

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Joint Application of Byron Smyl, Receiver
for Trillion Partners, Inc. and TX
Communications LLC to Qualify TX
Communications LLC as a Public Utility and
Transfer Trillion Partners Inc.'s (U7054C)
Certificate of Public Convenience and
Necessity to TX Communications LLC.

Application 12-11-024
(Filed November 21, 2012)

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

Joint Applicants Byron Smyl, Receiver for Trillion Partners, Inc. (Trillion) and TX Communications LLC (TXC, jointly Applicants) are granted approval for the transfer of control of Trillion to TXC, a company newly formed for the purpose of completing the transfer of and continuing Trillion's business operations.

2. Parties to the Transaction**2.1. Trillion Partners Inc.**

Trillion is a Delaware corporation whose principle office is located at 9208 Waterford Centre Boulevard, Suite 150, Austin, Texas 78758. Trillion provides facilities-based local service as a competitive local exchange carrier and interexchange telecommunications services throughout the service territories of Pacific Bell Telephone Company, Verizon California Inc., Roseville Telephone Company, and Citizens Telecommunications. Trillion provides E-Rate eligible

Voice over Internet Protocol and broadband wide area network services to K-12 school districts and consortia. Currently Trillion provides services to over 800 schools and approximately half a million students, many of whom are located in rural and economically disadvantaged areas.

On July 8, 2011, Tatonka Capital Corporation (Tatonka) filed a civil action in the United States District Court (Court) against Trillion. The suit sought appointment of a receiver and other remedies due to Trillion's material default on its payments and other obligations to Tatonka. Byron Smyl was appointed as the Receiver on July 27, 2011 to oversee Trillion's assets, which include the Certificate of Public Convenience and Necessity (CPCN), the subject of the transfer application in this proceeding.

2.2. TX Communications LLC

TXC is a Delaware limited liability company with its principal office located at 805 Third Avenue, 20th Floor, New York City, New York 10022. TXC is a newly formed company, created by TX Broadband Holding Company, for the sole purpose of implementing the transaction described in this application and continuing the Trillion business as TXC.

3. The Proposed Transaction

On August 27, 2010, Byron Smyl, Receiver for Trillion, executed an Asset Purchase Agreement with TXC's sole member, TX Broadband Holding Company.¹ Three of Trillion's creditors comprise TX Broadband Holding Co.: Global Leveraged Capital Credit Opportunity which acquired 63.81% of Trillion equity; Global Leveraged Capital Primary Credit Fund which acquired 22.82% of

¹ The Asset Purchase Agreement was amended on October 24, 2012.

Trillion equity; and Tatonka which acquired 13.37% of Trillion equity. The Asset Purchase Agreement which included a purchase price of \$50 million and the assumption of certain liabilities was approved by the Court on October 26, 2012.²

The Applicants represent that after the transfer is approved, TXC, under the direction of TX Broadband Holding Company, will continue to operate the existing Trillion business without any changes to the rates, terms or conditions of service. Applicants further assert that approval of the transfer will benefit the existing school system and school consortia customers who rely on the services currently provided by Trillion.

4. Discussion

4.1. Standard of Review

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.”³ 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 make a showing that it has a minimum of \$100,000 in cash or cash equivalent, and demonstrate adequate technical expertise in telecommunications or a related business.

² \$48 million of the purchase price was to retire outstanding liabilities and the balance was cash consideration.

³ See D.03-12-033, mimeo at 6; D.01-06-007, mimeo at 15.

4.2. Financial Qualifications

As to financial qualifications, because TXC was formed specifically for the purpose of acquiring Trillion, the application does not contain past financial statements. Instead, TXC has provided documentation regarding a line of credit for up to \$5 million, which, Applicants assert, TXC may draw upon following the Commission's approval of the transfer. Given this, TXC has demonstrated that it has more than sufficient cash or cash equivalents to meet the Commission's requirements for acquiring a CPCN. Accordingly, the transaction meets our financial requirements and there is no basis upon which to rest a finding that the transaction will adversely affect TXC's financial status.

4.3. Technical Experience

Information provided in the original application, and supplemental information provided in response to a request by the assigned Judge, describes TXC's technical experience in the telecommunications industry. The original application listed Jeffrey Youle, James Christian and Douglas Bodel, whose backgrounds are primarily in the financial sector, as TCX officers, but stated that TXC intended to retain all current Trillion management and staff. Applicants' supplemental information listed two officers recently appointed by TXC, Darol Lain and Darryl Loose, both with significant experience in the telecommunications industry. With the appointments of Darol Lain and Darryl Loose, Jeffrey Youle, James Christian and Douglas Bodel resigned from the positions they held in TXC.

Darol Lain and Darryl Loose were most recently associated with Last Mile, Inc. d/b/a Sting Communications (Sting), a Pennsylvania-based corporation. On October 12, 2011, Sting filed for bankruptcy under Chapter 11 in the U.S. Bankruptcy Court of the Southern District of New York (U.S. Bankruptcy Court).

On May 15, 2013, the U.S. Bankruptcy Court approved the sale of Sting's assets, free and clear of all liens. Mr. Lain and Mr. Loose remained as officers of Sting throughout this period. The assets of Sting are being acquired by an affiliate of TXC in a separate transaction.

On January 29, 2009, the State of Arizona Attorney General's Office (AG) filed a complaint in Superior Court of the State of Arizona against Trillion alleging antitrust, bid rigging, procurement fraud and violations of Arizona's conflict of interest law. Among other things, the complaint alleged that Trillion, which submitted a bid related to the Tucson Unified School District E-Rate program applications, obtained inside information from the E-Rate program consultant and provided gifts and gratuities to the school district administrators and employees involved in the competitive purchasing and procurement processes.

On March 13, 2009, the AG and Trillion entered into a settlement agreement by which the AG dismissed the complaint against Trillion without admission of fault, wrongdoing, or liability on the part of Trillion or its employees. In return, Trillion agreed to reimburse the State of Arizona for the costs associated with the investigation of Trillion. Additionally, Trillion agreed to initiate a self-reporting program to report to the AG's office every contact with any Arizona school district, and finally, to adopt and implement a code of conduct for all company employees regarding gifts and gratuities. Trillion took immediate action to implement the settlement, including terminating the employment of the two sales representatives and the supervisor who interacted with the Tucson Unified School District. The settlement agreement expired on April 15, 2012.

Aside from these incidents, Applicants state that to the best of their knowledge, no party to the proposed transaction, or any affiliate, officer, director, partner, nor owner of more than 10 percent of TXC, 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 after the transfer there will be no change in Trillion's service offerings.

Taken as a whole, we find that Applicants have demonstrated that TX has the financial and technical qualifications to acquire Trillion. We also find that the transaction is consistent with the public interest. Past bankruptcy and legal issues have been appropriately dealt with and disclosed. No immediate changes to the service provided as a result of the transfer of Trillion to TXC are proposed. The Applicants assert that there will be no interruption or disruption of service to customers. The transaction will thus be seamless for Trillion's customers. Finally, the Applicants note that the transfer of control will enable TXC to continue to provide service to schools and students located in rural and economically disadvantaged areas of the state. 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 176-3306, 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 176-3306 therefore will not be altered.

7. Waiver of Comment Period

The application was noticed in the Commission's Daily Calendar on December 20, 2012. No protests were filed. 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.

8. Assignment of Proceeding

Catherine J.K. Sandoval is the assigned Commissioner and Linda A. Rochester is the assigned Judge in this proceeding.

Findings of Fact

1. Byron Smyl, is the court-appointed receiver for Trillion , a Delaware Corporation authorized in California to provide facilities-based local and interexchange telecommunications services as a competitive local exchange carrier.

2. TXC is a Delaware limited liability company, newly created by TX Broadband Holding Company for the purpose of implementing the transaction described in this application.

3. The proposed transaction would result in TXC acquiring 100 % of the ownership interests in Trillion.

4. The Applicants have demonstrated that TXC has sufficient financial resources and the technical expertise to operate as a provider of facilities-based local exchange telecommunications services.

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

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

7. Notice of this application appeared on the Commission's Daily Calendar on December 20, 2012; there were no protests to the application.

8. No hearings are necessary.

Conclusions of Law

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

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

3. The proposed transfer of Trillion to TXC 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 transfer of control of Trillion Partners, Inc. to TX Communications LLC in accordance with the documents and agreement submitted in conjunction with Application 12-11-024, is authorized.

2. TX Communications 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 corporation surety company authorized to transact surety business in California, and the Commission must be listed as the obligee on the bond. Within five days of acceptance of Certificate of Public Convenience and Necessity authority, TX Communications LLC must submit a Tier-1 advice letter to the Director of Communications, containing a copy of the license-holder’s executed bond, and submit a Tier-1 advice letter annually, no later than March 31, with a copy of the executed bond.

3. TX Communications 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 and the carrier has not been granted an extension of time by the Communications Division.

4. Application 12-11-024 is closed.

This order is effective today.

Dated _____, at San Francisco, California.