person or corporation ... shall merge, acquire, or control ... any public utility organized and doing business in this state without first securing authorization to do so from the commission ... Any merger, acquisition, or control, without that prior authorization shall be void and of no effect.

The Commission has broad discretion to determine if it is in the public interest to authorize a transaction pursuant to § 854(a).⁴ The primary standard used by the Commission to determine if a transaction should be authorized under § 854(a) is whether the transaction will adversely affect the public interest.⁵

For the following reasons, we conclude that it is reasonable to grant this § 854(a) application. First, Yipes will continue to operate as it has done in the past, using the same names and operating authorities. Second, the public may benefit from the transfer of control to the extent the transaction enhances the ability of Yipes to raise capital, in order to maintain and expand services and operations in California. Third, there is no opposition to this application. For

⁴ D.95-10-045, 1995 Cal. PUC LEXIS 901, *18-19.

⁵ D.00-06-079, p. 13.

these reasons, we see no reason to withhold authority for the transfer of control before us here.

8. Categorization and Need for Hearing

In Resolution ALJ 176-3198, dated September 6, 2007, the Commission preliminarily categorized this proceeding as Ratesetting, and preliminarily determined that hearings were not necessary. No protests have been received. Given this status, public hearing is not necessary and it is not necessary to alter the preliminary determinations made in Resolution ALJ 176-3198.

9. Waiver of Comment Period

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.

10. Assignment of Proceeding

Timothy Alan Simon is the assigned Commissioner and Bertram D. Patrick is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. Yipes is authorized by D.03-03-019 to provide limited facilities-based and resold local exchange telecommunications services and resold intraLATA and interLATA interexchange telecommunication services.

2. Yipes seeks authorization of the transfer of control resulting from FLAG acquiring a major ownership interest in its corporate structure.

3. Pub. Util. Code § 854(a) requires Commission authorization to transfer control of a public utility. Any transfer of control without Commission authorization is void under the statute.

4. Yipes will continue offering current services and use the same name and authority after the transfer of control.

5. Yipes is current on reporting and transmitting the user fees applicable to its California operations.

6. Upon completion of the transaction, Yipes will not change its name or its rates, terms or conditions of service as a result of the change in ultimate control.

7. Applicants contend that the transaction will be transparent to California consumers.

8. There is no opposition to this application.

Conclusions of Law

1. This is a Ratesetting proceeding and no hearing is necessary.

2. This application should be approved and become effective immediately because it is not adverse to the public interest.

3. Approval of this application is not a finding of value of the rights and property being transferred.

O R D E R

IT IS ORDERED that:

1. Yipes Enterprise Services, Inc. (Yipes) is authorized, pursuant to Pub. Util. Code §§ 851-854 to implement the transfer of control of Yipes as described in the application.

2. The motion to have the financial information filed with this application kept under seal is granted for two years from the effective date of this decision. During that period, the information shall not be made accessible or disclosed to anyone other than the 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 Yipes believes that further protection of the information kept under seal is needed, it may file a motion stating the justification for further withholding of the information from public inspection, or for such other relief as the Commission's rules may then provide. This motion shall be filed no later than one month before the expiration date.

4. Yipes shall notify the Director of the Commission's Communications Division in writing of the transfer of control, as authorized herein, within 30 days of completion of this transaction.

5. Application 07-08-003 is closed.

This order is effective today.

Dated November 16, 2007, at San Francisco, California.

MICHAEL R. PEEVEY

President

DIAN M. GRUENEICH

JOHN A. BOHN

RACHELLE B. CHONG

TIMOTHY ALAN SIMON

Commissioners