

Decision **REVISED DRAFT DECISION OF ALJ PRESTIDGE**  
**(Mailed 12/28/2004)****BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

In the Matter of the Application of Gores Portfolio Holdings, Inc., and Global Tel\*Link Corporation (U-5680-C) For Authority to Transfer Control of an Authorized Telecommunications Providers.

Application 04-09-014  
(Filed September 14, 2004)

**OPINION AUTHORIZING TRANSFER OF CONTROL  
OF GLOBAL TEL\*LINK CORPORATION, INC.  
TO GORES PORTFOLIO HOLDINGS****Summary**

This decision grants the application of Global Tel\*Link Corporation (Global) and Gores Portfolio Holdings, Inc., (Gores) for approval pursuant to Sections 852 and 854<sup>1</sup> of the sale of 100% of the stock of Global to Gores. As a result of this transaction, Gores will own and acquire control of Global.

**Parties to the Transaction**

Global is a Delaware corporation with its principal business office located in Mobile, Alabama. Global holds a certificate of public convenience and necessity (CPCN) to provide interLATA and intraLATA telecommunications services in California.<sup>2</sup> Global specializes in the provision of prepaid and inmate-

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<sup>1</sup> All Code references are to the Public Utilities Code, unless otherwise stated.

<sup>2</sup> See Decision (D.) 96-09-078

only telecommunications services. Global is a wholly-owned subsidiary of Schlumberger, a large privately-held corporation formed under the laws of the State of Delaware.

Gores is a Delaware corporation whose principal place of business is located in Boulder, Colorado. Gores is wholly owned by three Delaware limited partnerships that comprise the private equity fund managed by Gores Technology Group. Gores holds a controlling interest in Voicecom Telecommunications, LLC (VoiceCom), a telecommunications provider. Gores also has experience in acquiring and managing network services and software and hardware companies.

Gores represents that it has substantial financial resources available to assist with the operation of Global. Gores also asserts that it has substantial experience in the telecommunications area through its ongoing involvement with VoiceCom.

### **Proposed Transaction**

Under this transaction, Gores will acquire all of the stock of Global from Schlumberger. As a result of these transactions, Global will become a direct subsidiary of Gores. Gores will pay Schlumberger approximately \$25 million for Global's stock.<sup>3</sup>

Global will continue to hold its CPCN to provide telecommunications services in California.

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<sup>3</sup> Under the agreement between Gores and Schlumberger, the exact purchase price is subject to adjustment based on certain factors including Global's success in collecting certain accounts receivable and renewing contracts with certain customers.

Gores and Global represent that this change in ownership will benefit Global and its customers, because it will strengthen Global's financial position.

The applicants further represent that the transaction will be transparent to customers. There will be no change in the name or management of Global because the transaction will be completed at the parent company level only. Customers will continue to receive service from Global under the same rates, terms, and conditions after the transaction is approved.

### **Discussion**

Under Section 852, no public utility, and no subsidiary, affiliate of, or corporation holding a controlling interest in, a public utility, shall purchase or acquire, take or hold, any part of the capital stock of any other public utility, organized or existing under the laws of this state, without prior Commission authorization. Section 854 further requires Commission authorization before a company may "merge, acquire, or control . . . any public utility organized and doing business in this state . . .". The purpose of these and related sections is to enable the Commission, before any transfer of a public utility 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 in which a company that does not possess a CPCN desires to acquire control 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. Therefore, although Gores does not hold a CPCN to provide telecommunications services in California, Gores must meet the requirements for issuance of a CPCN because it is acquiring control of Global.

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 local exchange and 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. In addition, the applicant is required to make a reasonable showing of technical expertise in telecommunications or a related business. The application includes financial statements and other evidence that demonstrates that Gores has sufficient resources to meet our financial requirements. Since Global is expected to continue to operate under the same day-to-day management, we find that our general requirement for technical expertise is satisfied, for the purposes of this transaction only.<sup>4</sup> The transaction will improve Global's access to capital and credit, which should improve Global's financial position and ability to serve customers in this state. In addition, this transaction will be transparent to customers. Therefore, the proposed transaction is in the public interest.

Therefore, we will grant the application pursuant to Sections 852 and 854.

However, we note several problems related to this application. First, although the application represents that VoiceCom has or has applied for operating authority in every state, Commission records indicate that VoiceCom does not have and has not applied for a CPCN in California, at least under this

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<sup>4</sup> We made no determination that Gores would otherwise meet the technical and managerial requirements for authorization to provide telecommunications services in this state.

corporate name.<sup>5</sup> Under Rule 1,<sup>6</sup> both counsel and parties filing applications with the Commission are obligated to ensure that statements in the application are correct and are not misleading.

In addition, under Section 2.4(c) of the stock purchase agreement between Gores and Schlumberger, upon the closing of the transaction, Schlumberger is entitled to withdraw all cash held by Global, except for funds needed to cover outstanding checks issued by Global before the closing. In order to ensure that Global has sufficient funds to operate as a telecommunications provider in this state, we will require Gores to amend Section 2.4(c) to provide that at all times Global shall retain funds in at least the minimum amount required to qualify to meet requirements for its CPCN. Gores may file the revised agreement or amendment with the Commission Telecommunications Division by advice letter no later than 45 days after the effective date of this decision.

### **Categorization and Need for Hearings**

In Resolution ALJ 176-3139, dated September 23, 2004, the Commission preliminarily categorized this application as ratesetting, and preliminarily determined that hearings were not necessary. No protests have been received. There is no apparent reason why the application should not be granted. Given

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<sup>5</sup> Decisions from at least several other states indicate that VoiceCom has merged with or acquired the assets of another telecommunications company, Premiere Communications, Inc. Premiere does have a CPCN, which authorizes Premiere to provide telecommunications services in California. However, VoiceCom has not filed an application with this Commission to merge with or acquire the assets of Premiere.

<sup>6</sup> All Rule citations are to the Commission Rules of Practice and Procedure, unless otherwise stated.

these developments, a public hearing is not necessary, and it is not necessary to disturb the preliminary determinations.

### **Comments on Draft Decision**

The draft decision of the ALJ Prestidge in this matter was mailed to the parties in accordance with Pub. Util. Code § 311(g)(1) and Rule 77.7 of the Rules of Practice and Procedure. Comments were filed on December 22, 2004. We have revised the draft decision in response to the comments received.

### **Assignment of Proceeding**

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

### **Findings of Fact**

1. Global is a Delaware corporation and a wholly owned subsidiary of Schlumberger, a privately-held Delaware corporation.
2. In D.96-09-078, Global was granted a CPCN to provide limited facilities-based and resold local exchange and interexchange services in California.
3. As a result of the transaction, Gores will have a 100% ownership interest in Global and will therefore have ultimate control of Global.
4. Gores does not hold a CPCN that authorizes it to provide telecommunications services in California.
5. There will be no change in the name or day-to-day management of Global as a result of the transaction.
6. Global customers will continue to receive service under the same rates, terms, and conditions as a result of this transaction.
7. Gores has sufficient financial resources to meet the Commission's requirements to provide facilities-based and resold local exchange and interexchange services.

8. Since this transaction will give Global access to increased funding and credit for its operations, this transaction will improve the financial stability of Global.

9. Since Global's day-to-day management will remain the same, Gores has met the general requirement for technical and managerial expertise to provide telecommunications services, for the purposes of this transaction only.

10. Although the application states that VoiceCom has or has applied for a CPCN in every state, VoiceCom does not have and has not applied for a CPCN in California, at least under this corporation .

11. This application does not directly address Global's right to operate as a telecommunication carrier in this state.

12. Under Section 2.4(c) of the stock purchase agreement between Gores and Schlumberger, Schlumberger may withdraw all of the cash held by Global, except for funds needed to cover checks issued by Global prior to the closing of the transaction.

13. In order to ensure that Global has sufficient funds to operate effectively as a telecommunications provider in this state, Global must retain at least the minimum amount of funds required to qualify for its CPCN at all times.

14. Notice of this application appeared on the Commission's Daily Calendar on September 24, 2004.

15. There were no protests to this application.

16. 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 control of a facilities-based and resale

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

2. Gores meets the Commission's requirements for the issuance of a CPCN to provide facilities-based and resold local exchange and interexchange telecommunications services, for the purposes of this transaction only.

3. This transaction is not adverse to the public interest.

4. Under Rule 1, parties and counsel filing applications with the Commission have a duty to ensure that statements in the application are correct and are not misleading.

5. The Commission may impose conditions on the transfer of Global to Gores and the accompanying sale of stock in order to protect the public interest.

6. Gores should amend Section 2.4 of the stock purchase agreement between Gores and Schlumberger to provide that Global shall retain at least the minimum amount of funds required to qualify for its CPCN at all times, in order to ensure that Global has sufficient funds to operate effectively as a telecommunications provider in this state.

7. 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 852 and 854, the application of Global Tel\*Link Corporation (Global) and Gores Portfolio Holdings, Inc. (Gores) for approval of the transfer of control of Global to Gores is approved.

2. As a condition precedent to approval, Gores shall amend the Section 2.4(c) of its stock purchase agreement with Schlumberger Technologies, Inc., to provide that Global shall retain at least the minimum amount of funds needed to qualify for its CPCN at all times. Gores shall submit the revised agreement to the Commission Telecommunications Division by advice letter no later than 45 days after the effective date of this decision.

3. This proceeding is closed.

This order is effective today.

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