

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Joint Application of TNCI Operating Company LLC and Trans National Communications International, Inc. (U6265C) for Approval for Assignee to Acquire the Customers and Certain Assets, Including the Certificates of Public Convenience and Necessity, of Assignor.

Application 13-04-011
(Filed April 12, 2013)

DECISION APPROVING ASSIGNMENT OF CERTAIN ASSETS, INCLUDING A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY AND CUSTOMERS, BY TRANS NATIONAL COMMUNICATIONS INTERNATIONAL, INC. TO TNCI OPERATING COMPANY, LLC.**1. Summary**

Pursuant to § 851 of the Public Utilities Code,¹ we approve the proposed transaction whereby TNCI Operating Company, LLC acquires certain assets, including the Certificate of Public Convenience and Necessity and customer lists, of Trans National Communications International, Inc. through a sale pursuant to Section 363 of the United States Bankruptcy Code (Transaction)² and pursuant to the Asset Purchase Agreement, Dated as of January 31, 2013.

This proceeding is closed.

¹ All statutory references herein are to the California Public Utilities Code unless otherwise indicated.

² In re Trans National Communications International, Inc., Chapter 11, Case No. 11-19595-WCH, U.S. Bankr. Court (E.D. Mass).

2. Factual Background

On October 9, 2011, Trans National Communications International, Inc. (TNCI or Assignor) filed a voluntary petition for relief under chapter 11 of Title 11, U.S.C. §§ 101 *et seq.*, as amended, in the United States Bankruptcy Court for the District of Massachusetts (the Bankruptcy Court). Throughout the proceeding, TNCI has continued to operate its business and provide telecommunication services to its customers. TNCI and TNCI Operating Company, LLC (TNCI-Op-Co or Assignee) entered into an Asset Purchase Agreement, Dated January 31, 2013 pursuant to Section 363 of the United States Bankruptcy Code (The Transaction). As a result of the Transaction, TNCI's customers will be transferred to TNCI-Op-Co, which will become the service provider for those customers. The Bankruptcy Court approved the Transaction on March 13, 2013. The Agreement and Sale Order provide for an Initial Closing following receipt of approval from the Federal Communications Commission (FCC), and for additional closing at approximately 45 day intervals until the Final Closing, which will occur on or before the 180th day following the Initial Closing. At each closing, TNCI will assign to TNCI-Op-Co those assets and customers for which applicable state governmental approval have been obtained in order to complete the assignment.

Applicants jointly filed Application (A.) 13-04-011 on April 12, 2013. The Application requests Commission authority for TNCI to assign certain of its assets, including customers and Certificate of Public Convenience and Necessity (CPCNs), to TNCI-Op-Co.

On May 9, 2013, Resolution ALJ 176-3314 reached a preliminary determination that this proceeding was ratesetting and that no hearings would be necessary.

The Commission has received no protests to the Application.

3. The Transaction

TNCI is a Delaware corporation with its principal offices located in Boston, Massachusetts. TNCI originally holds a CPCN from the Commission to provide non-dominant interexchange Services (resale services only)³, which was later expanded to include certification as a competitive local exchange services as a limited facilities-based carrier and reseller⁴. TNCI offers communications services including local and long distance service, audio/web conferencing, dedicated Internet Protocol (IP)-enabled, integrated voice and data services, private line, frame relay and enhanced network solutions. TNCI only provides services to business and enterprise customers.

TNCI-Op-Co is a newly formed Delaware limited liability company with its principal place of business in Santa Barbara, California. It is a wholly owned subsidiary of TNCI Holdings, LLC., a Delaware Limited Liability Company. TNCI Holdings, LLC., is wholly owned by investment funds managed by Garrison Investment Group, a middle market investor.

The Applicants assert that this transaction “will serve the public interest.”⁵ They contend that the proposed Transaction will result in the assignment of TNCI customers to a financially stable company that will continue to provide telecommunications services to the assigned customers without interruption and under the same rates, terms and conditions of services as are provided by TNCI.

³ See Decision (D) 99-10-076 issued October 29, 1999.

⁴ See D.04-09-051 issued September 23, 2004.

⁵ Joint Application at 13.

TNCI-Op-Co will be overseen by a well-qualified management team with substantial telecommunications experience and technical expertise.⁶

4. Discussion

The Commission has established that:

Where a company that does not possess a Certificate of Public Convenience and Necessity (CPCN) desires to acquire control of a company or companies that do possess a CPCN, the Commission will apply the same requirements to the acquiring company as would be applied to an initial applicant seeking a CPCN.⁷

The Commission has two major criteria for determining whether a CPCN should be granted, or transferred. An applicant who desires to operate as a provider of resold and limited facilities based exchange and interexchange services must demonstrate that it has a minimum of \$100,000 in cash or cash equivalent for operations of the company plus the costs of deposits to be paid to other carriers. In addition, the applicant is required to make a reasonable showing of technical expertise in telecommunications or a related business.

TNCI-Op-Co has submitted financial documentations showing a minimum of \$100,000 in cash plus the costs of deposits to be paid to other carriers,⁸ as well as a declaration by Mr. Jeff Compton, TNCI-Op-Co's President and Chief Executive Officer to keep such funds available for a minimum of 12 months after Commission approval for operations of the company and the costs of deposits to other carriers.⁹

⁶ Joint Application at 13.

⁷ See D.11-11-017 at 4.

⁸ See Response to Administrative Law Judge Request (ALJ)-Attachment A.

⁹ See Response to ALJ Request- Attachment B.

Applicants state that TNCI-Op-Co is technically and managerially qualified to acquire and operate TNCI's existing telecommunications operations in California.¹⁰ In support, Applicants have submitted as Exhibit F to its application a description of the managerial experience of TNCI-Op-Co's President and Chief Executive Officer and selected members of the Board of managers for its parent company, TNCI Holdings. TNCI-Op-Co will also employ some of the same technical, operational, and managerial personnel as TNCI to ensure a continuity of knowledge and service.¹¹

Further, TNCI-Op-Co represents that no persons associated with or employed by TNCI-Op-Co as an affiliate, officer, director, partner, or owner of more than 10% of TNCI-Op-Co was previously associated with any telecommunication carrier that filed for bankruptcy, or was sanctioned, investigated or is being investigated by the FCC or any state regulatory agency for failure to comply with any regulatory statute, rule or order. We note nothing in the record which contradicts these assertions.

As stated above in the Factual Background, TNCI filed a voluntary petition for relief under Chapter 11 of Title 11, U.S.C. §§ 101 *et seq.*, as amended. Throughout the Chapter 11 proceeding, TNCI has continued to operate its business and provide telecommunication services to its customers. At closing of the Transaction, TNCI-Op-Co will employ certain personnel of TNCI, which on its face seems to violate the standards set out by the Commission. However, the Commission has previously granted CPCN authority to applicants despite applicants having affiliated persons that were previously associated with another

¹⁰ See Joint Application at 9-10.

¹¹ See Joint Application at 10.

telecommunications carrier that filed for bankruptcy.¹² Applicants that may be otherwise suitable for being granted authority will not be excluded from applying for operating authority.¹³ We find that the Applicants have made sufficient disclosures and shown that it is in the public interest to grant the transfer and assignment of the CPCN.

We find that the TNCI-Op-Co has demonstrated sufficient financial strength and technical expertise to satisfy Commission requirements for transfer of a CPCN.

Section 851 also requires that a public utility receive prior approval from the commission before disposing any property necessary or useful in the performance of its duty to the public. Specifically, Section 851 states:

A public utility...shall not sell, lease, assign, mortgage, or otherwise dispose of, or encumber the whole or any part of its...property necessary or useful in the performance of its duties to the public... without first having... secured an order from the commission authorizing it to do so for qualified transactions valued above five million dollars...

In administering these sections of the Public Utilities Code, "the basic task of the Commission in a Section 851 proceeding is to determine whether the transaction services the public interest: ' the public interest is served when utility property is used for other productive purposes without interference with the utility's operation or affecting service to utility customers.'" ¹⁴

The assignment of assets in this transfer, including customers and CPCNs, will serve the public interest. Existing customers of TNCI will be transferred to a

¹² See e.g. D.09-09-022, D.08-12-027; D.06-06-050; D.04-12-021; D.03-12-048.

¹³ See D.13-05-035.

¹⁴ See D. 09-01-029 at 5 (citing D.-02-01-058).

financially stable company with the same rates, terms and conditions and with no interruption to their service. TNCI-Op-Co is overseen by a management team with substantial experience and expertise in the telecommunications field, and the transaction has been structured to assure an orderly transition.

TNCI-Op-Co also submitted a copy of the Customer Notice of Transfer sent to existing TNCI customers. The notice complies with section 3 of the Telecommunications Industry Rules by providing a minimum of 30-days-notice. It also complied with section 3.1 of that same rule by identifying the transferee, stating that there are no changes to the rates, chargers, terms and conditions of service, stating that customers have the right to select another utility, and providing a toll free customer service telephone number.

The transfer of assets for which authority is sought is categorically exempt from the requirement for the preparation of environmental documents and does not have a significant effect on the environment within the meaning of California Environmental Quality Act (CEQA) Guidelines 15300 *et seq.* As TNCI is a reseller and limited facilities-based provider in California and does not own any network or other facilities except equipment installed in existing buildings or structures in the state, the proposed Transaction can be seen as having no significant adverse effect on the environment.

Based on the terms of the proposed transaction, we find that approving this transaction, is in the public interest. Since the transaction is in the public interest, it is also not adverse to the public interest. Thus, the proposed transaction fulfills the requirements of §851 and it is reasonable for the Commission to approve this transaction.

5. Motion for confidentiality

With their application, the Applicants filed a Motion for Leave to File Confidential Materials Exhibits D (Pro Forma Financial Statements of TNCI-Op-Co) and E (Financial Statements of TNCI) Under Seal pursuant to Pub. Util. Code § 583 and Rule 42 of the Commission's Rules of Practice and Procedure and General Order 66-C (2.2)(b). Applicants assert that the information contained in Exhibit D and E are non-public financial information for TNCI-Op-Co and TNCI. Joint Applicants assert that public disclosure of this private, confidential information could subject them to unfair competitive disadvantage in connection with the business negotiations and dealings with vendors, customers, potential business partners and others. We have granted similar requests in the past and we agree that details of the TNCI-Op-Co pro forma financial statement and TNCI financial statements, if disclosed, could place applicants at an unfair competitive disadvantage. Therefore, the motion is granted.

6. Categorization and Need for Hearing

In Resolution ALJ 176-3314, dated May 9, 2013, the Commission preliminarily categorized this application as rate setting, and preliminarily determined that no hearings were necessary. As the Commission has received no protests to this application, a public hearing is not necessary.

7. Assignment of Proceeding

Catherine J.K. Sandoval is the assigned Commissioner and S. Pat Tsen is the assigned Administrative Law Judge and the presiding officer in this proceeding.

8. Waiver of Comment Period

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to 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.

Findings of Fact

1. TNCI is a Delaware Corporation.
2. TNCI-Op-Co is a Delaware Limited Liability Company.
3. TNCI provides telecommunication services in the contiguous United States, Hawaii, the District of Columbia and Puerto Rico.
4. TNCI holds a CPCN as a non-dominant interexchange carrier and a limited facilities-based carrier and reseller of competitive local exchange services. It provides services only to business and enterprise customers.
5. TNCI filed a voluntary petition for Chapter 11 Bankruptcy and the Bankruptcy Court has approved the transfer of certain assets, including TNCI customers, equipment, and its CPCNs (Transaction).
6. TNCI-Op-Co is a newly formed company created for the purpose of the Transaction and does not currently provide telecommunication services.
7. Where a company that does not possess a California CPCN desires to acquire control of a company or companies that do possess a California CPCN, the Commission will apply the same requirements, to the acquiring company, as would be applied to an initial applicant seeking a CPCN.
8. TNCI-Op-Co's management has significant experience in the telecommunications industry and it will also retain some of the technical and operational employees of TNCI to ensure a smooth transition.

9. Applicants have provided financial statements demonstrating that TNCI-Op-Co has access to well over \$100,000 in cash or cash equivalent, which is reasonably liquid and available and which is sufficient to cover operating expenses and any deposits third-party carriers may require.

10. TNCI-Op-Co has also submitted a declaration signed by its Chief Executive Officer pledging to keep a minimum of \$100,000 in liquid assets available for operations for 12 months after the Commission grants assignment authority.

11. Applicants have complied with the customer notice requirements as set out in Section 3.1 of the Telecommunications Industry Rules.

12. Applicants represent that no other persons associated with or employed by Applicants as an affiliate, officer, director, partner, or owner of more than 10% of Applicant (other than existing personnel that will be retained from TNCI) was previously associated with any telecommunication carrier that filed for bankruptcy, or was sanctioned by the Federal Communications Commission or any state regulatory agency for failure to comply with any regulatory statute, rule or order.

13. TNCI's current customers will continue to receive service under the same rates, terms and conditions after the Transaction and will be transferred to a financially stable company.

14. The Transaction, as described in the Joint Application serves the public interest, and produces benefits for businesses, the local community, and the states' communications infrastructure.

15. Approving the proposed transaction, as described in the Joint Application is the relief requested by the Joint Applicants and this relief is not opposed by any party in this proceeding.

Conclusions of Law

1. TNCI should be allowed to assign certain assets, including customers and CPCNs, to TNCI-Op-Co.
2. TNCI-Op-Co has the financial resources and the technical capabilities that the issuance of a CPCN would require.
3. The transaction is in the public interest, meets the criteria of Section 851 of the Pub. Util. Code, and it should be approved.
4. Applicants have complied with the customer notice requirements as set out in Section 3.1 of the Telecommunications Industry Rules.
5. This proceeding is an uncontested matter.
6. The Joint Application should be approved.
7. TNCI-Op-Co should continue to be subject to the applicable Commission rules, decisions, General Orders, and statutes that pertain to California public utilities.
8. Hearings are not necessary in this proceeding.

O R D E R**IT IS ORDERED** that:

1. Application 13-04-011, jointly filed by TNCI Operating Company, LLC and Trans National Communications International, Inc. pursuant to Public Utilities Code §851 is granted.
2. TNCI Operating Company, LLC must obtain a performance bond of at least \$25,000 in accordance with Decision 13-05-035. The performance bond must be a continuous bond (*i.e.*, there is no termination date on the bond) issued by a corporate surety company authorized to transact surety business in California, and the Commission must be listed as the obligee on the bond. Within 30 days of

the effective date of the transfer of control, TNCI Operating Company, LLC must submit a Tier-1 advice letter to the Director of Communications, containing a copy of the carrier's executed bond, and submit a Tier-1 advice letter annually, but not later than March 31, with a copy of the executed bond.

3. TNCI Operating Company, LLC must not allow its performance bond to lapse during any period of its operation. Pursuant to Decision 13-05-035, the Commission may revoke a Certificate of Public Convenience and Necessity if a carrier is more than 120 days late in providing the Director of the Communications Division a copy of its executed performance bond.

4. In addition to all the requirements applicable to competitive local exchange carriers and interexchange carriers included in Appendices to Decision 99-10-076 and Decision 04-09-051, TNCI Operating Company, LLC, continues to be subject to all applicable Commission rules, decisions, General Orders, and statutes that pertain to California public utilities.

5. Applicant's Motion for Leave to File Confidential Materials Under Seal 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 by Applicants or as ordered by a court of competent jurisdiction. If Applicants believe that it is necessary for this information to remain under seal for longer than two years, Applicants may file a new motion at least 30 days before the expiration of this limited protective order.

6. Application 13-04-011 is closed

This order is effective today.

Dated _____, at Carmel-by-the-Sea, California.