

Decision 11-01-018 January 13, 2011

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

Application for Approval of Indirect Transfer of Control of Associated Network Partners, Inc. (U5795C) and Zone Telecom, Inc. (U6418C) to ANZ Communications LLC.

Application 10-10-018  
(Filed October 26, 2010)

**DECISION AUTHORIZING INDIRECT TRANSFER OF CONTROL OF ASSOCIATED NETWORK PARTNERS, INC. AND ZONE TELECOM, INC. TO ANZ COMMUNICATIONS LLC**

**Summary**

This decision grants the joint unopposed application of Associated Network Partners, Inc. and Zone Telecom, Inc. for approval of a transaction in which Associated Network Partners, Inc. and Zone Telecom, Inc. will transfer their operating authorities to ANPI LLC and Zone Telecom, LLC, respectively and in which ANZ Communications LLC will acquire control of these operating companies.

This proceeding is closed.

**1. Parties to the Transaction**

Associated Network Partners, Inc. (ANPI) is an Illinois corporation with its principal business office located at 3130 Pleasant Run, Springfield, Illinois. ANPI is currently an independent corporation. Zone Telecom, Inc (Zone) is a Delaware corporation with its principal business office located at 3 Executive Campus, Suite 520, Cherry Hill, New Jersey. Zone is a wholly owned subsidiary of Zone USA, Inc. (Zone USA). ANZ Communications LLC (ANZ) will not come into

existence until the closing of the transaction and thus is not a party. When formed, ANZ will be a Delaware Limited Liability Company (LLC) with the same address as ANPI. ANPI and Zone (jointly, Applicants) both hold certificates of public convenience and necessity (CPCN) to provide switchless resold inter- and intra-LATA telecommunications services in California. In addition, Zone provides direct service to California residential and business customers.<sup>1</sup> ANPI owns 25 percent (25%) of another company, Common Point, LLC, which has a pending CPCN application before the Commission.

## **2. Proposed Transaction**

Under the proposed merger transaction, ANPI will be merged into a Delaware limited liability company, called ANPI, LLC, which is a wholly owned subsidiary of ANPI Holding, Inc. (ANPI Holding). As a result of the transaction, the current ANPI shareholders will become shareholders of ANPI Holding. Similarly, Zone will be converted into a limited liability company called Zone Telecom, LLC, wholly owned by Zone USA. Pursuant to a Contribution Agreement, ANPI Holding and Zone USA each will contribute 50% of their holdings to, and own 50% of, ANZ. The ownership of the two parent companies will be merged through their joint (50/50) ownership of ANZ. ANZ will own 100% of each operating company, ANPI, LLC and Zone Telecom, LLC.

The CPCN currently held by ANPI will be transferred to ANPI LLC. The CPCN currently held by Zone will be transferred to Zone Telecom, LLC. Both operating companies will serve their customers under their current names and will continue to provide interexchange telecommunication services in California.

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<sup>1</sup> See Decision (D.) 97-06-053 and D.00-09-077.

Applicants represent that the proposed transfer of control will be transparent to their shareholders and customers. Applicants state that they will maintain their current management teams and that their operations and finances will be unaffected. They assert that the transaction will give ANPI and Zone greater access to capital, resources, and shared expertise. In addition, Applicants assert that the transaction will bring increased competition to the California telecommunications market, benefiting their customers and shareholders.

### **3. Discussion**

The CPCN currently held by ANPI will be transferred to ANPI LLC. The CPCN currently held by Zone will be transferred to Zone Telecom, LLC. The Commission has established two major criteria for determining whether a CPCN should be granted, or transferred. An applicant who desires to operate as a provider of non-dominant resale local exchange and interexchange services must demonstrate that it has a minimum of \$25,000 in cash or cash equivalent for operations of the company plus the costs of deposits to be paid to other carriers. In addition, the applicant is required to make a reasonable showing of technical expertise in telecommunications or a related business. In confidential Exhibits F and G to the application, the Applicants have provided financial statements that demonstrate that both operating companies have access to well over \$25,000 cash or cash equivalent, which is reasonably liquid and available. This amount is sufficient to cover operating expenses and any deposits third party carriers may require.

Both companies currently provide telecommunications services in California and will retain sufficient experience and expertise for their continued operations post transfer of control. In addition, the ultimate ownership of the two companies will remain the same. This transaction will provide ANPI and

Zone increased access to financial resources and allow both companies to become stronger competitors in California's telecommunications marketplace. The transaction will be transparent to customers and shareholders. Therefore, the proposed transaction is in the public interest. We find the respective transfers of CPCNs to meet the Commission's requirements; therefore, we authorize these transfers.

Where a company that does not possess a CPCN desires to acquire control of a company or companies that do possess a CPCN, the Commission will apply the same requirements, to the acquiring company, as would be applied to an initial applicant seeking a CPCN. In this case, ANZ will be an intermediate owner of ANPI and Zone with ultimate ownership of the operating companies residing with ANZ's parent companies, ANPI Holding and Zone USA. Therefore, these three companies, in addition to the operating companies, should meet the criteria for issuance of a CPCN.

The instant application includes financial statements<sup>2</sup> and other evidence that demonstrates that ANZ, through its joint ownership by ANPI Holding and Zone USA, has sufficient resources to meet the Commission's financial requirements. Applicants have indicated that they will retain ANPI's and Zone's current management.

Pursuant to Pub. Util. Code § 852,<sup>3</sup> 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

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<sup>2</sup> A.10-10-018, Exhibits D, E, F, G, & I (Confidential).

<sup>3</sup> All Code references are to the Public Utilities Code, unless otherwise stated.

utility organized or existing under the laws of this state, without prior Commission authorization. In addition, § 854 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.)

For the above reasons, the transaction is in the public interest and we will grant the application pursuant to §§ 852 and 854.

#### **4. Categorization and Need for Hearings**

In Resolution ALJ 176-3263, dated October 28, 2010, 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.

#### **5. Waiver of Comment Period**

No protests were filed in this proceeding. Therefore, this is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to § 311(g)(2) and Rule 14.6(c)(2) of the Commission’s Rules of Practice and Procedure (Rules), the otherwise applicable 30-day period for public review and comment is being waived.

#### **6. Assignment of Proceeding**

Timothy Alan Simon is the assigned Commissioner and W. Anthony Colbert is the assigned Administrative Law Judge in this proceeding.

## **7. Request to File Under Seal**

Pursuant to Rule 11.4, Applicants have filed a motion for leave to file Exhibits C through I to the application as confidential materials under seal. Applicants represent that the information is sensitive, and disclosure could place them at an unfair business disadvantage. We have granted similar requests in the past, and do so here.

### **Findings of Fact**

1. ANPI is an Illinois corporation.
2. Zone is a Delaware corporation and a wholly owned subsidiary of Zone USA.
3. In D.97-06-053, ANPI was granted a CPCN to operate as a switchless reseller of inter- and intra-LATA telecommunications services in California.
4. In D.00-09-077, Zone was granted a CPCN to operate as a facilities-based carrier of inter- and intra-LATA telecommunications services in California.
5. As a result of this transaction, ANPI will be merged into a Delaware limited liability company, called ANPI, LLC, which is a wholly owned subsidiary of ANPI Holding.
6. Current ANPI shareholders will become shareholders of ANPI Holding.
7. As a result of this transaction, Zone will be converted into a limited liability company called Zone Telecom, LLC, wholly owned by Zone USA.
8. As a result of this transaction the CPCN held by ANPI will be transferred to ANPI, LLC.
9. As a result of this transaction the CPCN held by Zone will be transferred to Zone Telecom, LLC.
10. As a result of this transaction, ANZ will be formed.

11. Pursuant to a Contribution Agreement, ANPI Holding and Zone USA will each contribute 50% of their holdings to, and own 50% of, ANZ.

12. ANZ does not hold a CPCN that authorizes the company to provide telecommunications services in California.

13. As a result of this transaction, ANZ will be the intermediate owner of ANPI and Zone with ultimate ownership of the operating companies residing with ANPI Holding and Zone USA.

14. The operations, finances, and management of ANPI and Zone will be unaffected by this transaction.

15. This transaction will provide ANPI and Zone increased access to financial resources and allow both companies to become stronger competitors in California's telecommunications marketplace.

16. ANPI and Zone currently provide telecommunications services in California and there will be sufficient experience and expertise for their continued operations, post transfer of control; in addition, the ultimate ownership of the two companies will remain the same.

17. Applicants have provided financial statements that demonstrate that both ANPI and Zone have access to well over \$25,000 cash or cash equivalent, which is reasonably liquid and available and which is sufficient to cover operating expenses and any deposits third party carriers may require.

18. Pursuant to Rule 11.4, Applicants filed a motion for leave to file confidential materials under seal, including Exhibits C through I to the application.

19. Notice of this application appeared on the Commission's Daily Calendar on October 28, 2010. There were no protests to this application.

20. No hearings are necessary.

### **Conclusions of Law**

1. The Commission will apply the same requirements to a request for approval of an agreement for the indirect transfer of control of providers of non-dominant resale local exchange and inter- and intra-LATA telecommunications services within California as it does to an initial applicant for authority to provide such services.

2. The CPCN currently held by ANPI will be transferred to ANPI LLC and the CPCN currently held by Zone will be transferred to Zone Telecom, LLC.

3. ANZ will have indirect control of ANPI and Zone; the management and ultimate shareholder control of the companies will remain the same; and each company will have the financial resources required; as a result, this transaction meets the Commission's requirements for issuance of a CPCN to provide non-dominant resale local exchange and inter- and intra-LATA telecommunications services within California.

4. This transaction is in the public interest.

5. Applicants' motion to file their Exhibits C through I to the application under seal should be granted for two years.

6. Since this matter is uncontested, the decision should be effective on the date it is signed.

### **O R D E R**

#### **IT IS ORDERED** that:

1. The Certificate of Public Convenience and Necessity currently held by Associated Network Partners, Inc. may be transferred to ANPI, LLC and the Certificate of Public Convenience and Necessity currently held by Zone Telecom, Inc., may be transferred to Zone Telecom, LLC.

2. Pursuant to Pub. Util. Code §§ 852 and 854, the application of Associated Network Partners, Inc. and Zone Telecom, Inc. for approval of a transaction in which ANZ Communications LLC will acquire control of Associated Network Partners, Inc., ANPI, LLC, Zone Telecom, Inc., and Zone Telecom, LLC, and in which ANZ Communications LLC will in turn be controlled by ANPI Holding and Zone USA is approved.

3. Within five days of the closing of the transaction, the surviving entities shall notify the Communications Division, by letter, of the consummation of the transaction.

4. Associated Network Partners, Inc. and Zone Telecom, Inc.'s motion to file their Exhibits C through I to the application under seal is granted. The information will remain under seal for a period of two years after the date of issuance of this order. During this two-year period, this information will remain under seal and may not be viewed by any person other than the assigned Commissioner, the assigned Administrative Law Judge, the Assistant Chief Administrative Law Judge, or the Chief Administrative Law Judge, except as agreed to in writing by Associated Network Partners, Inc. and Zone Telecom, Inc., or their successors in interest, or as ordered by a court of competent jurisdiction. If Associated Network Partners, Inc. and Zone Telecom, Inc., or their successors in interest, believe that it is necessary for this information to remain under seal for longer than two years, Associated Network Partners, Inc. and Zone Telecom, Inc., or their successors in interest may file a new motion at least 30 days before the expiration of this limited protective order.

5. Application 10-10-018 is closed.

This order is effective today.

Dated January 13, 2011, at San Francisco, California.

MICHAEL R. PEEVEY  
President  
TIMOTHY ALAN SIMON  
NANCY E. RYAN  
Commissioners