

Decision 05-09-026 September 14, 2005

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Joint Application of Winstar Communications, LLC and GVC Networks, LLC for Approval of an Indirect Transfer of Control of Winstar Communications, LLC. (U-5531-C)

Application 05-07-026
(Filed July 29, 2005)

OPINION APPROVING ACQUISITION OF INDIRECT CONTROL

Summary

Winstar Communications, LLC (Winstar) and GVC Networks, LLC (GVC) (collectively, Applicants) jointly seek approval of GVC's acquisition of indirect control over Winstar. The transaction is approved.

Jurisdiction

Applicants filed this matter pursuant to Pub. Util. Code § 854 and Rule 35 of the Commission's Rules of Practice and Procedure. Section 854 precludes any person or corporation from transferring direct or indirect control of a public utility organized and doing business in California without first securing authorization to do so from this Commission upon a finding that the transfer is in the public interest. 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 the public interest may require. (*San Jose Water Co.* (1916) 10 California Railroad Commission 56.)

Description of the Parties and Transaction

Winstar, a limited liability company with principal offices in Newark, New Jersey, is authorized to operate as a nondominant reseller of interLATA and intraLATA interexchange services in California pursuant to Decision (D.) 02-03-021 on March 6, 2002. Winstar is a wholly owned operating subsidiary of Winstar Holdings. IDT Corporation ultimately owns Winstar Holdings. IDT is a publicly held corporation organized under the laws of Delaware with principal offices in Newark, New Jersey.

GVC, a Delaware limited liability company with principal offices in Detroit, Michigan, is a minority-owned enterprise formed to provide facilities-based local, long distance and high-speed data (broadband) communications to business and multi-tenant residential entities in multiple markets, including California. GVC is currently authorized to provide these services in Michigan. GVC is a subsidiary of GVC Holdings, Inc. and is the parent company of GVC NewCo.

Under the terms of a merger agreement, attached to the application as Exhibit D, GVC will acquire, indirectly, 100% of the equity in Winstar through a two-part transaction. In the first part, Winstar Holdings will form a wholly owned subsidiary, Winstar NewCo, which will, in turn, wholly own Winstar. In the second part of the transaction, Winstar NewCo will merger into GVC NewCo, with Winstar NewCo as the surviving entity. As a result of the merger, GVC will acquire a 100% equity interest in Winstar NewCo and, thus, a 100% indirect ownership in Winstar.

Applicants state that because the transaction will be completed at the holding company level and will not change the rates, terms or conditions of Winstar's services, the proposed transaction will be transparent to customers of

Winstar receiving services in California. Applicants state that Winstar will continue to have the managerial and technical qualifications to provide telecommunications services in California. GVC, the ultimate parent company, states that there will be no significant changes in Winstar's current management as a result of this transaction, and the current senior management is expected to continue to oversee day-to-day operations of Winstar's business. Applicants state that, over time, there may be management changes as deemed appropriate by GVC.

Applicants state that GVC has the technical, financial and managerial qualifications to own the Winstar business. GVC was founded in 2002 and since 2003 has held a license to provide local and long distance telecommunications services in Michigan. GVC is a minority enterprise composed of a team of executives with significant experience with such telecommunications carriers as MCI, AT&T, SBC, Sprint, Global Crossing and Winstar.

Applicants state that the transaction serves the public interest, ensuring the continuation of Winstar's business and its position as a strong competitor. GVC states that it will supplement Winstar's current management, the majority of whom will be retained, and will bring additional capital to Winstar. GVC states that its commitment to the minority community gives rise to the potential for new or enhanced infrastructure in underserved areas in the state.

Discussion

Where, as here, a company acquiring control of a certificated telecommunications carrier does not possess a certificate of public convenience and necessity (CPCN) in California, the Commission applies the same requirements as to an applicant seeking a CPCN to exercise the type of authority held by the company being acquired: a minimum of \$100,000 in cash or cash

equivalent, and technical expertise in telecommunications or a related business. Review of the documents submitted in support of GVC's financial qualifications indicate that it will have sufficient resources to meet Commission requirements. Applicants state that the actual management of Winstar will not change significantly and the transaction will be transparent to Winstar's customers. Applicants further declare that there are no plans for any changes in rates, terms, or conditions of Winstar service. Accordingly, GVC meets the Commission's required technical and managerial qualifications.

GVC confirms that no affiliate, officer, director, partner, or owner of more than 10% of GVC, or any person acting in that capacity, has filed for bankruptcy or has been sanctioned by the Federal Communications Commission or any state regulatory commission for failure to comply with any regulatory statute, rule or order; and no such person has been found criminally or civilly liable for a violation of § 17000 et seq. of the California Business and Professions Code or for any actions that involved misrepresentations to consumers, or is currently under investigation for similar violations. Thus, applicants satisfy the Commission's requirements on these factors.

Given the financial commitment by GVC to Winstar, it appears that the transaction has been and will be consistent with the public interest.

This application proposes no new construction. Accordingly, there is no possibility that the transaction described herein may have any significant impact on the environment. There are no protests to this application. Applicants' request is granted.

Uncontested Matter

This is an uncontested matter in which the decision grants the relief requested. Applicants have requested expedited approval. Accordingly,

pursuant to Pub. Util. Code § 311(g)(2), the otherwise applicable 30-day period for public review and comment is being waived. Pursuant to Pub. Util. Code §§ 851-854, the Executive Director may grant noncontroversial applications by nondominant telecommunications carriers to transfer assets or control.¹

Categorization and Need for Hearings

In Resolution ALJ 176-3157, dated August 25, 2005, 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; thus, the preliminary determinations in ALJ 176-3157 will not be altered.

Assignment of Proceeding

John Bohn is the Assigned Commissioner and Glen Walker is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. Resolution ALJ 176-3157 determined that this was a ratesetting proceeding and that hearings were not necessary.
2. Notice of this application appeared in the Commission's Daily Calendar on August 3, 2005.
3. No protests were filed.
4. On July 29, 2005, Applicants filed for approval of GVC's acquisition of indirect control over Winstar, pursuant to Pub. Util. Code § 854.

¹ *Re Crico Telecommunications of San Jose*, D.87-10-035, 1987 Cal. PUC LEXIS 283; *Re California Associations of Long Distance Telephone Companies*, D.86-08-057, 1986 Cal. PUC LEXIS 786.

5. GVC has sufficient financial resources to meet the Commission's requirements to operate as a nondominant reseller of interLATA and intraLATA interexchange services in the state.

6. Given joint applicants' stated intention to retain the current managerial team of Winstar, GVC will possess the necessary technical expertise required by the Commission.

7. No new construction is being proposed in this application.

8. GVC has no complaints (alleging fraud or significant wrongdoing) pending against it before this Commission, the FCC or any other state Commission.

Conclusions of Law

1. An uncertificated entity seeking indirect control of a public utility in California should do so pursuant to Pub. Util. Code § 854.

2. The indirect transfer of control of Winstar to GVC is not adverse to the public interest.

3. This proceeding is designated as a ratesetting proceeding; no protests have been received; no hearing is necessary.

4. It can be seen with certainty that the proposed transfer will not have any adverse impact on the environment.

5. GVC meets the Commission's requirements for an acquiring company of an authorized provider of local exchange and interexchange telecommunications services.

6. The application should be approved pursuant to Pub. Util. Code § 854(a); since the matter is uncontested, the decision should be effective on the date it is signed.

7. The application is noncontroversial and may be granted by the Executive Director pursuant to authority delegated by the Commission.

Therefore, **IT IS ORDERED** that:

1. Pursuant to Pub. Util. Code § 854(a), the indirect transfer of control of Winstar Communications, LLC to GVC Networks, LLC Partners III, L.P., in accordance with the merger documents submitted in conjunction with Application (A.) 05-07-026, is authorized.

2. The Executive Director may grant noncontroversial applications by nondominant telecommunications carriers to transfer assets or control, pursuant to Pub. Util. Code §§ 851-854.

3. A.05-07-026 is closed.

This order is effective today.

Dated September 14, 2005, at San Francisco, California.

/s/ STEVE LARSON

STEVE LARSON

Executive Director