

Decision 02-03-050 March 21, 2002

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of McLeodUSA Telecommunications Services, Inc. (U-5712-C) and Forstmann Little & Co. Equity Partnership-VII, L. P.; Forstmann Little & Co. Subordinated Debt & Equity Management Buyout Partnership-VIII, L. P.; Forstmann Little & Co. Equity Partnership-V, L. P.; Forstmann Little & Co. Subordinated Debt & Equity Management Buyout Partnership-VI, L. P.; and Forstmann Little & Co. Subordinated Debt & Equity Management Buyout Partnership-VII, L. P. for Expedited, Ex Parte Approval of the Indirect Transfer of Control of McLeodUSA Telecommunications Services, Inc.

Application 02-02-017
(Filed February 15, 2002)

O P I N I O N

Summary

This decision grants the joint application of McLeodUSA Telecommunications Services, Inc. (U-5712-C) (McLeod) and Forstmann Little & Co. Equity Partnership-V, L. P. (FL-V); Forstmann Little & Co. Equity Partnership-VII, L. P. (FL-VII); Forstmann Little & Co. Subordinated Debt & Equity Management Buyout Partnership-VI, L. P. (FLDE-VI); Forstmann Little & Co. Subordinated Debt & Equity Management Buyout Partnership-VII, L. P. (FLDE-VII); Forstmann Little & Co. Subordinated Debt & Equity Management Buyout Partnership-VIII, L. P. (FLDE-VIII); for approval of the indirect transfer of control of McLeod to FL-V, FL-VII, FLDE-VI, FLDE-VII, and FLDE-VIII.

Parties to the Transaction

McLeod is an Iowa corporation authorized to do business in California. Its principal place of business is located at McLeodUSA Technology Park, 6400 C Street, SW, Cedar Rapids, Iowa 52406-3177. McLeod's ultimate parent is McLeodUSA Incorporated (Parent). By Decision (D.) 01-05-055, McLeod was granted a certificate of public convenience and necessity (CPCN) to operate in California as a limited facilities-based and resale provider of local exchange services, and as a limited facilities-based provider of interexchange services. By D.96-12-021, McLeod was granted a CPCN to resell interexchange services.

FL-V, FL-VII, FLDE-VI, FLDE-VII, and FLDE-VIII are members of a family of affiliated private investment funds. Their principal place of business is located at 767 Fifth Avenue, New York, New York 10153.

Proposed Transaction

On January 31, 2001, Parent filed for reorganization relief under Chapter 11 of Title 11 of the United States Code. McLeod has not filed for bankruptcy, and is not part of Parent's bankruptcy proceeding. McLeod expects to continue to operate without interruption.

Pursuant to the transaction, FL-VII and FLDE-VIII will acquire approximately 23% of Parent's common stock, and five-year warrants to purchase an additional 6% of Parent's common stock at a specified price. In addition, FL-V, FLDE-VI, and FLDE-VII's existing preferred stock will be converted to approximately 35% of Parent's common stock. As a result, FL-V, FL-VII, FLDE-VI, FLDE-VII, and FLDE-VIII will collectively own approximately 57% of Parent's common stock. Therefore, FL-V, FL-VII, FLDE-VI, FLDE-VII, and FLDE-VIII will collectively own a controlling interest in Parent and McLeod.

The applicants represent that the transaction will improve Parent's financial structure. This will, in turn, improve McLeod's access to capital from Parent.

The applicants represent that the transaction will be transparent to customers. There will be no change in the name or management of McLeod. Customers will continue to receive service under the same rates, terms, and conditions after the transaction is approved.

Discussion

Pub. Util. Code § 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 this and 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 a condition of the transfer, as the public interest may require. (San Jose Water Co. (1916) 10 CRC 56.)

In a situation where 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. Since McLeod possesses a CPCN to operate as a limited facilities-based and resale provider of local exchange and interexchange telecommunications services within California, we will apply the requirements for such authority to FL-V, FL-VII, FLDE-VI, FLDE-VII, and FLDE-VIII.

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.

FL-V, FLDE-VI, and FLDE-VII provided audited financial statements that demonstrate that they have sufficient resources to meet our financial requirements. Since McLeod will continue to operate under the same management, we find that our requirement for technical expertise is satisfied.

The transaction will improve McLeod's access to capital from Parent. In addition, it will be transparent to customers. Therefore, the proposed transaction is not adverse to the public interest.

As discussed above, FL-V, FL-VII, FLDE-VI, FLDE-VII, and FLDE-VIII have satisfied our financial and experience requirements, and the proposed transaction is not adverse to the public interest. Therefore, we will grant the application.

Procedural Matters

In Resolution ALJ 176-3082, dated February 21, 2002, the Commission preliminarily categorized this application as ratesetting, and preliminarily determined that hearings were not necessary. No protests have been received. Therefore, a public hearing is not necessary, and it is not necessary to alter the preliminary determinations.

This is an uncontested matter in which the decision grants the requested relief. Therefore, pursuant to Section 311(g)(2) of the Public Utilities Code, the otherwise applicable 30-day period for public review and comment is being waived.

Findings of Fact

1. By D.01-05-055, McLeod was granted a CPCN to operate in California as a limited facilities-based and resale provider of local exchange services, and as a limited facilities-based provider of interexchange services.
2. By D.96-12-021, McLeod was granted a CPCN to resell interexchange services.
3. On January 31, 2001, Parent filed for reorganization relief under Chapter 11 of Title 11 of the United States Code.
4. McLeod has not filed for bankruptcy, and is not part of Parent's bankruptcy proceeding.
5. As a result of the transaction, FL-V, FL-VII, FLDE-VI, FLDE-VII, and FLDE-VIII will collectively own approximately 57% of Parent's common stock and, therefore, a controlling interest in Parent and McLeod.
6. There will be no change in the name or management of McLeod as a result of the transaction.
7. Customers will continue to receive service under the same rates, terms, and conditions after the transaction.
8. FL-V, FL-VII, FLDE-VI, FLDE-VII, and FLDE-VIII have sufficient financial resources to meet the Commission's requirements to provide facilities-based and resold local exchange and interexchange services.
9. FL-V, FL-VII, FLDE-VI, FLDE-VII, and FLDE-VIII, through McLeod, possess the necessary technical expertise required by the Commission.
10. Notice of this application appeared on the Commission's Daily Calendar on February 20, 2002.
11. There were no protests to this application.
12. 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. FL-V, FL-VII, FLDE-VI, FLDE-VII, and FLDE-VIII meet the Commission's requirements for the issuance of a CPCN to provide facilities-based and resold local exchange and interexchange telecommunications services.
3. The transaction is not adverse to the public interest.
4. 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 Section 854, the joint application of McLeodUSA Telecommunications Services, Inc. (U-5712-C) (McLeod), and Forstmann Little & Co. Equity Partnership-V, L. P. (FL-V); Forstmann Little & Co. Equity Partnership-VII, L. P. (FL-VII); Forstmann Little & Co. Subordinated Debt & Equity Management Buyout Partnership-VI, L. P. (FLDE-VI); Forstmann Little & Co. Subordinated Debt & Equity Management Buyout Partnership-VII, L. P. (FLDE-VII); Forstmann Little & Co. Subordinated Debt & Equity Management Buyout Partnership-VIII, L. P. (FLDE-VIII); for approval of the indirect transfer of control of McLeod to FL-V, FL-VII, FLDE-VI, FLDE-VII, and FLDE-VIII is approved.

2. This application is closed.

This order is effective today.

Dated March 21, 2002, at San Francisco, California.

LORETTA M. LYNCH

President

HENRY M. DUQUE

CARL W. WOOD

GEOFFREY F. BROWN

MICHAEL R. PEEVEY

Commissioners