

Decision 01-08-051 August 23, 2001

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Joint Application of Net-tel Communications Corporation (U-5818-C) and Integrated Communications Consultants Corporation for a Commission Order Pursuant to Public Utilities Code Sections 851 and 854 Authorizing the Sale of Assets of Net-tel Corporation to Integrated Communications Consultants Corporation.

Application 01-05-025
(Filed May 10, 2001)

O P I N I O N

1. Summary

Pursuant to Sections 851 and 854 of the Public Utilities Code, Net-tel Communications Corporation (Net-tel), through its trustee in bankruptcy, and Integrated Communications Consultants Corporation (ICC) seek a Commission order authorizing the sale of certain assets of Net-tel and the transfer of Net-tel's operating authority to ICC. In examining this application, we have applied the same tests to ICC that we would have applied had it sought this operating authority on its own. The application is unopposed. The application is granted.

2. Description of Applicants

Net-tel is certificated to provide facilities-based and resale interexchange service in California and to provide facilities-based and resale local exchange service within the territories of Pacific Bell, Verizon, Roseville and Citizens telephone companies. Certificates authorizing these services were granted to the

company in Decision (D.) 97-08-022, D.98-12-046 and D.00-03-047. Net-tel holds two utility identification numbers, U-5818-C and U-6321-C.

ICC is a Delaware corporation with a principal place of business in Marina del Rey, California. It was organized in 1998 as a billing consultant firm and data traffic aggregator. It now seeks to expand into the field of facilities-based telecommunications services. Upon approval of this application, it would operate as the provider of local exchange and interexchange services currently authorized to Net-tel.

3. Nature of Application

Net-tel has filed for Chapter 7 bankruptcy with the United States Bankruptcy Court for the District of Columbia. On February 15, 2001, the Bankruptcy Court authorized Net-tel to sell certain of its assets, including customer lists, and to transfer its California operating certificates to ICC pursuant to Commission procedures.

Applicants state that the transaction does not involve sale and transfer of Net-tel facilities and equipment to ICC. Instead, ICC states that it intends to install and collocate its own switching and ancillary equipment in the central offices of incumbent local exchange carriers. ICC states that it also may purchase unbundled network elements and resell the services of other certificated carriers.

Net-tel currently has no California customers for its certificated services, and thus no transfer of customers will result from the transaction and no customer notification will be necessary. However, ICC states that it will adopt Net-tel's current approved tariff on file with the Commission and will re-file the tariff to incorporate the name change upon approval of this application. Rates, terms and conditions available to customers will not change.

4. Public Interest

The application states that the transfer of operating authority will serve the public interest in promoting competition in the local exchange and intrastate and

interstate telecommunications market. ICC states that it intends to compete with incumbent local exchange carriers, other competitive local carriers and long-distance carriers by providing high-quality, fairly priced and innovative telecommunications services.

Attached to the application are copies of ICC's financial statements, brief biographies of its principal managers, and a copy of the Bankruptcy Court order authorizing the sale of certain assets and the transfer of operating authority. The transfer is made subject to the approval of this Commission.

5. Discussion

Pub. Util. Code § 851 requires Commission authorization before a public utility may convey its property to another entity. Pub. Util. Code § 854 requires Commission approval before a company may “merge, acquire, or control...any public utility organized and doing business in this state....” The purpose of these 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 have a certificate of public convenience and necessity (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 for the first time. Since Net-tel has a CPCN to act as a switchless reseller of interexchange telecommunications services in California and a CPCN to operate as a facilities-based competitive local carrier, we apply the more stringent competitive local carrier requirements.

To obtain a facilities-based competitive local carrier CPCN, an applicant must possess the requisite managerial qualifications, technical competence, and

financial resources consisting of a minimum of \$100,000 in cash or cash equivalent. Financial documents filed under seal as Exhibit D show that ICC meets the financial requirements. ICC also has demonstrated the requisite management and technical competence. Ivan Zweig, president of ICC, has more than four years of experience in the telecommunication industry as a sales manager for various carriers. Alex Ponnath, chief technical officer of ICC, has four years of experience in technical positions with telecommunications and Internet service providers.

Applicants state that no officer, director, or manager of ICC has been involved with a California carrier that has abandoned service or become insolvent, or has been sanctioned by federal or state regulatory agencies.

The proposed transfer of CPCN authority here promises improved services for California consumers. No changes in the existing services of Net-tel are proposed. No new construction is being proposed. Accordingly, there is no possibility that the transaction contemplated here will have any significant impact on the environment. ICC states that if in the future it needs to construct new facilities, it will comply with all applicable laws and environmental regulations to obtain authority for its construction.

ICC notes that Net-tel has been granted two utility identification numbers. ICC asks that the Commission in this order cancel the number U-6321-C and permit ICC to operate solely under the number U-5818-C.

There have been no protests to this application, and the contemplated transfer of CPCN authority appears to be noncontroversial. The application requests expedited approval.

In Resolution ALJ 176-3064, dated May 24, 2001, the Commission preliminarily categorized this proceeding as ratesetting, and preliminarily

determined that hearings were not necessary. Based on the record, we conclude that a public hearing is not necessary, nor is it necessary to alter the preliminary determinations in Resolution ALJ 176-3064.

The application is granted, subject to the terms and conditions set forth below.

Findings of Fact

1. Notice of this application appeared in the Commission's Daily Calendar of May 15, 2001.

2. Applicants seek approval pursuant to Pub. Util. Code §§ 851 and 854 of a sale of certain assets and transfer of CPCN authority from Net-tel to ICC.

3. Net-tel is authorized to provide interstate and intrastate interexchange services in California, and is authorized to provide facilities-based and resale competitive local carrier authority.

4. ICC is a Delaware corporation, with principal offices in California, which intends to provide the services authorized for Net-tel.

5. After the sale and transfer, ICC will adopt Net-tel's existing tariff in its entirety, and there will be no change in rates, terms and conditions of service provided to current customers.

Conclusions of Law

1. The proposed sale and transfer of operating authority is not adverse to the public interest.

2. ICC meets the financial, technical and managerial requirements of a company seeking authority as a facilities-based competitive local carrier.

3. This proceeding is designated a ratesetting proceeding; no protests have been received; no hearing is necessary.
4. The application should be approved.

O R D E R

IT IS ORDERED that:

1. Net-tel Communications Corporation (Net-tel), through its Trustee in Bankruptcy, and Integrated Communications Consultants Corporation (ICC) are authorized pursuant to Sections 851 and 854 of the Public Utilities Code to enter into the transaction, as more fully described in the application and its exhibits, by which ICC will acquire certain assets and the California operating authority now held by Net-tel.
2. Net-tel and ICC shall notify the Director of the Commission's Telecommunications Division in writing of the transfer of operating authority, as authorized herein, within 10 days of the date of consummation of such transfer. A true copy of the instruments of transfer shall be attached to the notification.
3. ICC shall file a new tariff incorporating changes in names and management authorized in the transaction.
4. Net-tel and ICC shall make all books and records available for review and inspection upon Commission staff request.
5. The certificates of public convenience and necessity granted to Net-tel in Decision (D.) 97-08-022, D.98-12-046, and D.00-03-047 will transfer to ICC upon consummation of the transaction, and ICC is authorized to continue use of the utility identification number U-5818-C.
6. Upon consummation of the transaction, utility identification number U-6321-C will be canceled.

7. Upon consummation of the transaction, Net-tel shall have no further public utility obligations in connection with the authority transferred in this application.

8. The authority granted herein shall expire if not exercised within one year of the date of this order.

9. Application 01-05-025 is closed.

This order is effective today.

Dated August 23, 2001, at San Francisco, California.

LORETTA M. LYNCH

President

HENRY M. DUQUE

RICHARD A. BILAS

CARL W. WOOD

GEOFFREY F. BROWN

Commissioners