

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Joint Application of First Communications, LLC (U6837C), Globalcom, Inc. (U6093C), Xtension Services, Inc. (U6508C) and Summit Data Services, Inc. for Approval of a Transfer of Control.

Application 12-11-008
(Filed November 8, 2012)

DECISION AUTORIZING TRANSFER OF CONTROL TITLE**1. Summary**

Applicants First Communications, LLC (U6837C) (FCL), Globalcom, Inc. (U6093C) (Globalcom), Xtension Services, Inc. (U6508C) (Xtension) (collectively Licensees) and Summit Data Services, Inc. (Summit) are granted approval for the transfer of control of Licensees to Summit (Transaction), a company newly formed for the purposes of completing the Transaction by current and former management of Licensees.

2. Parties to the Transaction**2.1. First Communications, Inc. and Licensees**

First Communications, Inc. (FCI) is a Delaware corporation located at 3340 West Market Street, Akron, Ohio 44333. FCI is a holding company that operates a business services group of carriers comprised of Licensees FCL, Globalcom, and Xtension, that offer data and switched voices services in 49 states. FCI owns 100 percent of the ownership interests of FCL. FCL, an Ohio limited liability company, is authorized in California to provide facilities-based and resold local exchange and resold interexchange telecommunications services

pursuant to authorization Decision (D.) 07-03-030 in Application (A.) 06-11-013 granted on March 15, 2007 and D.03-10-066 in A.03-06-026 granted on October 22, 2003, respectively. Globalcom, an Illinois corporation, is authorized in California to provide resold interexchange and resold and facilities-based local exchange telecommunications services pursuant to authorizations D.01-07-015, D.99-02-019 and D.98-12-002 granted on July 12, 2001, February 4, 1999 and December 1, 1998, respectively. Xtension, a Delaware corporation, is authorized in California to provide resold interexchange telecommunications service pursuant to authorization D.01-03-006 in A.01-01-045 granted on March 5, 2001.

2.2. Summit Data Services, Inc.

Summit is a newly formed Ohio corporation formed for the purposes of this Transaction with offices located at 3421 Ridgewood Road, Suite 125, Akron, Ohio 44333. Summit's owners are Joseph R. Morris, Mark Sollenberger, and Sandi R. Murphy. Mr. Morris was an officer of FCI since 1998, most recently serving as the President of FCI and Licensees until June 30, 2012. Mr. Sollenberger is the Chief Financial Officer of FCI and the Licensees, and Ms. Murphy is the Senior Vice President and General Counsel of FCI and Licensees.

3. The Proposed Transaction

Summit will acquire control of Licensees by acquiring from FCI 100 percent of the membership interests of FCL, 100 percent of the shares of Xtension, and 100 percent of the shares of First Global Telecom, Inc., the direct parent of Globalcom, for a cash purchase price of \$30 million and assumption of certain liabilities. As a result, Licensees will become wholly-owned subsidiaries of Summit.

No transfer of the Licensees' Certificates of Public Convenience and Necessity (CPCNs), assets, or customers will occur with this transaction. The applicants represent that the transaction will not affect the daily management or operations of the Licensees, and after the transaction is consummated, the Licensees will continue to provide service at current rates, terms, and conditions. Applicants further assert that the transaction will not eliminate existing or potential competitors, and will enhance the Licensees' ability to compete, to the ultimate benefit of consumers.

4. Discussion

The primary standard, by which the Commission reviews whether a transaction should be approved under Section 854(a), is whether the transaction will be "adverse to the public interest."¹ As part of its determination, and where a company acquiring control of a certificated telecommunications carrier does not possess a CPCN in California, the Commission applies the same requirements that govern a new applicant seeking a CPCN to exercise the type of authority held by the company being acquired. Specifically, the company must demonstrate a minimum of \$100,000 in cash or cash equivalent and demonstrate adequate technical expertise in telecommunications or a related business.

The applicants have provided information that reflects that the proposed change in ultimate ownership of the Licensees will not adversely impact their operations or financial status. Applicants have provided information that demonstrates that the acquiring company, Summit, has sufficient managerial and

¹ See D.03-12-033, mimeo at 6; D.01-06-007, mimeo at 15.

technical expertise and sufficient financial resources to operate the acquired carrier.

Information provided about Summit's management team reflects its significant experience in the telecommunications industry. The applicants also state that to the best of their knowledge, no legal complaints have been decided against Summit or any affiliates, or are pending in any court in California or any other state, involving an alleged violation of Section 17000 *et seq.* of the California Business and Profession Code, any misrepresentation to customers, or any similar violations. Applicants also state that to the best of their knowledge, no Applicant, any affiliate, officer, director, partner, nor owner of more than 10 percent of Summit, or any person acting in such capacity whether or not formally appointed, has been sanctioned by the Federal Communications Commission or any state regulatory agency for failure to comply with any regulatory statute, rule, or order. In addition, applicants have represented that there will be no change in the Licensees' management, operations, and service offerings and thus the transaction will not affect their operations. Thus, the transaction satisfies the Commission's technical requirements.

As for financial qualifications, the applicants have attached Summit's 2012 audited consolidated financial statements under seal. The financial statements of Summit reflect that it has more than sufficient cash or cash equivalents to meet the Commission's requirements for acquiring a CPCN. Accordingly, the transaction meets the requisite financial requirements and there is no basis to find that the transaction will adversely affect the Licensees' financial status.

We find that Applicants have demonstrated that Summit has the financial and technical qualifications to acquire the Licensees.

We also find that the transaction is consistent with the public interest. There will be no immediate changes to the Licensees' direct management or the service they provide as a result of the transfer. Applicants represent that the Licensees will continue to operate in the same manner after the transaction is completed as it operates today. The applicants also assert that there will be no interruption or disruption of service to customers. The transaction will thus be seamless for the Licensees' customers. Finally, the applicants note that the transfer of control will enable the Licensees to become stronger competitors and allow them to compete with other, larger telecommunications providers in California. Increased competition will benefit consumers and the telecommunications marketplace. Accordingly, we find that the transaction is consistent with the public interest.

5. California Environmental Quality Act (CEQA) Compliance

The application proposes no new construction and thus, there is no possibility that the transaction will have a significant adverse impact on the environment. The proposed transaction does not constitute a "project" under CEQA, California Public Resources Code, Section 21000 *et. seq.*

6. Categorization and Need for Hearings

In ALJ-Resolution 176-3305, the Commission preliminarily categorized this proceeding as ratesetting, and preliminarily determined that hearings were not necessary. Based on the record, the Commission concludes that a public hearing is not necessary, and the preliminary determinations in ALJ-Resolution 176-3305 therefore will not be altered.

7. Waiver of Comment Period

The application was noticed in the Commission's Daily Calendar on November 16, 2012. No protests were filed. This is an uncontested matter in

which the decision grants the relief requested. Accordingly, pursuant to Public Utilities Code Section 311(g)(2) of the Public Utilities Code 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.

8. Assignment of Proceeding

Catherine J.K. Sandoval is the assigned Commissioner and Karl J. Bemederfer is the assigned Administrative Law Judge in this proceeding.

9. Request to File Under Seal

Pursuant to Rule 11.4, applicants filed a motion for leave to file Exhibit C to the application as confidential materials under seal. Applicants represent that the information is competitively sensitive and proprietary and disclosure could place them at an unfair business disadvantage if disclosed. The motion is unopposed. We grant Applicants' motion to treat Exhibit C to the application as confidential.

Findings of Fact

1. FCI is a Delaware holding company that owns licensees that offer data and switched voices services in 49 states.
2. FCL is an Ohio limited liability company authorized in California to provide facilities-based and resold local exchange and resold interexchange telecommunications services and is wholly-owned by FCI.
3. Globalcom is an Illinois corporation authorized in California to provide resold interexchange and resold and facilities-based local exchange telecommunications services and is wholly-owned by FCI.
4. Xtension is a Delaware corporation authorized in California to provide resold interexchange telecommunications service and is wholly-owned by FCI.

5. The proposed transaction would result in Summit acquiring 100 percent of the ownership interests in FCL, Globalcom and Xtension and thereby becoming the parent of all three Licensees.

6. The applicants have demonstrated that they have sufficient financial resources and the technical expertise to operate as providers of facilities-based and resold local exchange and resold interexchange telecommunications services.

7. No new construction is being proposed in the application.

8. No complaints alleging fraud or significant wrongdoing are pending against the applicants before this Commission, the FCC, or any other state commission.

9. The applicants have filed a motion for leave to file under seal confidential materials contained in Exhibit C to the application.

10. Notice of this application appeared on the Commission's Daily Calendar on November 16, 2012. There were no protests to the application.

11. No hearings are necessary.

Conclusions of Law

1. The Commission applies the same requirements to a request for approval of an agreement for the indirect transfer of control of providers of local exchange and interexchange services, as it does to an initial applicant for authority to provide such services.

2. Summit meets the Commission's requirements for an acquiring company of an authorized provider of local exchange and interexchange telecommunications services.

3. The indirect transfer of control of the Licensees proposed in the application would not be adverse to the public interest.

4. It can be seen with certainty that the proposed transfer will not have any adverse impact on the environment.
5. The application should be approved.
6. The matter is uncontested, and the decision accordingly should be effective on the date it is signed.
7. Applicants remain subject to all applicable Commission rules, decisions, General Orders, and statutes including Public Utilities Code Section 451 to take all actions “...necessary to promote the safety, health, comfort and convenience of [utility] patrons, employees and the public.”

O R D E R

IT IS ORDERED that:

1. Pursuant to Public Utilities Code Section 854(a), the indirect transfer of control of First Communications, LLC (U6837C), Globalcom, Inc. (U6093C) and Xtension Services, Inc. (U6508C) to Summit Data Services, Inc. in accordance with the documents and agreement submitted in conjunction with Application 12-11-008, is authorized.
2. Applicant’s motion to file under seal its Exhibit C is granted. The information will remain under seal for a period of two years after the date of this order. During this two-year period, this information will remain under seal and may not be viewed by any person other than the assigned Commissioner, the assigned Administrative Law Judge, the Assistant Chief Administrative Law Judge, or the Chief Administrative Law Judge, except as agreed to in writing or as ordered by a court of competent jurisdiction. If Applicant believes that it is necessary for this information to remain under seal for longer than two years,

Applicant may file a new motion at least 30 days before the expiration of this limited protective order.

3. Application 12-11-008 is closed.

This order is effective today.

Dated _____, at San Francisco, California.