

Decision 02-09-009 September 5, 2002

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of Application for Approval of the
Involuntary Transfer of Control of Foresthill
Telephone Co. (U-1009-C) to Rose A. Hoepfer.

Application 02-06-007
(Filed June 5, 2002)

O P I N I O N

1. Summary

Applicant Rose A. Hoepfer seeks authority to assume control of Foresthill Telephone Co. (Foresthill) following the death of her husband, Ralph E. Hoepfer. The application is granted.

2. Background

Foresthill is a local exchange carrier serving portions of Placer County. It has telecommunications plant in service valued at \$12.9 million, and its operating revenues for the year ended December 31, 2001, totaled \$3.7 million.

Ralph E. Hoepfer was president of the company and held voting control until his death from cancer on November 26, 2001.

Mr. and Mrs. Hoepfer jointly controlled Foresthill and held 100% of its stock as community property. According to the application, Mr. Hoepfer's 50% interest will vest in Mrs. Hoepfer through testamentary disposition upon final administration of his estate. Accordingly, Mrs. Hoepfer's individual ownership in Foresthill will increase to a 100% controlling interest.

The application states that the involuntary change of control of the company will not adversely affect any member of the public or have any adverse effect upon the operations of the company or upon its subscribers.

3. Section 854 Authority

The application seeks approval of the transfer of control to Rose A. Hoeper pursuant to Pub. Util. Code § 854. Section 854 provides in pertinent part:

No person or corporation, whether or not organized under the laws of this state, shall merge, acquire, or control either directly or indirectly any public utility organized and doing business in this state without first securing authorization to do so from the commission. The commission may establish by order or rule the definitions of what constitute merger, acquisition, or control activities which are subject to the section. Any merger, acquisition, or control without that prior authorization shall be void and of no effect. No public utility organized and doing business under the laws of this state, and no subsidiary or affiliate of, or corporation holding a controlling interest in a public utility, shall aid or abet any violation of this section.

The meaning of Section 854 is clear. It was added to ensure that no acquisition or transfer can be effected without this Commission first having opportunity to consider whether the acquisition or transfer is consistent with and promotes the public interest. But equally clear is the fact that its provisions cannot be applied literally to a transfer that occurs as the result of the death of an owner.

The Legislature has recognized this conflict. After the Commission on similar reasoning approved a testamentary transfer of a small water company in 1982 (Application of Bianca Gambi (1981) 7 CPUC2d 52), the Legislature amended Section 853 of the Code to provide that the provisions of Section 854 would not apply to a transfer of ownership of a small water company from a

decedent to a member of the decedent's family under the Probate Code or by will, trust, or other instrument. (*See* Pub. Util. Code § 853(c).)

A certificate of public convenience and necessity to operate a public utility is a right that has value. It has sufficient independent existence to be made the subject of a community property interest. But the estate of an heir vests in the heir at the time of the testator's death. (Probate Code § 240.) It would be impossible for the Commission to consider in advance the circumstances that might exist at the time of the testator's death.

Nonetheless, the rights of inheritance and testamentary disposition are statutory and subject to legislative control, and the Legislature, in exercising its plenary power, had adopted provisions governing the descent of property in this state as set forth in the Probate Code. Here, control of the utility was passed to Rose A. Hoeper upon the death of her husband pursuant to the Probate Code. As we see it, absent evidence that any given devolution results in or creates a situation inconsistent with or adverse to the public interest, our role should be a ministerial one in passing to and affording the beneficiary substantially the same rights and privileges as were held by the predecessor. (*See*, Application of Steven R. Bryan, Decision (D.) 00-10-016 (2000).) Should the successor's interest appear to the Commission inconsistent with or prove adverse to the public interest, this Commission always can, after notice and hearing, cancel, revoke, or suspend the inherited interest.

Based on exhibits filed with the application, it is apparent that Rose A. Hoeper is qualified to assume control of Foresthill. She has been involved in the business office operations of Foresthill for many years. During her husband's illness, she operated Foresthill as its chief executive officer. She will rely on company employees to fulfill the network and central office

responsibilities formerly performed by her husband. The involuntary transfer of control will not result in any changes to Foresthill's rates, tariffs or service quality. There is no indication that the transfer in any way would be inconsistent with or adverse to the public interest.

Accordingly, the application for approval of transfer of control to Rose A. Hoepfer should be granted.

In Resolution ALJ 176-3090, dated June 27, 2002, 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 176-3090.

Because the application is unopposed, and because our decision today grants the relief requested, the requirement for 30-day public review and comments is waived pursuant to Pub. Util. Code § 311(g)(2).

Findings of Fact

1. Foresthill is a local exchange telephone company providing service to portions of Placer County.
2. Ralph E. Hoepfer and Rose A. Hoepfer controlled Foresthill, each holding a 50% interest in the company.
3. Ralph E. Hoepfer succumbed to cancer on November 26, 2001.
4. Upon final administration of the estate, Mrs. Hoepfer's individual ownership in Foresthill will increase to a 100% controlling interest.
5. Mrs. Hoepfer has served as chief executive officer of the utility since her husband's illness.
6. The proposed change in control will have no adverse effect on any member of the public.

7. There will be no change in rates, terms or conditions of service as a result of the proposed change in control.

Conclusions of Law

1. No public hearing is necessary.
2. Rose A. Hoeper is qualified to assume control of Foresthill.
3. It is reasonable to grant an exemption to the pre-approval requirement of a transfer of utility property for the transfer of control to Rose A. Hoeper.
4. The application should be granted.

O R D E R

IT IS ORDERED that:

1. The application of Rose A. Hoeper to assume control of Foresthill Telephone Co. (Foresthill) is approved.
2. Within 60 days of the date of this order, Rose A. Hoeper shall file an Advice Letter in accordance with General Order 96-A to modify the Foresthill tariff book to reflect the change in control.
3. Application 02-06-007 is closed.

This order is effective today.

Dated September 5, 2002, at San Francisco, California.

LORETTA M. LYNCH
President
CARL W. WOOD
GEOFFREY F. BROWN
MICHAEL R. PEEVEY
Commissioners

Commissioner Henry M. Duque, being necessarily absent, did not participate.