

Decision 18-05-033 May 31, 2018

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Joint Application for Approval for the Acquisition by Education Networks of America, Inc. of Control of TQCI Holdco II, LLC d/b/a TeleQuality California (U7075C) Pursuant to Public Utilities Code Sections 851 and 854.

Application 17-11-015

DECISION AUTHORIZING TRANSFER OF CONTROL

Summary

We grant the joint application for approval of the acquisition of control of TQCI Holdco II, LLC d/b/a TeleQuality California (U7075C) by Education Networks of America, Inc. pursuant to Public Utilities Code Sections 851 and 854.

1. Background

The joint application (Application) and supporting documents were filed on November 22, 2017. On January 9, 2018, joint applicants (Applicants) filed an amendment to the Application that updated the Application to take account of a completed corporate reorganization that was underway at the time the Application was filed. The amendment corrected the description of the parties to the transaction to reflect the results of the completed corporate reorganization. The Application was not protested.

On February 1, 2018, the assigned Administrative Law Judge (ALJ) held a prehearing conference (PHC) to determine the issues and set a timetable for the proceeding. On February 12, 2018, the assigned commissioner issued a scoping

memorandum and ruling. At the PHC, the parties agreed to waive briefing. The proceeding was submitted for decision upon issuance of the scoping memo.

2. Discussion

2.1. Parties to the Transaction

Education Networks of America, Inc. (ENA) is a Delaware corporation headquartered in Nashville, TN that provides high-capacity broadband, Wi-Fi, voice and video solutions to the K-12 education community, higher education institutions, and libraries. ENA's managed networks include information solutions, instructional and productivity tools, and third party applications that are used in tandem with the proprietary products. ENA currently provides services primarily to school districts and libraries that participate in the Federal Communication Commission's (FCC) school and libraries universal service support program, commonly known as the E-Rate program.

TQCI Holdco II, LLC d/b/a TeleQuality California is a Delaware limited liability company doing business as TeleQuality California, with its primary office in San Antonio, TX. TeleQuality California operates under Utility Identification Number (U7075C). It received a Certificate of Public Convenience and Necessity (CPCN) to operate as a competitive local exchange carrier (CLEC) and limited facilities-based non-dominant interexchange carrier (NDIEC) from

its parent TeleQuality Communications, LLC,¹ formerly known as TeleQuality Communications, Inc., as a result of an intra-corporate reorganization.²

TeleQuality California provides Internet access and data network products and services to rural health care providers that participate in the California Public Utilities Commission's (Commission) California Teleconnect Fund program and the FCC's Rural Health Care universal service support program. TeleQuality California's technology solutions, including high-bandwidth connectivity, Internet access, and hosted VoIP services, enable healthcare providers to take advantage of emerging healthcare communications technologies that increase access to and lower the cost of healthcare.

2.2. Description of the Proposed Transaction

On October 13, 2017, TeleQuality Communications, Inc. (TeleQuality Inc.), TQCI Holdco, Inc. (TQCI Holdco), TQCI Holdings LLC, ENA, and Timothy Koxlien entered into a Unit Purchase Agreement (Agreement). As part of the Agreement, TeleQuality Inc. will convert to a limited liability company, redomicile in Delaware as TeleQuality Communications LLC (TeleQuality LLC), and become a direct subsidiary of ENA. Upon approval by the Commission for the present transfer, TeleQuality California will transfer the California assets held by TeleQuality California to TeleQuality LLC, a direct subsidiary of ENA. Although ENA will acquire control of TeleQuality California's assets, including

¹ TeleQuality Communications, Inc. was granted a CPCN to provide resold and facilities-based local exchange and interexchange telecommunications services in Decision (D.) 08-04-030.

² As part of this intra-corporate reorganization, an advice letter, modifying the name and fictitious business name in the tariff, was served on the Commission, and a notice of this transfer was provided to the Communications Division on November 17, 2017.

its CPCN and customer contracts, ENA will not acquire TeleQuality California's corporate entity. The TeleQuality California corporate entity will continue to be wholly owned by TQCI Holdco, which is ultimately controlled by Timothy Koxlien.

2.3. Standard for Approval of Transfer

The Commission's Rules require that a company intending to acquire the assets of, or control over, a certificated company must obtain prior approval. Public Utilities (Pub. Util.) Code Section 851 requires prior approval before a utility disposes of assets that are necessary or useful in the performance of its duties to the public. Section 854 requires prior approval before acquiring or gaining control of a regulated utility. The acquiring company must already have an equivalent certificate to the utility being acquired, or the acquirer must contemporaneously demonstrate that it meets the same requirements as the utility being acquired.

The Commission has two primary criteria for determining whether a CPCN should be granted or transferred under Pub. Util. Code § 1001 – financial ability and management/technical ability. An applicant who desires to provide full facilities-based competitive local exchange 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.³ An applicant also is required to make a reasonable showing of managerial and technical

³ The financial requirement for Competitive Local Exchange Carriers is contained in D.95-12-056, Appendix C. The financial requirement for NDIECs is contained in D.91-10-041. Acceptable forms of proof of financial ability were updated in D.14-11-004.

expertise in telecommunications or a related business.⁴ As we discuss below, ENA has demonstrated that it is fully qualified financially and technically to acquire the CPCN and operating assets of TeleQuality California.

The standard applied by the Commission to determine if a transaction should be approved under Pub. Util. Code Section 854(a) is whether the transaction will be “adverse to the public interest.”⁵ This transfer is not adverse to the public interest, but rather will benefit the public by allowing ENA to leverage reduced costs, increased expertise, and increased efficiencies to innovate and offer new products and services to consumers.

2.4. Compliance with Standards for Transfer

2.4.1. Technical and Managerial Qualifications

ENA has supplied resumes and other information regarding the key executives and personnel who will control the new entity receiving the CPCN and operating assets from TeleQuality California. These resumes demonstrate extensive experience and expertise in the telecommunication industry, thereby clearly showing that the CPCN and assets of TeleQuality California will be implemented by fully qualified individuals. The other information includes sworn certification statements regarding prior regulatory and business history of

⁴ D.95-12-056 at Appendix C, Rule 4.A.

⁵ See, e.g., *Quest Communications Corp.*, D.00-06-079, 2000 Cal. PUC LEXIS 645, *18. This is also the standard applied by D.03-06-069 (2002 CalPUC LEXIS 975), in which the Commission authorized the transfer of control to EnCana, and by D.05-12-007 (2005 CalPUC LEXIS 527), which authorized the transfer of a 50% interest in the parent of Lodi Gas Storage, L.L.C.

ENA and TeleQuality California executives pursuant to Ordering Paragraph 14 of D.13-05-035.

2.4.2. Financial Qualifications

Joint Applicants have included as an exhibit to the application ENA's audited financial report supplemented with three months of bank records showing that ENA has well in excess of \$115,000 in cash resources to meet the Commission's requirements for liquid assets and funds for carrier deposits. ENA has sufficient funds to support operations for the period while this joint application is pending and for the first full year following approval of the proposed transaction and for any required carrier deposits. TeleQuality California does not have any carrier deposits for its existing, ongoing operations, and Joint Applicants do not expect to be required to provide any such deposits in the future.

Based on the above discussion, we conclude that Joint Applicants have demonstrated that the proposed transaction meets the Commission's requirements for transfer of a telecommunication CPCN and should be approved.

3. Compliance with California Environmental Quality Act (CEQA)

The Joint Application merely seeks approval for the transfer of assets and does not propose any new construction. Therefore, Joint Applicants submit that it can be seen with certainty that there is no possibility that granting the Joint Application will have a significant adverse effect on the environment. The Commission has held that a proposed transaction which simply involves the transfer of assets or control does not require CEQA review because in such

⁶circumstances there is no possibility that granting the application would have an adverse effect on the environment.

4. Categorization of Proceeding

In Resolution ALJ176-3410, dated December 14, 2017, it was preliminarily determined that hearings are not necessary. We confirm the preliminary determination.

5. Waiver of Comment Period

This decision grants the relief requested in an unopposed manner. Therefore, pursuant Public Utilities Code Section 311, public comment is waived.

6. Assignment of Proceeding

Carla Peterman is the assigned Commissioner and Karl J. Bemesderfer is the assigned ALJ.

Findings of Fact

1. Joint Applicants have met the requirements for transfer of a CPCN pursuant to Public Utilities Code Section 851.
2. Joint Applicants have met the requirement for transfer of a CPCN pursuant to Public Utilities Code Section 854.
3. It can be seen with certainty that granting the Joint Application will not have a significant adverse effect on the environment.

⁶ See e.g., Decision 17-05-005, *Application by Pacific Lightwave (U7154C) and Simon Bojkovsky for approval of the acquisition of control of Pacific Lightwave (U7154C) by Simon Bojkovsky pursuant to Public Utilities Code Section 854(a)*, at 9 (mimeo.) (May 17, 2017).

Conclusions of Law

1. The proposed transaction is not adverse to the public interest.
2. The proposed transaction should be approved.

O R D E R

IT IS ORDERED that:

1. The acquisition of TQCI Holdco II LLC by Educational Networks of America, Inc. upon the terms and conditions set forth in the joint application of the parties is approved.
2. Application 17-11-015 is closed.

This order is effective today.

Dated May 31, 2018, at San Francisco, California.

MICHAEL PICKER

President

CARLA J. PETERMAN

LIANE M. RANDOLPH

MARTHA GUZMAN ACEVES

CLIFFORD RECHTSCHAFFEN

Commissioners