

Decision \_\_\_\_\_

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

Joint Application of First Communications, LLC (U6837C), Xtension Services, Inc. (U6508C), and Gores FC Holdings, LLC For Approval of Transfer of Control.

Application 07-07-017  
(Filed July 18, 2007)

**OPINION GRANTING AUTHORIZATION TO ACQUIRE  
CONTROL OF FIRST COMMUNICATIONS, INC.**

**Summary**

First Communications, LLC (FCL), Xtension Services, Inc. (Xtension), and Gores FC Holdings, LLC (Gores FC) (collectively, the Applicants) seek authorization for Gores FC, pursuant to Pub. Util. Code § 854, to acquire control of First Communications, Inc. (FCI) in accordance with a Securities Purchase Agreement that they have submitted. The request is granted under Pub. Util. Code § 854(a). This proceeding is closed.

**Jurisdiction**

Applicants filed this matter pursuant to Pub. Util. Code § 851 *et seq.* and Rules 2.1(a), 2.2 and 3.6(a) of the Commission's Rules of Practice and Procedure. Section 851 requires a public utility to obtain Commission authorization before it "may sell, lease, assign or otherwise dispose of ... property necessary or useful in the performance of its duties to the public." Section 854 precludes any person or corporation from transferring control of any public utility organized and doing business in California without first securing authorization to do so from the Commission upon a finding that the transfer is in the public interest. The purpose of these 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.<sup>1</sup>

### **Description of the Parties and Transaction**

FCL, an Ohio corporation, is a wholly owned subsidiary of FCI, and located at 3340 West Market Street, Akron, Ohio 44333. FCL is authorized to provide local, private line, and/or long distance services to both business and residential customers in 49 states and holds domestic and international Section 214 authorizations<sup>2</sup> from the Federal Communications Commission (FCC). Its services include, in addition to traditional local and long distance services, toll-free services, conference calling packages, calling cards, prepaid calling cards, Internet access and dedicated and private line services. FCL provides its telecommunications services primarily on a resale basis using the facilities and switches that other telecommunications carriers own and operate. In California, FCL has authorization to provide resold and facilities-based local exchange and interexchange telecommunications services.<sup>3</sup>

Xtension, a Delaware corporation, is another wholly owned subsidiary of FCI, with offices located at 30 South Treasure Drive, Tampa, Florida 33609. Xtension holds domestic and international Section 214 authorizations from the FCC and provides long distance telecommunications services in 13 states and

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<sup>1</sup> See, *San Jose Water Co.* 10 CRC 56, 63 (May 10, 1916).

<sup>2</sup> The FCC requires any person that provides telecommunications services to or from the United States to receive an authorization under Section 214 of the Communications Act of 1934. This authorization is called an International Section 214 Authorization, or, commonly, an International 214 License.

<sup>3</sup> See, Decision (D.) 03-10-066 and D.07-03-030 issued on October 22, 2003 and March 15, 2007, respectively.

local exchange services in New Jersey. In California, Xtension has authorization to provide resold interexchange telecommunications services in accordance with D.01-03-006.<sup>4</sup>

Gores FC is a limited liability corporation with its principal office located at 10877 Wilshire Boulevard, Suite 1085, Los Angeles, California 90024. The Gores Group and its managing member, Alec E. Gores, control Gores FC.<sup>5</sup> The Gores Group is a private investment firm that focuses its investments on opportunities in the technology and telecommunications sectors. Its private equity fund has combined capital commitments of \$400 million from institutional investors and Gores Group principals. In addition to its own capital resources, through an established network of debt financing sources and investment partners, the Gores Group also provides access to working capital for its portfolio companies on favorable terms and conditions that might not otherwise be available to those companies as standalone enterprises.

Gores FC currently holds 9.9 % voting interest in FCI, the parent of FCL and Xtension. The agreement through which Gores FC acquired its interest permits Gores FC to increase its interest to 13.1% by converting its nonvoting shares of common stock to voting shares upon receipt of the necessary regulatory approvals and to increase its voting interest in FCI up to 35.6% through certain

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<sup>4</sup> Issued in Application (A.) 01-01-045 on March 5, 2001.

<sup>5</sup> Three limited partnerships directly own 10% or more of Gores FC: Gores Alternative Investment I, L.P. (44.1%), Gores Alternative Investments II, L.P. (20.76%), and Gores Co-Invest Partnership, L.P. (22.5%) (together the Limited Partnerships). In addition, Gores Capital Advisors, LLC owns 10% of Gores FC and serves as general partner of the three Limited Partnerships. The Gores Group is the managing member of Gores Capital Advisors, LLC.

warrants, if fully exercised. The agreement will also give Gores FC the right to appoint a majority of the board of directors, thereby giving it *de facto* control of FCI. Consequently, Applicants request authorization for Gores FC to have the right to appoint a majority of FCI's board of directors.

Applicants contend that the proposed transaction will serve the public interest by providing FCL and Xtension access to additional financial and operational resources that will help strengthen their position in the telecommunications marketplace. Applicants anticipate that the proposed transaction will be entirely transparent to customers of FCL and Xtension, since the deal will be completed at the holding company level. FCL and Xtension do not foresee that the proposed transaction will have any effect on their rates, terms, or conditions of service. As a result, Applicants assert, the proposed transaction will not directly affect any end user customers of FCL or Xtension or the services they currently receive.

### **Discussion**

Where a company acquiring control of a certificated telecommunications carrier does not possess a Certificate of Public Convenience and Necessity (CPCN), 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. Here, Gores FC seeks to have the right to assume *de facto* control of FCI, the parent of two certificated carriers. Review of the financial documents submitted<sup>6</sup> in support of Gores FC's

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<sup>6</sup> On September 10, 2007, Gores FC submitted supplementary financial information at the request of the Administrative Law Judge (ALJ).

financial qualifications indicate that it will have more than sufficient resources to meet Commission requirements. Applicants also state that they expect that the proposed transaction will not result in any change to FCL's and Xtension's day-to-day operations.

In the submitted documents, Applicants indicate that FCL and Xtension will continue to operate in California, and pay any applicable regulatory fees. It appears that no affiliate, officer, director, partner, or owner of more than 10% of Gores FC, or any person acting in that capacity, has filed for bankruptcy or been sanctioned by the FCC 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.

In all, the proposed transaction will serve the public interest by providing FCL and Xtension access to additional financial and operational resources that will help to strengthen their position in the telecommunications marketplace. Access to additional financial resources will also allow FCL and Xtension to implement their business strategies while continuing to provide high quality services to existing consumers.

### **Environmental Review**

Under the California Environmental Quality Act (CEQA), the Commission must consider the environmental consequences of projects, as defined, that are subject to its discretionary approval. (Public Resources Code § 21080.) While transfers of utility assets are generally projects subject to CEQA review by the

Commission, the facts of this case indicate that this transfer, while a project, is not subject to CEQA. Based upon the record, this transaction does not have the potential for causing a significant effect on the environment; and accordingly, the Commission need not perform further CEQA review. (CEQA Guideline 15061(b) (3).)

Thus, any approval granted herein under Section 854 for the transfer of control of FCI to Gores FC does not authorize Applicants to construct facilities. In addition, Applicants must follow all applicable environmental regulations should they wish to construct any facilities.

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

In Resolution ALJ-176-3196, dated July 26, 2007, 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; thus, the preliminary determinations in ALJ-176-3196 will not be altered.

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Section 311(g) (2) of the Public Utilities Code and Rule 14.6(c) (2) of the Commission's Rules of Practice and Procedure, the otherwise applicable 30-day period for public review and comment is waived.

### **Assignment of Proceeding**

The assigned Commissioner in this matter is Commissioner Rachelle R. Chong and the assigned ALJ is Jacqueline A. Reed.

### **Findings of Fact**

1. Resolution ALJ 176-3196 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 of July 24, 2007.

3. No protests were filed.

4. Applicants sought review under Pub. Util. Code §§ 851-854.

5. Review of the financial documents submitted in support of Gores FC's financial qualifications indicate that it will have sufficient resources to meet Commission requirements.

6. Since Applicants expect the proposed transaction will not change FCL's and Xtension's day-to day operations, Gores FC will possess the necessary technical expertise required by the Commission.

7. It appears that no affiliate, officer, director, partner, or owner of more than 10% of Gores FC, or any person acting in that capacity, has filed for bankruptcy during their association or tenure with the company.

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

9. The Commission is the Lead Agency for this project under CEQA.

### **Conclusions of Law**

1. The proposed transfer of control of FCI to Gores FC is not adverse to the public interest.

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

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

4. Gores FC meets the Commission's requirements for an acquiring company of authorized providers of local exchange and interexchange telecommunications services.

5. 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.

**O R D E R**

**IT IS ORDERED** that:

1. First Communications, Inc. (FCI), the parent company of First Communications, LLC and Xtension Services, Inc., and Gores FC Holdings, LLC (Gores FC) are authorized, pursuant to Pub. Util. Code § 854(a), to consummate a transaction whereby Gores FC will obtain the right to appoint a majority of the FCI board of directors, giving it de facto control in accordance with the Securities Purchase Agreement submitted in conjunction with Application (A.) 07-07-017.

2. FCI and Gores FC shall notify the Director of the Commission's Communications Division in writing of the transfer of control authorized herein, within 10 days of no later than either the date of consummation of such transfer, or the date of the signing of this order.

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

4. Application 07-07-017 is closed.

This order is effective today.

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