

Decision \_\_\_\_\_

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

In the Matter of the Joint Petition of C III Communications, LLC, C III Communications Operations, LLC, Broadwing Communications Services Inc. and Broadwing Telecommunications Inc. for the Transfer of Certificate of Public Convenience and Necessity and Related Assets and Customers.

Application 03-04-014  
(Filed April 14, 2003)

**OPINION AUTHORIZING TRANSFER OF ASSETS****Summary**

This decision grants the joint application of C III Communications, LLC (C III ), C III Communications Operations, LLC (C III Ops), Broadwing Communications Services Inc. (Broadwing-CSI), and Broadwing Telecommunications Inc. (Broadwing-TI) for approval to transfer to C III Ops the certificate of public convenience and necessity (CPCN) to provide facilities-based interexchange services currently held by Broadwing-CSI; and to transfer to wholly owned subsidiaries of C III Ops the related assets and customers of Broadwing-CSI.

**Parties to the Transaction**

C III is a privately held Delaware limited liability company. C III is the parent company of C III Ops. C III does not currently hold any authority to provide telecommunications services. Upon the closing of the proposed transaction, C III would be renamed Broadwing, LLC.

C III Ops is a Delaware limited-liability company wholly owned by C III. C III Ops would be the licensed service provider and enter into contracts with customers for the provision of services. C III Ops does not currently hold any authority to provide telecommunications services. Upon closing of the proposed transaction, C III Ops would be renamed Broadwing Communications, LLC.

Four special purpose entities (SPEs) have been organized to hold the assets of C III Ops. These include C III Communications Real Estate, LLC, which would hold all of the real property used to provide the services offered by C II Ops; C III Communications IRU, LLC, which would hold all of the IRUs<sup>1</sup> used to provide the services; C III Communications Assets, LLC, which would hold all assets, other than those held by C II Communications Real Estate, LLC or C III Communications IRU, LLC, used to provide services; and C III Communications Employees, Inc., which would employ all employees used to provide services.<sup>2</sup>

Corvis Corporation (Corvis), a Delaware corporation, is a publicly traded company (NASDAQ: CORV). It is the majority and controlling owner of C III. Corvis does not currently hold any authority to provide telecommunications services.

Cequel III, LLC (Cequel III) is a privately held Delaware limited liability company and a minority owner of C III. Cequel III manages over 6,000

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<sup>1</sup> “IRU” means “Indefeasible Right to Use” an allocated portion of a fiber optic cable shared by several users.

<sup>2</sup> Pursuant to the Agreement of Purchase and Sale between the C III entities and the Broadwing entities, all Broadwing-CSI employees will be offered employment by C III Communications Employees, Inc. It is expected that all Broadwing-CSI’s current employees will become employees of C III Communications Employees, Inc.

transmission towers located throughout the United States and several local cable television systems.

Broadwing-TI, a Delaware corporation, is a wholly owned subsidiary of Broadwing-CSI, a Delaware corporation. Broadwing-CSI is a wholly owned subsidiary of Broadwing Communications Inc. (Broadwing Communications) a Delaware corporation, which in turn is a wholly owned subsidiary of Broadwing, Inc., a publicly-traded Ohio Corporation (NYSE:BRW) consisting of Broadwing Communications and Cincinnati Bell.<sup>3</sup> After the closing of the proposed transaction, Broadwing, Inc., Broadwing Communications, Broadwing-CSI and Broadwing-TI would be renamed. The new names would not include the word “Broadwing.”

Broadwing-CSI (U-5525-C) is authorized to provide resold intrastate interexchange services in 48 states including California. Broadwing-TI (U-5393-C) received its authority to provide resold telecommunications services in California on April 9, 1997 in Decision (D.) 97-04-019, under the name Network Long Distance, Inc. Broadwing-TI currently resells Broadwing-CSI’s long distance services to end-user customers.

### **Proposed Transaction**

For tax purposes, the proposed transaction has been structured as a sale of assets rather than a merger or other transfer of control. Upon completion of the transaction, C III Ops would hold the operating authority and the customer contracts. The other assets would be held by the four SPEs as outlined above.

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<sup>3</sup> The proposed transaction does not involve the transfer of any assets of Cincinnati Bell.

**Discussion**

Pub. Util. Code § 851 requires Commission authorization before a public utility may “sell, lease, assign or otherwise dispose of ...property necessary or useful in the performance of its duties to the public...” Pub. Util. Code § 854 requires Commission authorization before a company may “merge, acquire, or control . . . any public utility organized and doing business in this state . . .” The purpose of this and related sections is to enable the Commission, before any transfer of public utility property is consummated, to review the situation and to take such action, as a condition of the transfer, as the public interest may require. (San Jose Water Co. (1916) 10 CRC 56.)

In a situation where a company that does not possess a CPCN desires to acquire the assets, including the CPCN, of a company that does possess a CPCN, we will apply the same requirements as in the case of an applicant seeking a CPCN to exercise the type of authority held by the company being acquired. Even though this transaction has been structured for tax purposes as a sale of assets rather than a change in control, we will treat it both as the sale of public utility property subject to Section 851 and a change of control subject to Section 854. Since Broadwing-TI possesses a CPCN to operate as a limited facilities-based and resale provider of interexchange telecommunications services within California, we will apply the requirements for such authority to C III Ops, as the proposed holder of the CPCN following completion of the transaction.

With regard to the structure of C III Ops following the completion of the transaction, property necessary and useful in the provision of service to the public does not lose its character as utility property by virtue of being held in a subsidiary of the license holder. The land and other assets that will be transferred to the SPEs are impressed with a public use and will continue to be

so following completion of the transaction. *South Bay Irrigation District v. South Bay Water Company*, 61 Cal App. 3d 944, 957. Any future encumbrance, transfer or other disposition of those assets will require our approval.

The Commission has established two major criteria for determining whether a CPCN should be granted. An applicant who desires to operate as a facilities-based and resale provider of interexchange service must demonstrate that it has a minimum of \$100,000 in cash or cash equivalent, reasonably liquid and readily available to meet the firm's start-up costs. If the applicant will be required to provide deposits to other telecommunications carriers in order to provide interexchange services, it must demonstrate that it has sufficient additional cash or cash equivalent to do so. In addition, the applicant is required to make a reasonable showing of technical expertise in telecommunications or a related business.

The applicants provided financial statements of Corvis that demonstrate that C III Ops will have sufficient resources to meet our financial requirements. Since C III Ops will continue to operate using the same personnel as Broadwing-TI, we find that our requirement for technical expertise is satisfied.

### **Procedural Matters**

In Resolution ALJ 176-3111, dated April 17, 2003, the Commission preliminarily categorized this application as ratesetting, and preliminarily determined that hearings were not necessary. No protests have been received. Therefore, a public hearing is not necessary, and it is not necessary to alter the preliminary determinations.

This is an uncontested matter in which the decision grants the requested relief. Therefore, pursuant to Section 311(g)(2) of the Public Utilities Code, the

otherwise applicable 30-day period for public review and comment is being waived.

### **Assignment of Proceeding**

Geoffrey F. Brown is the Assigned Commissioner, and Karl J. Bemederfer is the assigned Administrative Law Judge in this proceeding.

### **Findings of Fact**

1. By D.97-04-019, Broadwing-TI was granted a CPCN to operate in California as a resale provider of interexchange services.
2. As a result of the transaction, C III Ops will acquire the CPCN, customer contracts and other assets of Broadwing-TI.
3. C III Ops will retain the management of Broadwing-TI.
4. Customers will continue to receive service under the same rates, terms, and conditions of service after the transaction.
5. C III Ops has sufficient financial resources to meet the Commission's requirements to provide facilities-based and resold interexchange services.
6. C III Ops possesses the necessary technical expertise required by the Commission.
7. The transaction will provide C III Ops with improved access to capital.
8. Notice of this application appeared on the Commission's Daily Calendar on April 16, 2003.
9. There were no protests to this application.
10. No hearings are necessary.

### **Conclusions of Law**

1. The Commission will apply the same requirements to a request for approval of an agreement to acquire the assets, including the CPCN, of a resale

provider of interexchange telecommunications services within California as it does to an applicant for authority to provide such services.

2. C III Ops meets the Commission's requirements for the issuance of a CPCN to provide facilities-based and resold interexchange telecommunications services.

3. The transaction provides net benefits to the public and is, therefore, in the public interest.

4. The character of assets used and useful in providing public utility service is not altered by transfer to a utility's affiliate.

5. In order to avoid delaying this transaction, the approval of the application should be made effective immediately.

## O R D E R

### **IT IS ORDERED** that:

1. Pursuant to Public Utilities Code Sections 851 and 854, the joint application of C III Communications, LLC, C III Communications Operations, LLC, Broadwing Communications Services Inc., and Broadwing Telecommunications Inc. for approval of the transfer of the assets, customers and certificate of public convenience and necessity of Broadwing-TI to C III Ops is approved.

2. This application is closed.

This order is effective today.

Dated \_\_\_\_\_, at San Francisco, California.