

Decision 09-09-022 September 10, 2009

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Joint Application of New Horizons Communications Corporation (U6896C) and New Horizons Communications of California Corp. (U7133C) for Approval to Transfer the CLC Certificate of New Horizons Communications of California Corp. to New Horizons Communications Corporation.

Application 09-07-005
(Filed July 3, 2009)

DECISION AUTHORIZING TRANSFER OF THE COMPETITIVE LOCAL CARRIER CERTIFICATE OF NEW HORIZONS COMMUNICATIONS OF CALIFORNIA CORP. TO NEW HORIZONS COMMUNICATIONS CORPORATION

New Horizons Communications Corporation (U6896C) (“New Horizons”) and New Horizons Communications of California Corp. (U7133C) (“NH-California”) (New Horizons and NH-California together, the “Applicants”), seek approval to permit NH-California to transfer its certificate of public convenience and necessity to operate as a limited facilities-based and resale provider of competitive local exchange service (the “CLC Certificate”) to New Horizons, a company that currently holds a certificate of public convenience and necessity (CPCN) from the Commission to provide non-dominant interexchange telecommunications services.

New Horizons is a Delaware corporation with principal offices in Lexington, Massachusetts. New Horizons is qualified to transact business in California. New Horizons is a communications company that offers local and

long distance phone services in addition to data services, and Internet access services in a number of states outside of California and is authorized to provide local exchange and/or interexchange telecommunications in eighteen states. In California, New Horizons is authorized to provide inter Local Access and Transport Area (LATA) and intraLATA services pursuant to Decision (D.) 04-06-025.

NH-California is a Delaware corporation with principal business offices in Lexington, Massachusetts. NH-California was formed to provide local exchange telecommunications services in California. NH-California is authorized to provide limited facilities-based and resold competitive local exchange services pursuant to a CPCN granted in D.09-03-009, but has not yet started providing such service to California customers.

New Horizons and NH-California are related entities with separate ownership structures. NH-California was created to provide local exchange telecommunications services in California. The Applicants have determined that having a separately owned but related entity providing intrastate service in California is not practical from an accounting and business perspective. Therefore, Applicants have determined to transfer NH-California's Competitive Local Carrier (CLC) CPCN to New Horizons, which already provides telecommunications services in multiple states and is authorized to provide interexchange telecommunications services in California. Following the transfer of the CLC Certificate, New Horizons will begin to provide local exchange telecommunications services in California and NH-California will dissolve. NH-California does not yet provide local exchange telecommunications services to California customers and no customers will be affected by the transfer of the CLC Certificate to New Horizons. Because NH-California has not yet offered

services to California customers, there are no California assets other than the CLC Certificate to be transferred as part of this transaction and therefore there is no asset purchase or other agreement memorializing the transaction.

Applicants request that the CLC Certificate be transferred to New Horizons with the same conditions as set forth in the ordering paragraphs of D.09-03-009. Since the CLC CPCN will retain the same conditions upon transfer to New Horizons, the transaction does not have a potential for resulting in either a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment pursuant to California Environment Quality Act Guideline 15378.

New Horizons has the technical and financial ability to provide the local exchange service permitted under the CLC Certificate. New Horizons was formed in 2002 and has been providing telecommunications services and expanding its service territory ever since. In California, New Horizons has been providing intrastate and interstate interexchange telecommunications services since June or July, 2004. New Horizons' management consists of experienced telecommunications professionals.

New Horizons has the capital necessary to conduct telecommunications operations under the CLC Certificate. In demonstration of its financial qualifications, New Horizons has attached to its application as Exhibit B its most recent audited financial statements and documentation of a revolving line of credit.

With the exception of Robert Fabbriatore, who was an officer of CTC Communications Corp. ("CTC"), another telecommunications carrier that was restructured in a Chapter 11 proceeding shortly after he left the company, Applicants advise the Commission that no affiliate, officer, director, general

partner, or persons owning more than 10% of New Horizons, or anyone acting in such a capacity whether or not formally appointed, held one of these positions with an interexchange or local exchange carrier that filed for bankruptcy or has been found either criminally or civilly liable by a court of appropriate jurisdiction for a violation of § 17000 et seq. of the California Business and Professions Code or for any actions which involved misrepresentations to consumers, and to the best of New Horizon's knowledge, is not currently under investigation for similar violations. The exception to this statement is that Robert Fabbriatore, CEO and founder, sole director and owner of New Horizons, was previously the founder, Chairman, and CEO of CTC, a telecommunications provider that entered a Chapter 11 restructuring shortly after Fabbriatore left the company in October, 2002, and emerged from that restructuring in December, 2003. Shortly after resigning from CTC, Fabbriatore founded New Horizons and in that capacity has continued his career of over 25 years in the communications industry.

Upon approval of the application, New Horizons will file a tariff that mirrors the tariff that NH-California filed to comply with D.09-03-009. Applicants assert that this application will promote the public convenience and necessity. The presence of New Horizons in the California telecommunications market will enhance competition in the provision of telecommunications services within California and will serve the public interest by providing end users with a broader choice of competitively priced telecommunications services. New Horizons will be a non-dominant competitive carrier that does not control a substantial portion of the California telecommunications market. Further, the transfer of NH-California's CLC CPCN to New Horizons will be transparent to

California consumers since NH-California has not yet begun offering local exchange services to California customers.

Discussion

Under Section 852, no public utility, and no subsidiary, affiliate of, or corporation holding and 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 take such action as the public interest may require.

The Commission has established two major criteria for determining whether a CPCN should be transferred. 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.

This application includes financial statements and other evidence that demonstrates that New Horizons has sufficient resources to meet our financial requirements, and that New Horizons has sufficient experience and expertise in the telecommunications field to capably manage the enterprise. This transaction will be transparent to customers. The proposed transaction is in the public interest.

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

Categorization and Need for Hearing

In Resolution ALJ 176-3237, dated July 9, 2009, 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 these developments, a public hearing is not necessary, and it is not necessary to disturb the preliminary determinations.

Waiver of Comment Period

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Section 311(g)(2) of the Pub. Util. Code and Rule 14.6(c) 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

Rachelle B. Chong is the assigned Commissioner and Robert Barnett is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. In D.09-03-009, NH-California was granted a CPCN to provide limited facilities-based and resold local exchange and interLATA and intraLATA services in California.
2. New Horizons has sufficient financial resources to meet the Commission's requirement to provide facilities-based and resold local exchange and interLATA and intraLATA services.
3. New Horizons management has met the requirements for technical and managerial expertise to provide telecommunications services in this state.

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 interLATA and intraLATA telecommunications services within California as it does to an applicant for authority to provide such services.

2. New Horizons meets the Commission's requirements for the transfer of a CPCN to provide facilities-based and resold local exchange and interLATA and intraLATA telecommunications services.

3. This transaction is in the public interest.

O R D E R

IT IS ORDERED that:

1. Pursuant to Public Utilities Code Sections 852 and 854, the application of New Horizons Communication of California Corp. (U7133C) to transfer its Certificate of Public Convenience and Necessity to operate as a limited facilities based and resale provider of competitive local exchange services to New Horizons Communications Corporation (U6896C), is granted.

2. Within 30 days after the transfer is completed New Horizons Communications Corporation shall inform the Communications Division of that fact, at which time Utility ID Number U7133C shall be cancelled.

3. Application 09-07-005 is closed.

This order is effective today.

Dated September 10, 2009, at San Francisco, California.

MICHAEL R. PEEVEY

President

DIAN M. GRUENEICH

JOHN A. BOHN

RACHELLE B. CHONG

TIMOTHY ALAN SIMON

Commissioners