

Decision 01-12-029 December 12, 2001

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Joint Application of Working Assets Funding Service, Inc. dba Working Assets Long Distance (U-5233-C) and Working Assets, Inc. for Ex Parte Authorization Under Cal Pub. Util. Code § 854 To Transfer Control to Working Assets, Inc.

Application 01-09-046
(Filed September 28, 2001)

O P I N I O N

1. Summary

This application seeks approval under Pub. Util. Code § 854 of a transaction that will transfer control of Working Assets Funding Service, Inc. (Working Assets) d/b/a Working Assets Long Distance, Inc., to Working Assets, Inc., a newly formed holding company. The transaction is structured to take effect upon approval of this Commission. The application is unopposed, and is granted.

2. Description of Applicants

Working Assets, a California corporation, provides resold interexchange services to residential and business customers in California. Working Assets was authorized to provide intrastate, inter local access and transport area (LATA) interexchange services as a reseller by Decision (D.) 91-03-046. This authority was expanded to intraLATA interexchange services by D.93-04-063. D.96-05-060 authorized Working Assets to provide resold competitive local exchange services.

Subsequently, Working Assets asked the Commission for suspension of its certificate to resell local exchange service, which the Commission granted.

Working Assets, Inc. is a recently (April 12, 2001), formed Delaware Corporation as shown in Exhibit B of this application. Working Assets, Inc. will be the parent corporation of Working Assets and existing subsidiaries, Working Assets Wireless, U-4308-C, Working Assets Online and Working Assets Green Power. Working Assets, Inc. submits that it will file an amendment to Working Assets Wireline's registration statement as required by D.95-10-032.

3. Request for Waiver of Rule 16(a) for Working Assets, Inc.

Working Assets, Inc. will not be operating in California except through its subsidiaries, and therefore, under Cal. Corp. Code § 191(a), is not required to qualify to transact intrastate business. Applicants state that because Working Assets, Inc., will not be transacting business in California as that term is defined by Cal. Corp. § 191(a)¹, it is not required by Cal. Corp. § 191(b)² to qualify to transact business in California. Applicants submit that requiring Working Assets, Inc. to qualify to transact intrastate business for the sole purpose of satisfying Rule 16(a)³ will impose administrative burdens on the company that it

¹ Section 191(a) defines the term "transact intrastate business" as entering into repeated and successive transactions of its business in this state, other than interstate or foreign commerce".

² Section 191(b) states that "foreign corporation shall not be considered to be transacting intrastate business merely because its subsidiary transacts business".

³ Rule 16(a) of the Commission's Rule of Practice and Procedure-Articles of Incorporation states that "If applicant is a domestic corporation, as defined by Section 167 of the Corporations Code, a copy of its current articles of incorporation, certified by the California Secretary of State, shall be annexed to the original of the application, but need not be annexed to copies of the application. If a corporate applicant is not a

Footnote continued on next page

would not otherwise incur but for having qualified and, which are not related to the issues before the Commission in this application. Therefore, the applicants request a waiver of Rule 16(a) requirement that Working Assets, Inc. submit a copy of qualification to transact business in California. In lieu of complying with Rule 16(a), Working Assets, Inc. has submitted a declaration attached to this application as Exhibit D waiving any objections to the Commission's jurisdiction over it on the grounds that it is not qualified to transact business in California.

Applicants submit that approval of this request does not require action by the full Commission. Rather, the Assigned Administrative Law Judge (ALJ) may act on Applicant's request for a waiver of a Commission Rule of Practice and Procedure⁴, without disqualifying the Application for approval on an ex parte basis by the Commission's Executive Director. The waiver requested by the Applicant does not involve the "final determination of a proceeding", nor does it require the waiver of a statute that could necessitate action by the Commission. The statutory authority referenced by Rule 16(a)⁵ is procedural, not substantive, so that Applicants are requesting only a waiver of a Rule of Practice and

domestic corporation, as so defined, a properly certified current copy of its articles of incorporation, and a copy of its certificate of qualification to transact intrastate business certified by the California Secretary of State, shall be annexed to the original of the application, but need not be annexed to copies of the application. If current articles or certificates of qualification have already been filed, the application need only make a specific reference to such filings".

⁴ Rule 63 provides that "[t]he presiding officer may rule on all objections or motions which do not involve final determination of proceedings".

⁵ Cal. Pub. Util. Code § 1701, Cal. Corp. Code §§ 167 and 15010.5, this latter section relates to partnerships and therefore supports Section 16(b), not Section 16(a).

Procedure, not the underlying statutory requirement. Accordingly, the Applicants request that the assigned ALJ grants this request to waive Rule 16(a).

4. Description of Transaction

Applicants seek approval of a transaction whereby Working Assets shareholders exchange their existing shares for shares issued by the newly formed corporation, Working Assets, Inc. As a result of this exchange of control, Working Assets will be transferred to the holding company, Working Assets, Inc. The transaction will be accomplished by creating a subsidiary of Working Assets, Inc., Working Assets Merger Sub, Inc., into which Working Assets, the operating company, will merge. At that time Working Assets Merger Sub, Inc. will cease to exist and Working Assets, the operating utility, will continue to provide telecommunications service to its California customers, to whom the transaction will be transparent. Following the merger, current Working Assets shareholders will trade their shares for an equal number of shares of Working Assets, Inc., which in turn will control Working Assets, as well as the other subsidiaries, Working Assets Wireless, Working Assets Online and Working Assets Green Power. A copy of the agreement detailing the terms of the transaction is shown on Exhibit E of the application. Organizations charts, Attachments A – C, depict the before and after merger holding company organization.

Applicants submit that Exhibit E demonstrates that the transaction is an internal corporate reorganization that will have no impact on Working Assets operations or its customers. Working Assets current management will continue in place without change. None of Working Assets' rates, terms and conditions, billing practices and operations will be affected by the transaction. Furthermore, because Working Assets is not publicly traded, there are no outside shareholders whose interests must be considered.

5. Public Interest

The applicants state that the proposed transaction will produce a corporate structure that can more efficiently bring new products and services to Working Assets' customers by allowing each subsidiary to pursue its own business plan in a more efficient and less costly manner. In addition, applicants state that this transaction will protect Working Assets' long distance ratepayers from financial risk associated with other subsidiaries' new products and new ventures, and will potentially advance the financial well being of Working Assets' shareholders and other stakeholders, but will not impact Working Assets' customers, who will be unaffected by this internal corporate restructuring.

6. Discussion

Pub. Util. Code §§ 851-854 require Commission authorization 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 to review the situation, before any transfer of public utility property is consummated, 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.)

This proposed transfer will not affect Working Assets Long Distance's (Working Assets') certificate of public convenience and necessity (CPCN). Management will remain the same. Financial documents filed under seal as Exhibits A and C show that Working Assets continues to meet the financial requirements imposed on new telecommunications entrants.

We will grant Applicants' request for a waiver of Rule 16(a) for Working Assets, as Applicants agree to waive any objection to Commission jurisdiction, on the basis that it is not qualified to transact business in California. (See declaration attached as Exhibit D to the application.)

Applicants have noted correctly that, as demonstrated by the financial documents attached as Exhibits A and C to the application, no party to this transaction has gross annual California revenues exceeding (\$500,000,000.00). Accordingly, § 854(b)(c) of the California Pub. Util. Code is inapplicable, and the application qualifies for expedited ex parte approval by the Executive Director.

The proposed transfer promises improved efficiency for the applicants, which can enhance applicants' ability to provide telecommunications services to its customers and protect customers from financial risk associated with business of the other subsidiaries of Working Assets, Inc. No changes in the existing services of Working Assets are proposed.

There have been no protests to this application, and the contemplated transfer of control appears to be noncontroversial. The application requests expedited approval of the application. Expedited approval may be granted by the Executive Director pursuant to authority delegated to him by the Commission to grant "noncontroversial applications for authority to transfer assets or control under [Pub. Util.] Code §§ 851-855" (CAWC, Inc. (1987), D.87-04-017; *see also* D.86-08-057.)

In Resolution ALJ 176-3074, dated October 26, 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 176-3074.

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

7. Request for Confidentiality

Applicants request that financial information pertaining to Working Assets' balance sheet and/Income statement filed with this application be kept under seal. Applicants represent that the information is proprietary and sensitive. The information, if revealed, would place Applicants at an unfair business disadvantage. We have granted similar requests in the past and will do so here.

Findings of Fact

1. Notice of this application appeared in the Commission's Daily Calendar of October 15, 2001.
2. Applicants seek approval pursuant to Pub. Util. Code § 854 of a transaction that will transfer control of Working Assets to Working Assets, Inc.
3. Working Assets will continue to provide interexchange telecommunications services in California.
4. Working Assets continues to meet the Commission's financial requirements for new telecommunications entrants.
5. Working Assets, Inc., is a Delaware corporation with offices in San Francisco.
6. There will be no change in name, current services or rates provided by Working Assets as a result of the transfer of control.
7. Public disclosure of financial information pertaining to Working Assets' balance sheet and income statement, included in the application, would place Applicants at an unfair business disadvantage.

Conclusions of Law

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

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

3. The application is noncontroversial and may be granted by the Executive Director pursuant to authority delegated by the Commission.

4. Applicants' request to file its financial information under seal should be granted for two years.

5. The application should be approved.

O R D E R

IT IS ORDERED that:

1. Working Assets Funding Service, Inc. d/b/a Working Assets Long Distance (Working Assets) and Working Assets, Inc., (collectively, Applicants) are authorized pursuant to Section 854 of the Public Utilities Code to enter into the transaction, as more fully described in the application and its exhibits, by which Working Assets, Inc. will acquire control of Working Assets.

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. Working Assets shall make all books and records available for review and inspection upon Commission staff request.

4. Applicants' request that the financial information pertaining to Working Assets' balance sheet and income statement, filed with this application be kept under seal is granted for two years from the effective date of this decision.

During that period the information shall not be made accessible or disclosed to anyone other than the Commission staff except on the further order or ruling of

the Commission, the Assigned Commissioner, the assigned Administrative Law Judge (ALJ), or the ALJ then designated as Law and Motion Judge.

5. If Applicants believe that further protection of the information kept under seal is needed, they may file a motion stating the justification for further withholding of the information from public inspection, or for such other relief as the Commission rules may then provide. This motion shall be filed no later than one month before the expiration date.

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

7. Application 01-09-046 is closed.

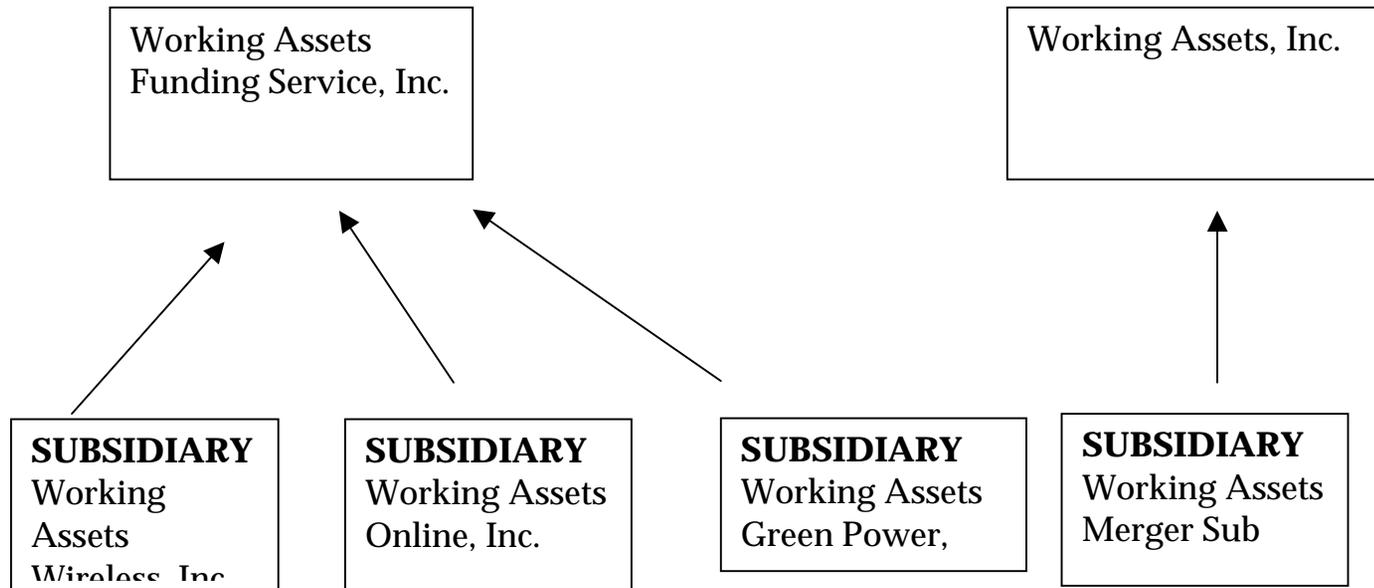
This order is effective today.

Dated December 12, 2001, at San Francisco, California.

/s/ WESLEY M. FRANKLIN

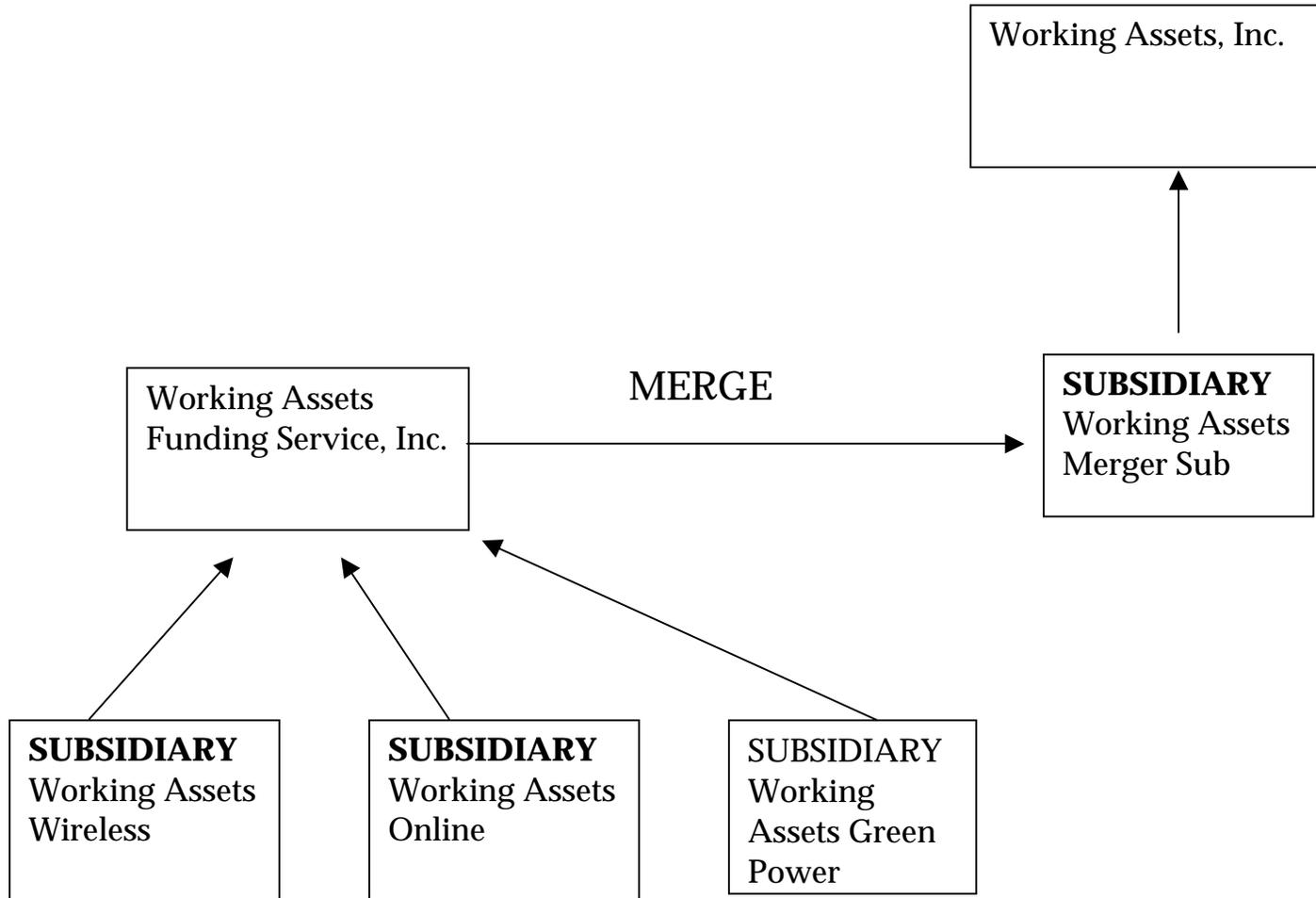
WESLEY M. FRANKLIN
Executive Director

ATTACHMENT A



(END OF ATTACHMENT A)

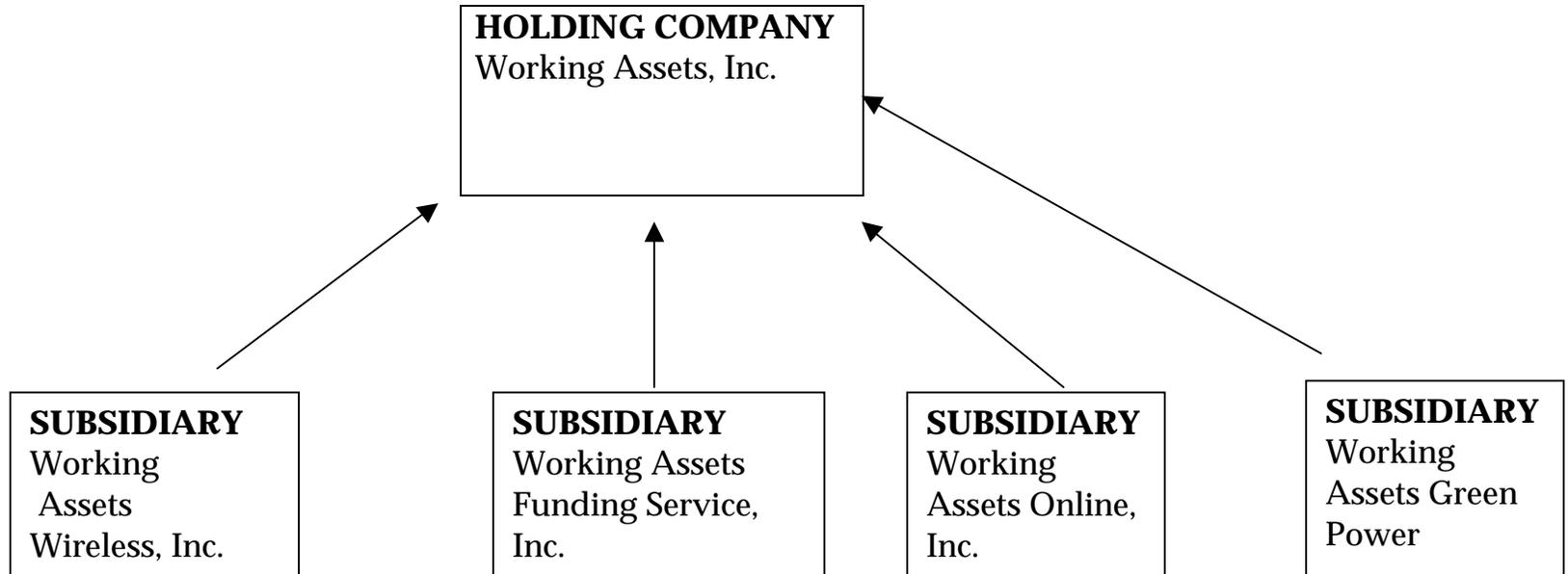
ATTACHMENT B



A.01-09-046 ALJ/DJE/jyc

(END OF ATTACHMENT B)

ATTACHMENT C



As part of the merger and exchange of stock between Working Assets Funding Service, Inc. and Working Assets, Inc. (Holding Company) Working Assets Funding Service, Inc. cedes ownership of Working Assets Wireless, Inc., Working Assets Online, Inc., and Working Assets Green Power, Inc. to the Holding Company. The result of which is that all of the former subsidiaries of Working Assets Funding Service, Inc. become peer companies of their former parent company. And in the final corporate structure all are subsidiaries of Working Assets, Inc.

(END OF ATTACHMENT C)