

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Joint Application of
TOFANE GLOBAL US LLC, KPN B.V., and
IBASIS RETAIL, INC. (U7301C) for
Approval to Transfer Indirect Control of
iBasis Retail, Inc. to Tofane Global US LLC.

Application 18-08-008

**DECISION APPROVING TRANSFER OF INDIRECT CONTROL
OF IBASIS RETAIL, INC.**

Summary

Pursuant to Public Utilities Code Section 854,¹ this decision grants the unopposed joint application of Tofane Global US LLC, KPN B.V., and iBasis Retail, Inc. (*i.e.*, Applicants) for authority to transfer indirect ownership and control of iBasis Retail, Inc. to Tofane Global US LLC as described below. We also grant the motions of Applicants for authorization to file certain confidential information under seal. We conclude that approval of the proposed transfer of control is in conformance with applicable statutory law and California Public Utilities Commission rules, and is in the public interest.

Application 18-08-008 is closed.

¹ Subsequent statutory references, unless otherwise noted, are to the California Public Utilities Code.

1. Factual Background

1.1. Entities Involved in the Transaction

1.1.1. iBasis Retail Inc., iBasis Inc., KPN B.V., and KPN N.V.

iBasis Retail Inc. (iBasis Retail) is a corporation organized under the laws of Delaware with its principal office in Lexington, Massachusetts. iBasis Retail is authorized to provide resold interexchange services pursuant to the Certificate of Public Convenience and Necessity (CPCN) granted by Decision (D.) 16-06-013 on June 9, 2016. iBasis Retail provides prepaid calling card services, which are primarily used for international calls.² iBasis Inc., the parent company of iBasis Retail, is also incorporated under the laws of Delaware, with offices in Massachusetts. The primary operations of iBasis Inc. is to transmit wholesale international traffic in the United States and locations worldwide.³ iBasis Inc. provides operational and management support for iBasis Retail.⁴

KPN B.V. (KPN) is a private limited liability company organized under the laws of the Netherlands.⁵ KPN owns iBasis, Inc., and iBasis Inc.'s subsidiary iBasis Retail.⁶ KPN is a wholly-owned direct subsidiary of Koninklijke KPN N.V. (KPN N.V.) KPN N.V. is a publicly-traded telecommunications company headquartered in the Netherlands.

² Joint Application at 6.

³ Response to Assigned Commissioner's Scoping Memo and Ruling at 2.

⁴ *Id.* at 2-3.

⁵ Joint Application at 4.

⁶ *Id.* at Exhibit D.

1.1.2. Tofane Global US LLC and Tofane Global SAS

Tofane Global US LLC (Tofane US) is a limited liability company organized under the laws of Delaware.⁷ Tofane US's sole member is Tofane Global SAS. Tofane Global SAS is a newly formed French company based in Paris. Tofane US and Tofane Global SAS are holding companies without operations of their own.⁸ Tofane US and Tofane Global SAS were founded by Alexandre Pébereau, who has extensive experience with international carriers.⁹ Tofane Global SAS provides telecommunications and digital services for carriers in the international market through subsidiaries such as Tofane US and strategic partnerships.¹⁰

1.2. Terms of the Transaction

Pursuant to a Share Purchase Agreement dated April 25, 2018 (Agreement), the proposed transfer of control (Transaction) is subject to the following terms and conditions. Tofane Global SAS will acquire all of the outstanding equity interests in iBasis Inc., including the subsidiary iBasis Retail, from KPN. After entering the Agreement, Tofane Global SAS created Tofane US, a Delaware corporation, as its direct subsidiary to hold the shares of iBasis, Inc.¹¹ As a result of the Transaction, iBasis Inc. will become a direct, wholly-owned

⁷ Joint Application at 4.

⁸ Response to Assigned Commissioner's Scoping Memo and Ruling at 2, 4.

⁹ Joint Application at 5.

¹⁰ *Id.*

¹¹ Response to Assigned Commissioner's Scoping Memo and Ruling at 5.

subsidiary of Tofane US and indirect wholly-owned subsidiary of Tofane Global SAS. iBasis Retail will remain a direct, wholly-owned subsidiary of iBasis Inc.¹²

According to the Applicants, the Transaction will not cause any change in the direct ownership or structure of iBasis Retail, nor will it affect the daily management or operations of iBasis Retail. The Transaction will have no adverse impact on iBasis Retail's customers and should be seamless.¹³ iBasis Retail's customers will continue to receive their existing services at the same rates, terms, and conditions.¹⁴

In support of its application, Applicants submitted Exhibit D showing the pre-transaction ownership structures of KPN N.V., KPN, iBasis, Inc., and iBasis Retail, and the post-transaction ownership structure of Tofane Global SAS, Tofane US, iBasis, Inc., and iBasis Retail.

Pursuant to Rule 2.2 of the California Public Utilities Commission's (Commission) Rules, Applicants provided a copy of the Certificates of Formation for Tofane US, KPN, and iBasis Retail.¹⁵ Applicants provided a Certificate of Status issued by the California Secretary of State on May 18, 2018, for iBasis Retail, which shows that iBasis Retail is in good standing.¹⁶ Applicants did not provide Certificates of Status for Tofane US or KPN because they have no operations in California. Additionally, Applicants provided financial

¹² Joint Application at 6.

¹³ *Id.* at 10.

¹⁴ *Id.* at 9, 10.

¹⁵ *Id.* at Exhibits A, B, and C.

¹⁶ *Id.* at Exhibit C.

information of Tofane US and iBasis Retail.¹⁷ Because iBasis Retail does not maintain financial statements separate from KPN N.V., Exhibit G contains financials from KPN N.V. with segment specific information on iBasis Inc.

2. Procedural Background

The application was filed on August 20, 2018. A telephonic prehearing conference was held on November 5, 2018. The assigned Commissioner issued a Scoping Memo and Ruling on November 22, 2018. Commission Resolution ALJ 176-3423 preliminarily determined that an evidentiary hearing was required. The assigned Commissioner's Scoping Memo and Ruling did not disturb the preliminary determination in the event an evidentiary hearing was determined to be necessary at a later time. This application is uncontested. This decision concludes that an evidentiary hearing is not required. This decision has been prepared based upon the record submitted in this proceeding.

3. Jurisdiction

Public Utilities Code Section 851 provides broad Commission authority to approve transfers of control which involve public utilities operating within California, as is requested in this proceeding. More specifically, Section 854(a) specifies that "[n]o 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 this Commission. The Commission may establish by order or rule the definitions of what constitute merger, acquisition, or control activities that are subject to this section of the statute."¹⁸ After the transfer of

¹⁷ *Id.* at Exhibit F and Exhibit G.

¹⁸ Pub. Util. Code § 854(a).

control is completed, the Commission will retain the same regulatory authority over the Applicants that it currently possesses.

4. Standard of Review

Applicants seek approval of the Transaction pursuant to Section 854(a) which requires Commission authorization before a public utility company may “merge, acquire, or control either directly or indirectly any public utility organized and doing business in this state...” The purpose of this and related code sections is to enable the Commission, before any transfer of public utility authority is consummated, to review the proposal and to take such action, as a condition of the transfer, as the public interest may require.¹⁹ Absent prior Commission-approval, Section 854(a) provides that the transaction is “void and of no effect.”

The Commission has broad discretion under Section 854 to approve or reject a proposed transaction. If necessary and appropriate, the Commission may attach conditions to approval of a transaction to protect and promote the public interest.²⁰ The primary question in a transfer of control proceeding under Section 854(a) is whether a transaction will be “adverse to the public interest.”

Neither Sections 854(b) nor 854(c) is applicable to this Transaction. Section 854(b) applies to transactions where one of the utilities has gross annual intrastate revenues exceeding \$500 million. Section 854(c) applies to transactions where any of the parties to the transaction have gross intrastate revenues exceeding \$500 million. Because none of the Applicants have gross annual

¹⁹ See *San Jose Water Co.* (1916) 10 CRC 56.

²⁰ D.01-06-007, 2001 Cal. PUC LEXIS 390, *24 (approving with conditions the transfer of control of telephone exchanges from GTE California and GTE West Coast to Citizens Telecommunications Company).

intrastate revenues exceeding \$500 million, Section 854(b) and Section 854(c) are not applicable to this Transaction.

When a company that does not possess a 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 the type of CPCN held by the company being acquired. An applicant who desires to operate as a provider of resold interexchange services must demonstrate that it has a minimum of \$25,000 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.

5. Discussion

We conclude that the proposed Transaction should be approved consistent with the terms and conditions of the Agreement. The relevant issue is whether the indirect transfer of control of iBasis Retail is in the public interest consistent with Section 854(a). The proposed Transaction will benefit consumers and promote the public interest by enhancing iBasis Retail's ability to compete in the telecommunications marketplace. After the Transaction, Tofane US and iBasis Retail will continue to partner with KPN and KPN N.V. to deliver international telecommunications services.²¹ According to the Applicants, consumers will face no disruption and will receive the same services as before the Transaction.

For the reasons discussed above, we find that approval of the proposed Transaction is in the public interest in accordance with Section 854(a).

²¹ Joint Application at 10.

5.1. CEQA Requirements

The proposed transfer of control does not constitute a “project” under the California Environmental Quality Act (CEQA), California Public Resources Code, Section 21000, *et. seq.* CEQA applies only to “projects,” defined as any “activity which may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment.”²² The CEQA Guidelines provide for an exemption “[w]here it can be seen with certainty that there is no possibility that the proposed activity in question may have a significant effect on the environment.”²³

We have concluded on numerous occasions that a transaction which simply involves the transfer of equity interests does not require CEQA review because granting such an application would have no adverse impact. The application at issue here proposes no new construction and thus, there is no possibility that the Transaction will have a significant adverse impact on the environment.

5.2. CPCN Requirements

We conclude that Applicants have satisfied the applicable requirements relating to certificates of public convenience and necessity. iBasis Retail is already certificated by the Commission, operating in the state and is the entity of which control is being transferred. Applicants provided a Certificate of Status issued by the California Secretary of State on May 18, 2018, for iBasis Retail, which shows that iBasis Retail is in good standing.²⁴ Applicants represented that

²² See *Cal. Pub. Res. Code* § 21065.

²³ C EQA Guidelines, § 15061(b)(3).

²⁴ Joint Application, Exhibit C.

this certification, as part of the application, is true and correct based on the best of their knowledge.²⁵

D.13-05-035 requires a telephone corporation seeking to transfer control to include with its application a broad certification that neither applicant nor any of its affiliates, officers, directors, partners, agents, or owners (directly or indirectly) of more than 10 percent of applicant's stock, or anyone acting in a management capacity has, among other items, held a position with a company that filed for bankruptcy, been found liable for misrepresentations to consumers, or agreed to any other type of monetary forfeitures in resolution of any action by any regulatory body, agency, or attorney general. D.13-05-035 provides, however, that if an applicant cannot make this certification, it shall attach relevant documentation.

Applicants confirm that to their knowledge, except in the instances described in Exhibit I, no Applicant: (a) neither they nor any of its affiliates, officers, directors, partners, or owners of more than 10 percent of the stock, nor any person acting in such capacity whether or not formally appointed, has been investigated or sanctioned by the Federal Communications Commissions or any state regulatory agency for failure to comply with any regulatory statute, rule or order; and (b) no affiliate, officer, director, partner, or person owning more than 10 percent of the stock or anyone acting in such capacity whether or not formally appointed, held one of those positions with a telecommunications carrier that filed for bankruptcy, or has been found either criminally or civilly liable by a court of appropriate jurisdiction for a violation of § 17000 *et seq.* of the California

²⁵ *Id.* at Verifications.

Business and Professions Code, or for any actions which involved misrepresentations to consumers, or is currently under investigation for similar violations.²⁶ Exhibit I describes regulatory and court actions that have mainly been resolved. The verifications attached to the application are based on a reasonable investigation, are made to the best of the certifying entities' and individuals' knowledge.

Applicants have demonstrated it maintains sufficient managerial and technical expertise and sufficient financial resources to operate the acquired carrier. iBasis Inc. provides operational and management support for iBasis Retail. After the Transaction, the management of iBasis Retail will remain largely intact. Mr. Pébureau of Tofane US will become Chairman of iBasis Inc., contributing to the business his expertise and experience with international carriers.²⁷

Applicants have demonstrated that Tofane US has the \$25,000 cash or cash equivalent required of companies to obtain an interexchange carrier reseller CPCN to cover expenses.²⁸ iBasis Retail does not have any carrier deposits for its existing operations and does not expect to be required to provide any such deposits in the future.²⁹

²⁶ See Joint Application at 8 to 9.

²⁷ Response to Assigned Commissioner's Scoping Memo and Ruling at 4.

²⁸ Joint Application, Exhibit F.

²⁹ *Id.* at 7.

Finally, because iBasis Retail will continue to offer services to its customers after consummation of the proposed Transaction, and there will be no customer transfers, no notice of transfer is required.³⁰

6. Request to File Documents Under Seal

Pursuant to Rule 11.4, Applicants filed a motion dated August 23, 2017, for leave to file Exhibits E and F to the application as confidential materials under seal. On November 29, 2018 Applicants revised the motion with the updated legal basis for confidential treatment pursuant to General Order 66-D. On November 30, 2018 Applicants filed a motion for leave to file Exhibit J to the Response to Assigned Commissioner's Scoping Memo and Ruling as confidential materials under seal. Applicants represent that the information is sensitive, and disclosure could place them at an unfair business disadvantage. For good cause shown, we grant Applicants' requests.

7. Waiver of Comment Period

This is an uncontested matter in which the decision grants the relief requested. Therefore, the otherwise applicable 30-day period for public review and comment is waived pursuant to Section 311(g)(2).

8. Assignment of Proceeding

Liane Randolph is the assigned Commissioner and Zhen Zhang the assigned Administrative Law Judge (ALJ). ALJ Zhang is the designated Presiding Officer.

³⁰ *Id.* at 9.

Findings of Fact

1. iBasis Retail is a domestic corporation formed under the laws of Delaware with principal offices in Massachusetts and provides prepaid calling card services in California.
2. iBasis Retail is certified to provide resold interexchange services in California pursuant to the CPCN granted by D.16-06-013 on June 9, 2016.
3. iBasis Retail is a wholly-owned subsidiary of iBasis Inc., a corporation formed under the laws of Delaware.
4. Tofane US is a Delaware corporation, formed as a holding company for iBasis Retail.
5. Tofane US is owned by Tofane Global SAS, a French company.
6. Under the terms of the proposed Transaction, Tofane US will acquire ownership of iBasis Inc. and indirect control of iBasis Retail.
7. The Transaction will not cause any change in the direct ownership or legal structure of iBasis Retail, nor will it affect the daily management or operations of iBasis Retail.
8. Because the proposed transfer of control is a parent-level transaction, retail customers will experience no changes in day-to-day operations of the regulated entities that operate in California.
9. The management team of the acquiring company, Tofane US, possesses sufficient experience, knowledge, and technical expertise to provide local exchange services to the public.
10. Except as provided in Exhibit I, no one associated with or employed by Applicants as an affiliate, officer, director, partner, agent, or owner (directly or indirectly) of more than 10 percent of any of the Applicants, or anyone acting in a management capacity for any of the Applicants: (a) held one of these positions

with a company that filed for bankruptcy; (b) 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; (c) been convicted of a felony; (d) been the subject of a criminal referral by judge or public agency; (e) had a telecommunications license or operating authority denied, suspended, revoked, or limited in any jurisdiction; (f) 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 of any other statute, regulation, or decisional law relating to fraud, dishonesty, failure to disclose, or misrepresentations to consumers or others; or (g) been found to have violated any statute, law, or rule pertaining to public utilities or other regulated industries; or (h) 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.

11. To the best of Applicants' knowledge, none of the Applicants, or any affiliate, officer, director, partner, nor owner of more than 10 percent of any of the Applicants, 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

12. Applicants have provided financial documentation demonstrating that there are sufficient funds to meet the Commission's minimum financial requirements for a CPCN.

13. Applicants demonstrate sufficient financial strength, and managerial and technical expertise to satisfy Commission requirements for a CPCN.

14. Because iBasis Retail will continue to offer services to its customers after consummation of the Transaction, and there will be no customer transfers, no notice of transfer is required.

15. The combined revenues of Applicants in this proceeding are less than half of the \$500 million threshold that applies for purposes of Section 854(b) or (c).

16. The application at issue here proposes no new construction and thus, pursuant to the CEQA, there is no possibility that the Transaction will have a significant adverse impact on the environment.

Conclusions of Law

1. The proposed Transaction constitutes a change of control, within the meaning of Public Utilities Code Section 854.

2. Public Utilities Code Section 854, subsections (b) and (c) do not apply to this transaction.

3. The standard generally applied by the Commission to determine if a transaction should be approved under Section 854(a) is whether the transaction will be "adverse to the public interest."

4. The proposed Transaction as set forth in the application is in the public interest and is not adverse to customers interested in receiving service.

5. Applicants have met the Commission's requirements for approval of a transfer of control applicable to the proposed Transaction.

6. Applicants' motions to file their application and exhibits under seal should be granted in accordance with Ordering Paragraph 5 of this decision.

7. Evidentiary hearings are not necessary.

O R D E R

IT IS ORDERED that:

1. Application 18-08-008, jointly filed pursuant to Public Utilities Code Section 854(a) by Tofane US, KPN, and iBasis Retail is hereby approved.
2. Tofane US is authorized to acquire iBasis Inc. and gain indirect control of iBasis Retail.
3. iBasis Retail will continue to be bound by the terms and conditions of the CPCN granted in Decision 16-06-013.
4. The motion of Applicants, dated August 20, 2018, revised on November 29, 2018 to file under seal the materials designated as confidential in Exhibits E and F of the application is granted subject to the conditions of Ordering Paragraph 5. The motion of Applicants, dated November 30, 2018 to file under seal the materials designated as confidential in Exhibit J of the Response to Assigned Commissioner's Scoping Memo and Ruling is granted subject to the conditions of Ordering Paragraph 5.
5. The designated confidential materials referenced in Ordering Paragraph 3 above, shall remain under seal for three years after the date of this order. During this three-year period, the confidential materials shall remain under seal and not be accessible or disclosed to persons other than the Commissioners and California Public Utilities Commission staff except on further order or ruling of the Commission, the assigned Administrative Law Judge, or the designated law and motion judge at the time of such ruling. If any interested party believes it is necessary for any of this information to remain under seal longer than three years, that party shall file a new motion stating the justification of further withholding the information from public inspection. The motion shall be filed at least 30 days before expiration of the instant order.

6. Application 18-08-008 is closed.

This order is effective today.

Dated _____, at Sacramento, California.