

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application by Pinnacles Telephone Company (U1013C) and Mr. Steven R. Bryan for approval of the transfer of control of Pinnacles Telephone Company (U1013C) to Mr. Steven R. Bryan pursuant to Public Utilities Code Section 854(a).

Application 15-02-005
(Filed February 3, 2015)

DECISION APPROVING THE INVOLUNTARY TRANSFER OF CONTROL OF PINNACLES TELEPHONE COMPANY (U1013C) TO MR. STEVEN R. BRYAN JR.

Summary

This decision approves the involuntary transfer of control of Pinnacles Telephone Company to Mr. Steven R. Bryan Jr.¹ This proceeding is closed.

1. Background

Applicants Pinnacles Telephone Company (Pinnacles) and Mr. Steven R. Bryan (Bryan) seek Commission approval of the involuntary transfer of control of Pinnacles to Bryan following the death of Steven R. Bryan Sr. (SRB), the father of Bryan, on February 4, 2014. At the time of his death, SRB owned 100 percent of the stock of Bryan Family Incorporated (BFI) as co-trustee of the Bryan Family Trust

¹ Pinnacles Telephone Company is a small incumbent local exchange carrier and operates a telephone system in portions of San Benito County, furnishing local, toll, and access telephone services. As of December 2014, Pinnacles serves approximately 229 telephone subscriber access lines.

(Family Trust),² BFI owns 100% of Pinnacles stock. Upon the death of SRB, Bryan became the special trustee of the Family Trust with respect to the BFI stock. Notices were sent pursuant to California Probate Code § 16060, *et seq.* No objections to the terms of the trust were made, and the period to contest the trust has passed. The trust is administered in Paicines, California.

Pursuant to the trust administration process, Bryan will become the sole owner of all voting stock of BFI after the distribution of the BFI stock from the Family Trust. The acquisition of this controlling interest in BFI will result in indirect control over Pinnacles, which is wholly-owned by BFI.

The Family Trust provided for distribution of 25 percent of the BFI stock to Bryan and 75 percent to his brother, Kenneth Bryan. However, this did not reflect the changed testamentary intent of the deceased at the time of his death. Therefore, the family members agreed in writing to a process where BFI would be recapitalized with two classes of stock, one voting and one non-voting.³

The family agreed that upon receipt of regulatory approval, Bryan would receive the Class A voting shares and his brother Kenneth Bryan would receive the Class B non-voting shares. Bryan would thereby acquire actual and working control of Pinnacles as the owner of all voting shares of BFI. The family further

² The Commission approved the acquisition of control of Pinnacles by Steven R. Bryan Sr. as trustee of the Family Trust and by BFI by Decision (D.) 00-10-016 in Application (A.) 00-04-048. Pinnacles has been in the Bryan family since it began service in 1955. It was established by Rex Bryan, who was the grandfather of Steven Bryan Jr. Upon the death of Rex Bryan, SRB became the owner of the company.

³ This recapitalization of the stock did not effect a transfer of control because all stock remained in the Family Trust before and after the recapitalization. Prior to the recapitalization of the stock there were 351 common shares and 350 preferred shares. The recapitalization resulted in the 350 preferred shares being canceled and the 351 common shares being split into one Class A voting share and three Class B non-voting shares. There are now 351 Class A voting shares and 1,053 Class B non-voting shares.

agreed that the non-voting shares would be redeemed by BFI, leaving Bryan as sole shareholder of all the outstanding common stock of Pinnacles through his ownership of the BFI stock. These shares remain held by the Family Trust pending approval of the transfer of control, which is the subject of this proceeding.

Upon approval of the transfer of control, Bryan will receive the 351 Class A voting shares and Kenneth Bryan will receive the 1,053 Class B non-voting shares. Kenneth Bryan's shares will then be redeemed by BFI. This redemption will have no effect on the financial statements of Pinnacles. The shares of Pinnacles will remain 100 percent owned by BFI.

In response to the Commission's recent adoption of Decision 13-05-035,⁴ the applicants provided a detailed biography and resume of Bryan. Bryan has extensive experience in the management and all working aspects of Pinnacles, including, but not limited to Customer Support, Network Engineering and Support, Installation, Maintenance and Repairs, compliance with state and federal regulatory requirements, and preparing or supervising the preparation of data request responses and other regulatory filings. Bryan has also been involved in several major network expansions, radio system upgrade projects, and has been responsible for various other improvements. Bryan was appointed the President and Chief Financial Officer of Pinnacles after the death of his father and previously served as the corporate secretary since 2007.

⁴ Decision Addressing Revisions to the Certification Processes for Telephone Corporations Seeking or Holding Certificates of Public Convenience and Necessity, and Wireless Carriers Seeking or Holding Registration.

Furthermore, the applicants attest that neither the applicants, any of their affiliates, officers, directors, partners, agents, or owners (directly or indirectly) or more than ten percent of applicant or anyone acting in a management capacity for the applicant has:

1. Held one of these positions with a company that filed for bankruptcy;
2. Been personally found liable, or held one of these positions with a company that has been found liable for fraud, dishonesty, failure to disclose, or misrepresentations to consumers or others;
3. Been convicted of a felony;
4. Been (to his or her knowledge) the subject of a criminal referral by judge or public agency;
5. Had a telecommunications license or operating authority denied, suspended, revoked, or limited in any jurisdiction;
6. Personally entered into a settlement, or held one of these positions with a company that has entered into settlement of criminal or civil claims involving violations of §§ 17000 *et. seq.*, 17200 *et. seq.*, or 17500 *et. seq.* of the California Business & Professions Code, or any other statute, regulation, or decisional law relating to fraud, dishonesty, failure to disclose, or misrepresentation to consumers or others;
7. Been found to have violated any statute, law, or rule pertaining to public utilities or other regulated industries;
8. Entered into any Settlement Agreements or made any voluntary payments or agreed to any other type of monetary forfeitures in resolution of any action by any regulatory body, agency, or Attorney General;
9. To the best of the applicants' knowledge, neither applicants, any affiliate, officer, director, partner, nor owner of more than ten percent of applicant, or any person acting in such capacity whether or not formally appointed, is being or has been investigated by the Federal

- Communications Commission or any law enforcement or regulatory agency for failure to comply with any law, rule or order; and
10. Have verified that they are in compliance with all California Public Utilities Commission reporting, fee, and surcharge transmittals.

1.1. Jurisdiction

Public Utilities Code (Pub. Util. Code) § 216(a) defines the term “Public utility” to include a “telephone corporation,” which in turn is defined in Pub. Util. Code § 234(a) as “every corporation or person owning, controlling, operating, or managing any telephone line for compensation within the state.”

Pinnacles is a telephone corporation and a public utility subject to our jurisdiction.

2. Issue Before the Commission

The issue before the Commission is whether to approve the involuntary transfer of control of Pinnacles to Bryan as the result of his inheritance of 351 Class A voting shares of BFI, which holds all of Pinnacles stock. This inheritance will give Bryan a controlling interest in Pinnacles.

3. Discussion and Analysis

The applicants seek approval of the transfer of control to Pinnacles pursuant to Pub. Util. Code § 854. This section provides, in pertinent part:

No person or corporation, whether or not organized under the laws of this state, shall merge, acquire, or control either directly or indirectly any public utility organized and doing business in this state without first securing authorization to do so from the commission. The commission may establish by order or rule the definitions of what constitute merger, acquisition, or control activities which are subject to this section. Any merger, acquisition, or control without that prior authorization shall be void and of no effect. No public utility organized and doing business under the laws of this state, and

no subsidiary or affiliate of, or corporation holding a controlling interest in a public utility, shall aid or abet any violation of this section.

Section 854 was added to ensure that no acquisition or transfer of control can be effected without the Commission first having an opportunity to consider whether the acquisition or transfer is in the public interest. However, its provisions cannot be applied to acquisitions through inheritance.

The Legislature has recognized this conflict. After the Commission approved a testamentary transfer of a small water company in 1982 (*Application of Bianca Gambi (1981) 7 CPUC2d 52*), the Legislature amended § 853 of the Pub. Util. Code to provide that the provisions of § 854 would not apply to a transfer of ownership of a small water company from a decedent to a member of the decedent's family under the Probate Code or by will, trust, or other instrument.⁵ Similarly, the court recognized corporate stock has value, and one means of acquiring control of a utility is through the acquisition of corporate stock. Section 854 requires that any individual who acquires sufficient stock to give him the voting power to elect officers who will direct the corporate affairs obtains control of that utility, and must seek prior authorization of this Commission to do so.

The estate of an heir vests in the heir at the time of the testator's death. "We do not believe that the Legislature in enacting *Pub. Util. Code § 854* intended to inhibit the transfer of interests by operation of law under [then] *Probate Code § 300*. It would be impossible for the Commission to consider in advance the bequest clauses in individual wills setting up a potential bequest of stock in a public utility, or predict the circumstances which might exist at the time of the testator's

⁵ § 853(c).

death, where that bequest coming to passage would change control. In some situations it is certainly possible that the bequest causing a change of control would create a situation inimical to the public interest. Nonetheless, the rights of inheritance and testamentary disposition are well-settled law and subject to legislative control, and the Legislature in exercising its plenary power has created a scheme governing the descent of property in this State as set forth in the Probate Code. As we see it, absent evidence that any given devolution creating a change in control of the utility results in or creates a situation inconsistent with or adverse to the public interest, our role should be a ministerial one. Should the successor control appear to the Commission to be inconsistent with or adverse to the public interest, the Commission can remedy the situation. For example, the Commission may, after notice and hearing, conduct an investigation into the operations and practices of the person exercising control over the regulated entity. The Commission may then take such action as it finds to be necessary in the public interest.⁶

Nothing in the requested transfer is inconsistent or adverse to the public interest. We will approve the transfer of control. The Commission retains the authority to conduct an investigation into the operations and practices of Bryan in his exercise of control over Pinnacles in the future if circumstances warrant.

Pinnacles is a small rural Local Exchange Carrier under rate of return in general rate case proceedings and a California High Cost Fund-A recipient. That status is not changed by the transaction approved here.

4. Categorization and Need for Hearing

In Resolution ALJ 176-3351 dated February 12, 2015, the Commission preliminary determined that hearings were necessary. A Telephonic Prehearing

⁶ D. 86-02-005.

Conference was held on March 16, 2015. No protests have been received. Further public hearings are not necessary.

5. 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.

6. Assignment of Proceeding

Carla J. Peterman is the assigned Commissioner and Gerald F. Kelly is the assigned ALJ in this proceeding.

Findings of Fact

1. All of the issued stock of Pinnacles Pinnacles is held by BFI, a holding company established by Rex Bryan, the grandfather of Bryan. These assets are part of the BFI trust. This trust is currently being administered in Paicines, California.
2. Upon the death of Rex Bryan, the Commission approved the acquisition of control of Pinnacles by Bryan's father, SRB on October 16, 2000 in A.00-04-048, D.00-10-016).
3. Under the written agreement entered into after the death of SRB, Bryan will receive 351 Class A voting shares and his brother Kenneth Bryan will receive 1053 Class B non-voting shares. Bryan would thereby acquire actual and working control of Pinnacles as the owner of all voting stock of BFI. The family further agreed that the non-voting stock would be redeemed by BFI, leaving Bryan as sole shareholder of all the outstanding common stock of Pinnacles through his ownership of the BFI stock. These shares remain held by BFI

pending approval of the transfer of control, which is the subject of this proceeding.

4. The redemption of the Class B non-voting stock will have no effect on the financial statements of Pinnacles. The shares of Pinnacles will remain 100 percent owned by BFI.

5. The company and Bryan have applied here for the Commission's consent to transfer the subject stock to Bryan before the actual transfer occurs. While Bryan's beneficial interest in this stock vested upon the death of SRB, the applicants have properly applied for the approval of this transfer by the Commission prior to the actual transfer.

6. Because this involuntary transfer of control is the result of the death of the majority stockholder of BFI and is passing to Bryan by way of the administration of the SRB estate and subsequent written agreements of the family, there was no way for the Commission to review and analyze this transfer of control at an earlier time. This application comes before the Commission at the earliest reasonable time under the circumstances.

7. Bryan has significant experience in the operation of Pinnacles and has held various roles since joining Pinnacles in 2007. This transfer of control will not impact the day-to-day management and operations of Pinnacles.

Conclusions of Law

1. The inheritance of a controlling interest in Pinnacles by Steven R. Bryan, Jr. will not impact the day-to-day operations of Pinnacles.

2. The transfer of control of Pinnacles to Bryan is in the public interest.

3. The involuntary transfer of control of Pinnacles to Bryan should be approved.

O R D E R

IT IS ORDERED that the involuntary transfer of control of Pinnacles Telephone Company to Mr. Steven R. Bryan Jr. is approved.

Application 15-02-005 is closed.

This order is effective today.

Dated _____, 2015, at San Francisco, California.