

Decision 02-12-001 December 3, 2002

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of SUREWEST COMMUNICATIONS, a California corporation, and its California public utility subsidiaries, for approval of its reincorporation as SUREWEST COMMUNICATIONS, INC., a Delaware corporation.

Application 02-08-032
(Filed August 29, 2002)

OPINION GRANTING REINCORPORATION REQUEST

Summary

SureWest Communications (SureWest-California) and SureWest Communications, Inc. (SureWest-Delaware) seek authorization to implement a reincorporation of the holding company of four California telecommunications carriers from a California corporation to a Delaware corporation through the merger of SureWest-California into and with SureWest-Delaware. SureWest-California controls Roseville Telephone Company,¹ Roseville Long Distance Company,² SureWest TeleVideo,³ and West Coast PCS LLC.⁴ The unopposed application is granted.

¹ An incumbent local exchange carrier (ILEC) and a competitive local exchange carrier (CLEC).

² A non-dominant interexchange carrier (IEC).

³ A CLEC and a non-dominant IEC.

⁴ A facilities-based PCS wireless provider.

Background

SureWest-California,⁵ the California parent company of Roseville Telephone Company, Roseville Long Distance Company, SureWest TeleVideo, and West Coast PCS LLC, seeks to change its state of incorporation from California to Delaware. The reincorporation will occur through the merger of SureWest-California into SureWest-Delaware, a wholly owned Delaware subsidiary that would be the surviving company after the merger. Applicants state that the purpose of this change is to move the holding company's corporate affairs and transactions from the governance of California law under that of Delaware law. They file this matter pursuant to Sections 851-854 of the California Public Utilities Code.

Applicants assert that the practical effect of this request is simply a change in the state of incorporation of SureWest. The proposal will have no effect on the assets, liabilities, name,⁶ business or management of any company having direct or indirect control over the California public utility subsidiaries, nor will it affect those same California entities' state of incorporation. Applicants further contend that the proposed reincorporation transfers no utility property, and makes no change to the equity interest of any shareholder of SureWest-California. Owners of shares of SureWest-California at the time of the merger will receive equivalent shares in SureWest-Delaware. SureWest-Delaware will succeed to all assets of

⁵ The California and Delaware holding companies as well as the four telecommunications carriers (collectively, Applicants) jointly filed this request.

⁶ Applicants note that SureWest-Delaware's current corporate name "SureWest Communications, Inc." differs slightly from SureWest-California's corporate name "SureWest Communications." However, the difference in name is temporary. Delaware law requires corporations with less than \$10 million in assets to include "Inc." or "Incorporated" in their names. SureWest-Delaware will have no assets until the reincorporation actually occurs. At that time, SureWest-California will become qualified to and intends to change its name to the original corporate appellation: "SureWest Communications." Thus, this transaction ultimately will not affect the corporate name.

SureWest-California, including ownership and control of the four California telecommunications carriers regulated by this Commission.

Applicants maintain that the certainty and predictability of Delaware corporate law are apt to inspire confidence in lenders and investors, and help to ensure adequate capitalization of SureWest. This will serve to protect the interests of the ratepayers of services regulated by the Commission as well as facilitate Applicants' growth. They request approval of the reincorporation, if required, under Pub. Util. Code § 854(a),⁷ without delay.

Pursuant to request, Applicants submitted documents on November 15, 2002, demonstrating that the public utility subsidiaries are current in their payment of fees due to the Public Utilities Commission Reimbursement Account for Telecommunications Utilities.⁸

Discussion

Pub. Util. Code § 854(a) states in pertinent part:

No person or corporation, . . . shall . . . 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 this commission. The commission may establish by order or rule the definitions of what constitute . . . acquisition, or control activities which are subject to this section. . . .

The purpose of this and related sections is to enable the Commission, before any acquisition or transfer of control of public utility property takes place, to review the matter and take such action, as a condition of the transfer, as the public interest may require. (*oCen Communications, Inc.*, Decision (D.) 00-08-030, 2000 Cal. PUC LEXIS 662 (August 11, 2000).) Applicants argue that there is an

⁷ Sections 854(b) and 854(c) do not apply because annual intrastate revenues generated by SureWest-California's public utility companies in California are less than \$500,000,000.

⁸ SureWest TeleVideo obtained its certificate of public convenience and necessity on July 17, 2002; consequently, given its total revenues, the company's first filing will be

apparent conflict in Commission opinions as to whether reincorporation necessarily constitutes a change in control requiring Commission approval. To illustrate, they cite a 1993 Commission decision⁹ in which the Commission held that the “spin off” of a wholly owned subsidiary did not require § 854 approval if appropriately structured. They also cite three more recent decisions¹⁰ in which the Commission ruled on reincorporation proposals on their merits. No conflict exists: the most recent decisions reflect current Commission policy.

The change in state of incorporation will have no adverse effect on the customers of SureWest-California’s subsidiaries. To these customers, the change will be transparent. SureWest-Delaware, the surviving entity post-merger, has the same principal executive offices and telephone number as SureWest-California and the four subsidiaries. The proposed transaction does not involve a permanent change in the name under which the company operates, or a change in the manner in which it provides service in California.

No authority for new construction is requested by this application and no utility assets are being shifted. Accordingly, this matter is not subject to the California Environmental Quality Act. There have been no protests to this application.

In Resolution ALJ-3094, dated September 5, 2002, the Commission preliminarily categorized this proceeding as ratesetting, and determined that hearings were not necessary. These preliminary determinations are upheld.

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

This is an uncontested matter in which the decision grants the relief requested. The application requests expedited approval. Pursuant to §§ 851-854,

due on January 15, 2003.

⁹ *Re Pacific Telesis Group*, D.93-11-011, 51 CPUC2d 728 (1993).

¹⁰ *oCen Communications, Inc.*, *supra*; *Accelerated Connections, Inc.*, D.98-06-092, 1998 Cal. PUC LEXIS 830 (June 30, 1998); *Telephone and Data Systems, Incorporated*, D.98-05-064, 1998 Cal. PUC LEXIS 553 (May 21, 1998).

the Executive Director may grant noncontroversial applications by nondominant telecommunications carriers to transfer assets or control.¹¹

Assignment of Proceeding

Henry Duque is the Assigned Commissioner and Jacqueline A. Reed is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. Notice of this application appeared in the Commission's Daily Calendar of September 6, 2002.

2. Applicants seek authorization pursuant to Pub. Util. Code § 854(a) of the merger of SureWest-California with and into SureWest-Delaware in order to implement a reincorporation of the holding company from a California corporation to a Delaware corporation.

3. Applicant SureWest-California is a diversified communications company that owns, manages, and invests in telephone and cellular telephone systems in California.

4. Applicant SureWest-Delaware is a wholly owned subsidiary of SureWest-California and was formed for the sole purpose of assuming the operations of SureWest-California.

5. There will be no impact on utility property or permanent change in name of Applicants as a result of the reincorporation.

6. Under the proposed reincorporation, SureWest-Delaware will succeed to all assets currently owned by SureWest-California, including ownership and control of four California telecommunications carriers, Roseville Telephone Company, Roseville Long Distance Company, SureWest TeleVideo, and West Coast PCS LLC.

¹¹ *Re Crico Telecommunications of San Jose*, D.87-10-035, 1987 Cal. PUC LEXIS 283; *Re California Associations of Long Distance Telephone Companies*, D.86-08-057, 1986 Cal. PUC LEXIS 786.

7. There will be no change in the operation of these four carriers.

8. Applicants have no complaints (alleging fraud or significant wrongdoing) pending against them before this Commission, the Federal Communications Commission or any other state Commission.

9. Applicants are current on all applicable regulatory fees and charges owed to this Commission.

Conclusions of Law

1. The proposed merger of SureWest-California with and into SureWest-Delaware is not adverse to the public interest.

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

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

4. SureWest-California should be authorized to reincorporate under Delaware law.

5. The application should be approved; since the matter is uncontested, the decision should be effective on the date it is signed.

O R D E R

IT IS ORDERED that:

1. On or after the effective date of this order, SureWest Communications, a California corporation (SureWest-California), and SureWest Communications, Inc., a Delaware corporation (SureWest-Delaware), are authorized, pursuant to California Pub. Util. Code § 854(a) to implement a reincorporation from a California corporation to a Delaware corporation through the merger of SureWest-California into SureWest-Delaware.

2. Within 30 days of reincorporation, SureWest-Delaware shall, in writing, notify the Director of the Telecommunications Division, of the date that transfer

of control has taken place. A copy of the document effectuating that transfer of control shall be attached.

3. The corporate identification numbers previously assigned to SureWest-Delaware's subsidiaries, Roseville Telephone Company (U 1015 C), Roseville Long Distance Company (U 5817 C), SureWest TeleVideo (U 6299 C and U 6324 C), and West Coast PCS LLC (U 3071 C) should be retained by those companies and included in the caption of all original filings with this Commission, and in the titles of other pleadings in existing cases.

4. The authority granted herein shall expire unless exercised within one year of the date of this order.

5. This proceeding is closed.

This order is effective today.

Dated December 3, 2002, at San Francisco, California.

/s/ WESLEY M. FRANKLIN

WESLEY M. FRANKLIN
Executive Director