

Decision 03-05-004 May 8, 2003

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

Application of Teleglobe USA Inc., Teleglobe USA LLC, and TLGB Corporation for Expedited Ex Parte Approval Assignment of Assets and Transfer of Certificate of Public Convenience and Necessity and Related Transactions, Pursuant to Sections 851 and 854(a) of the California Public Utilities Code.

Application 03-01-006  
(Filed January 9, 2003)

**OPINION AUTHORIZING TRANSFER OF ASSETS**

**Summary**

This decision grants the joint application of Teleglobe USA Inc. (Old Teleglobe), Teleglobe USA LLC (New Teleglobe), and TLGB Corporation (TLGB) for approval of the transfer of the assets and certificate of public convenience and necessity (CPCN) of Old Teleglobe to New Teleglobe, and the subsequent transfer of New Teleglobe to TLGB.

**Parties to the Transaction**

Old Teleglobe is a Delaware corporation authorized to do business in California. Its principal place of business is located at 11495 Commerce Park Drive, Reston, Virginia 20191. By Decision (D.) 97-09-087, Old Teleglobe was granted a CPCN to operate in California as a limited facilities-based and resale provider of interexchange services. Old Teleglobe is an indirect wholly-owned subsidiary of Teleglobe Inc. Teleglobe Inc. is a corporation organized under the laws of Ontario, Canada.

New Teleglobe is a new Delaware limited liability company formed for the purpose of carrying out the proposed transaction. It is currently a wholly-owned subsidiary of Old Teleglobe. Its current principal place of business is at the same location as Old Teleglobe. After the transfer, its principal place of business will be located at the same address as TLGB.

TLGB is a Delaware holding company. Its principal place of business is located at 1000 de la Gauchetiere West, Montreal, Quebec H3B 4X5, Canada. It is an indirect wholly-owned subsidiary of Teleglobe International Holdings Ltd. (TIH), a newly formed Bermuda corporation. The majority owners of TIH are four investment funds affiliated with Cerberus Capitol Management, LP (Cerberus). Cerberus is a private equity fund based in New York. The Cerberus funds are controlled by its chief executive officer, Stephen Feinberg, a U.S. citizen.

### **Proposed Transaction**

On May 15, 2002, Teleglobe Inc., and certain of its affiliates, including Old Teleglobe, applied for an order in the Ontario Superior Court of Justice, pursuant to the Companies' Creditors Arrangement Act of Canada (CCAA) commencing a restructuring proceeding, and providing Teleglobe Inc. with protection against creditors while a restructuring plan is being formulated.

On May 28, 2002, Old Teleglobe and Teleglobe Inc.'s other U.S. subsidiaries filed for bankruptcy under Chapter 11 of the United States Bankruptcy Code in the U.S. Bankruptcy Court for the District of Delaware (Bankruptcy Court). The U.S. and Canadian proceedings have been consolidated for procedural purposes and are being administered jointly.

On October 10, 2002, the Bankruptcy Court entered a sale order authorizing Teleglobe Inc. and its U.S. subsidiaries, including Old Teleglobe, to

consummate the proposed transaction subject to receipt of the required regulatory approvals.

Pursuant to the proposed transaction, Old Teleglobe has formed New Teleglobe as its wholly-owned subsidiary. Immediately prior to closing the transaction, Old Teleglobe will assign substantially all of its assets, dedicated access customers (Old Teleglobe does not have any end-user customers), and CPCN to New Teleglobe. At closing, Old Teleglobe will transfer all of New Teleglobe's stock to TLGB. As a result, New Teleglobe will succeed to the current business and operations of Old Teleglobe as a wholly-owned subsidiary of TLGB.

The applicants represent that New Teleglobe will have better access to capital than Old Teleglobe. The applicants also represent that the transaction will be transparent to customers. Much of the management of Old Teleglobe will remain with New Teleglobe. The applicants do not anticipate any changes in rates, terms, and conditions of service as a result of the transaction.

### **Discussion**

Pub. Util. Code § 851 requires Commission authorization before a public utility may “sell, lease, assign or otherwise dispose of ...property necessary or useful in the performance of its duties to the public...” 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 the assets, including the CPCN, 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 Old Teleglobe possesses a CPCN to operate as a limited facilities-based and resale provider of interexchange telecommunications services within California, we will apply the requirements for such authority to New Teleglobe, as it will exist after its acquisition by TLGB.

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 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. If the applicant will be required to provide deposits to other telecommunications carriers in order to provide interexchange services, it must demonstrate that it has sufficient additional cash or cash equivalent to do so. In addition, the applicant is required to make a reasonable showing of technical expertise in telecommunications or a related business.

The applicants provided a guarantee by TLGB that demonstrates that New Teleglobe, as it will exist after its acquisition by TLGB, will have sufficient resources to meet our financial requirements. Since New Teleglobe will continue to operate under much of the same management, we find that our requirement for technical expertise is satisfied.

The transaction will provide New Teleglobe with improved access to capital. In addition, it will be transparent to customers. The proposed

transaction provides net benefits to the public and is, therefore, in the public interest.

As discussed above, the applicants have demonstrated that New Teleglobe, as it will exist after its acquisition by TLGB, meets our financial and experience requirements, and the proposed transaction is in the public interest. Therefore, we will grant the application.

### **Request to File Under Seal**

The applicants request that the financial information filed with the application be filed under seal. The financial information consists of New Teleglobe's 2003 budget. The applicants represent that the information is proprietary and sensitive. The information, if revealed, would place New Teleglobe at an unfair business disadvantage. We have granted similar requests in the past and will do so here.

### **Procedural Matters**

In Resolution ALJ 176-3105, dated January 16, 2003, 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.

### **Assignment of Proceeding**

Loretta M. Lynch is the Assigned Commissioner, and Jeffrey P. O'Donnell is the assigned Administrative Law Judge in this proceeding.

### **Findings of Fact**

1. By D.97-09-087, Old Teleglobe was granted a CPCN to operate in California as a limited facilities-based and resale provider of interexchange services.
2. On May 15, 2002, Teleglobe Inc., and certain of its affiliates, including Old Teleglobe, applied for an order pursuant to the CCAA commencing a restructuring proceeding, and providing Teleglobe Inc. with protection against creditors while a restructuring plan is being formulated.
3. On May 28, 2002, Old Teleglobe and Teleglobe Inc.'s other U.S. subsidiaries filed for bankruptcy under Chapter 11 of the United States Bankruptcy Code.
4. The U.S. and Canadian proceedings have been consolidated for procedural purposes and are being administered jointly.
5. On October 10, 2002, the Bankruptcy Court entered a sale order authorizing Teleglobe Inc. and its U.S. subsidiaries, including Old Teleglobe, to consummate the proposed transaction subject to receipt of the required regulatory approvals.
6. As a result of the transaction, New Teleglobe will be a wholly-owned subsidiary of TLGB.
7. New Teleglobe, as it will exist after its acquisition by TLGB, will retain much of the management of Old Teleglobe.
8. Customers will continue to receive service under the same rates, terms, and conditions of service after the transaction.
9. New Teleglobe, as it will exist after its acquisition by TLGB, has sufficient financial resources to meet the Commission's requirements to provide facilities-based and resold interexchange services.

10. New Teleglobe, as it will exist after its acquisition by TLGB, possesses the necessary technical expertise required by the Commission.

11. The transaction will provide New Teleglobe with improved access to capital.

12. Notice of this application appeared on the Commission's Daily Calendar on January 13, 2003.

13. There were no protests to this application.

14. No hearings are necessary.

15. Public disclosure of the financial information filed under seal would place New Teleglobe at an unfair business disadvantage.

### **Conclusions of Law**

1. The Commission will apply the same requirements to a request for approval of an agreement to acquire the assets, including the CPCN, of a facilities-based and resale provider of interexchange telecommunications services within California as it does to an applicant for authority to provide such services.

2. New Teleglobe, as it will exist after its acquisition by TLGB, meets the Commission's requirements for the issuance of a CPCN to provide facilities-based and resold interexchange telecommunications services.

3. The transaction provides net benefits to the public and is, therefore, in the public interest.

4. The applicant's request to file financial information under seal should be granted for two years.

5. 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 Sections 851 and 854, the joint application Teleglobe USA Inc. (Old Teleglobe), Teleglobe USA LLC (New Teleglobe), and TLGB Corporation (TLGB) for approval of the transfer of the assets and certificate of public convenience and necessity of Old Teleglobe to New Teleglobe, and the subsequent transfer of New Teleglobe to TLGB is approved.

2. The applicants' request to have the financial information filed with the application 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.

3. If the 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.

4. This application is closed.

This order is effective today.

Dated May 8, 2003, at San Francisco, California.

MICHAEL R. PEEVEY  
President

CARL W. WOOD  
LORETTA M. LYNCH  
GEOFFREY F. BROWN  
SUSAN P. KENNEDY  
Commissioners