

Decision 01-06-072 June 28, 2001

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

In the Matter of the Application of Platinum Development Company, LLC for Transfer of Assets and its Certificate of Public Convenience and Necessity and Pending Full Facilities-Based Authority Request to Aevia, Inc.

Application 00-11-049  
(Filed November 20, 2000)

**O P I N I O N**

**I. Summary**

By this order we grant Platinum Development Company, LLC (Platinum) authority to transfer and assign its certificate of public convenience and necessity (CPCN), assets, and pending request seeking full facilities-based carrier authority to Aevia, Inc. (Aevia). This authority is being granted pursuant to Pub. Util. Code §§ 851-854.

**II. Categorization**

Notice of this application appeared in the Commission's Daily Calendar of November 22, 2000. With no filed protests there is no reason to hold a public hearing and no reason to change the preliminary determinations made in Resolution ALJ 176-3052.

**III. Jurisdiction**

This application was filed pursuant to Pub. Util. Code §§ 851-854. Section 854 precludes any person or corporation from transferring the control of any public utility organized and doing business in this state without first securing authorization to do so from this Commission. The additional criteria

needed for authority to transfer control of a utility set forth in subsections (b) and (c) of Section 854 are not applicable in this instance because neither Platinum nor Aevia has gross annual California revenues exceeding \$500 million.

#### **IV. The Parties**

Platinum, a California Limited Liability Company, was granted a CPCN under the U-6381-C corporate identification number to provide limited facilities-based telecommunications services subject to the terms and conditions set forth in Decision (D.) 00-08-014, dated August 3, 2000.

Aevia, wholly owned by Douglas Picard, is a Delaware corporation qualified to transact business in California. Picard also owns a 49% equity position in Platinum.

#### **V. The Transaction**

Platinum and Aevia propose to assign all of the assets of Platinum, tangible and intangible, to Aevia with Aevia being the surviving entity pursuant to the Asset Assignment Agreement attached to the application under seal as Exhibit C. This assignment includes Platinum's existing CPCN and its pending Application (A.) 00-04-010 request, filed on April 3, 2000, seeking full facilities-based carrier authority, of which Platinum is the only party of record.

Applicants represent that approval of this assignment of Platinum's assets will benefit California customers because Aevia has access to increased capital unavailable to Platinum and will be able to implement and enhance the operations, service, and product offerings proposed by Platinum on an expedited basis.

The assignment of Platinum's assets is structured in a seamless fashion. There will be no changes to the services that Platinum is authorized to offer, or in the manner in which these services are to be provided, as a result of the proposed assignment of assets. No change is contemplated in the tariff provisions

tendered by Platinum as part of its CPCN authorized by D.00-08-014. No customers in California are affected by this transaction because Platinum has not yet filed its final tariffs and has not yet commenced offering telecommunications services in California.

Aevia will reimburse Platinum for all fees and other costs Platinum incurred in obtaining its CPCN. In addition, Aevia will advance to Platinum such additional funds as may be necessary to complete Platinum's current negotiations with SBC/Pacific Bell. Such funds shall be the only consideration required of Aevia with respect to the proposed asset assignment.

## **VI. Discussion**

In a situation where a company not possessing a CPCN desires to acquire control of a company that does possess a CPCN, we 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. Since Platinum possesses a CPCN to provide limited facilities-based telecommunications services within California subject to the terms and conditions set forth in D.00-08-014, we will apply the same requirements for such authority to Aevia.

The Commission has established two major criteria for determining whether a CPCN should be granted. An applicant who desires to act as a facilities-based carrier 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. In addition, the applicant is required to make a reasonable showing of technical expertise in telecommunications or a related business.

To demonstrate its satisfaction of the financial resource requirement, Aevia submitted financial information under seal to substantiate that it has sufficient resources to meet our financial requirement. Aevia meets the Commission's financial resource requirement to provide the requisite service.

As previously addressed, Aevia is wholly owned by Picard who also owns a 49% equity position in Platinum. Picard's telecommunications qualifications were previously considered as part of Platinum's CPCN application granted by D.00-08-014. A reasonable showing of technical expertise in the telecommunications or related business has already been approved in connection with the issuance of a CPCN to Platinum. Hence, Aevia meets the Commission's technical expertise requirement.

No new construction is being proposed by this application. Accordingly, there is no possibility that the proposed transaction contemplated herein may have any significant impact on the environment.

Applicants have satisfied the Commission's financial requirement and technical competence requirement to provide the telecommunications services currently authorized. Consummation of the merger will not adversely affect Applicants, their customers, their shareholders, or any other person. The proposed merger is in the public interest and should be approved.

## **VII. Expedited Approval**

Platinum seeks approval of its proposed transfer of assets on an expedited basis by the Executive Director, pursuant to D.86-08-057 and D.87-10-035. Although these cited decisions provide the Executive Director with authority to grant noncontroversial transfer of control applications on an expedited basis, such authority only pertains to the transfer of assets by nondominant telecommunications carriers. Aevia is not yet a nondominant telecommunications carrier. Hence, the proposed transfer of assets does not involve a transfer of assets by nondominant telecommunications carriers and the Executive Director cannot act on Platinum's request.

### **VIII. Draft Decision Comments**

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

### **Findings of Fact**

1. Applicants seek to transfer the assets of Platinum from Platinum to Aevia, with Aevia being the surviving entity.

2. Notice of this application appeared in the Commission's Daily Calendar of November 22, 2000.

3. No protests were filed.

4. This application has been filed pursuant to Pub. Util. Code §§ 851-854.

5. Platinum possesses a California CPCN with authority to provide limited facilities-based telecommunications services subject to the terms and conditions set forth in D.00-08-014.

6. Aevia submitted confidential financial information under seal pursuant to General Order 66-C.

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

8. The transfer of assets also involves the assignment of Platinum's CPCN to Aevia.

9. Platinum is a nondominant telecommunications carrier.

10. Applicant seeks expedited approval of this application by the Executive Director.

### **Conclusions of Law**

1. The preliminary ratesetting categorization set forth in Resolution ALJ 176-3052 is affirmed.

2. The proposed transfer of assets and CPCN of Platinum to Aevia is not adverse to the public interest.
3. It can be seen with certainty that the proposed transfer will not have an adverse impact on the environment.
4. The financial information placed under seal should remain under seal.
5. This application is noncontroversial and should be granted on an ex parte basis.
6. Public convenience and necessity require the granting of this application be effective on the date signed.
7. The applicable 30-day period for public review and comment should be waived pursuant to Pub. Util. Code § 311(g)(2).
8. The application should be granted to the extent provided in the following order.

## **O R D E R**

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

1. Platinum Development Company, LLC (Platinum) and Aevia, Inc. (Aevia) are authorized to transfer the assets and Certificate of Public Convenience and Necessity (CPCN) of Platinum to Aevia. This transfer of Platinum's assets and CPCN shall be as set forth in the Asset Agreement attached to the application as Exhibit C.
2. Applicants shall notify the Director of the Commission's Telecommunications Division in writing of the transfer of authority, as authorized herein, within ten days of the date of consummation of such transfer. A true copy of the instruments of transfer shall be attached to the notification.
3. Aevia shall incorporate the change in name being approved by this order as part of its final tariffs to be filed with the Commission.

4. Aevia shall provide notice of the CPCN transfer from Platinum to Aevia in Platinum's Application (A.) 00-04-010 and any other Platinum proceeding currently open, within ten days of the date of consummation of the transfer being approved by this order.

5. The corporate identification number U-6381-C assigned to Platinum in Decision (D.) 00-08-014 shall be transferred to Aevia and shall be included in all original filings with the Commission and in the titles of other pleadings filed in existing cases.

6. All data placed under seal in this proceeding shall remain sealed for a period of one year from the date of this order. The sealed data should not be made accessible or disclosed to anyone other than Commission staff during the one-year time period except on the execution of a mutually acceptable nondisclosure agreement or on further order or ruling of the Commission or the Administrative Law Judge then designated as the Law and Motion Judge.

7. The application is granted as set forth above and the authority granted shall expire if not exercised within one year of the effective date of this order.

8. Aevia shall be bound by all conditions imposed in D.00-08-014.

9. A.00-11-049 is closed.

This order is effective today.

Dated June 28, 2001, at San Francisco, California.

LORETTA M. LYNCH  
President  
HENRY M. DUQUE  
RICHARD A. BILAS  
CARL W. WOOD  
GEOFFREY F. BROWN  
Commissioners