

Decision 04-11-010 November 10, 2004

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Joint Application of Evercom Systems, Inc.
(U-6888-C) and H.I.G. Capital Partners III, LP
for approval of acquisition by H.I.G. Capital
Partners III, LP of indirect control over Evercom
Systems, Inc.

Application 04-08-001
(Filed August 2, 2004)

OPINION GRANTING REQUEST TO ACQUIRE INDIRECT CONTROL

Summary

Evercom Systems, Inc. (Evercom) and H.I.G. Capital Partners III, LP (H.I.G.) (jointly, the Applicants) seek authorization for H.I.G. to acquire indirect control over Evercom in accordance with the Agreement and Plan of Merger that they have submitted. The request is granted.

Jurisdiction

Applicants filed this matter pursuant to Pub. Util. Code § 854 and Rule 35 of the Commission's Rules of Practice and Procedure. Section 854 precludes any person or corporation from transferring direct or indirect control of any public utility organized and doing business in California without first securing authorization to do so from this Commission upon a finding that the transfer is in the public interest. 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 the public interest may require. (*In the Matter of the San Jose Water Company* 10 California Railroad Commission 56 (May 10, 1916).)

Description of the Parties and Transaction

Evercom is authorized to operate as a nondominant reseller of interLocal Access Transport Area (LATA) and intraLATA interexchange services in California pursuant to Decision (D.) 04-05-049. Evercom provides similar services in other states and also provides interstate and international telecommunications services pursuant to authority granted by the Federal Communications Commission (FCC). The company lists Irving, Texas, as its principal place of business.

H.I.G., a Delaware limited partnership founded in 1993, holds investments in a number of businesses.¹ Its limited partners include investment banks, financial institutions, pension funds, and endowments. H.I.G. is a private equity and venture capital investment firm with more than \$1 billion of equity capital under its management, and has provided growth capital to a number of early stage technology companies and other businesses.

In accordance with the Agreement and Plan of Merger,² one hundred percent of the stock of Evercom Holdings, Inc.³ (EHI) will be acquired by TZ Holdings, Inc. (TZ), a subsidiary of H.I.G. Specifically, EHI will merge with a direct subsidiary of TZ that will no longer exist upon completion of the merger. Certain existing EHI shareholders will acquire interest in TZ, but the majority interest in it will be held by another H.I.G.-controlled subsidiary.⁴

¹ On August 3, 2004, H.I.G.

² Submitted and received, on October 19, 2004, as confidential Exhibit A.

³ Evercom's parent company.

⁴ H.I.G.-TNETIX, Inc. See D.04-11-004. Appended to this decision is a copy of Exhibit B, a chart showing the post-transaction ownership structure of Evercom.

H.I.G. declares that its proposed acquisition of control of Evercom will occur in connection with the extension of a long-term credit facility that will both fund the proposed transaction and provide Evercom and its affiliates with refinancing of current indebtedness as well as access to significant sources of capital to meet their operating needs. This will help ensure that Evercom has both the ability to continue to provide services to its customers and to potentially enhance or expanded services. H.I.G. describes the acquisition as a promising investment opportunity that will be in furtherance of the interests of investors.

Joint Applicants contend that this transaction will not result in any immediate changes to Evercom's current operations. Instead, they assert, Evercom will continue to operate as a separate entity on a basis that is transparent to its customers, with no changes in rates, terms, or conditions of service as a result of this transfer of control.

Discussion

Where a company acquiring control of a certificated telecommunications carrier does not possess a certificate of public convenience and necessity (CPCN), the Commission applies the same requirements as to an applicant seeking a CPCN to exercise the type of authority held by the company being acquired: a minimum of \$100,000 in cash or cash equivalent, and technical expertise in telecommunications or a related business. Review of the documents⁵ submitted in support of H.I.G.'s financial qualifications indicate that through ING's

⁵ Specifically, the latest available audited consolidated financial statements and unaudited updated statements through March 31, 2004 of EHI, and the financing commitment letter from ING Capital LLC (ING) included in Confidential Exhibit C. Applicants declared that separate financial statements for Evercom were not available.

commitment to provide one or more credit facilities to both fund the proposed transaction and to provide working capital for the operations of Evercom and its facilities, H.I.G. offers financial resources which exceed the Commission's minimum requirements for resellers of telecommunication services.

Applicants state that H.I.G. intends to retain Evercom's current experienced managerial team who has the Commission required technical and managerial qualifications. In addition, it appears that no affiliate, officer, director, partner, or owner of more than 10% of H.I.G., or any person acting in that capacity, has filed for bankruptcy or been sanctioned by the FCC or any state regulatory Commission for failure to comply with any statute, rule or order or been found civilly liable for a violation of § 1700 *et seq.* of the California Business and Professions Code or for any actions that involved misrepresentations to consumers, or is currently under investigation for similar violations. Thus, applicants satisfy the Commission's requirements on these factors.

In all, the proposed transaction will benefit the public interest by resulting in a better-financed, more viable competitive provider of local and interexchange telecommunications services.

This application proposes no new construction. Thus, there is no possibility that this proposed transaction may have any significant impact on the environment. There are no protests to this application. Applicants' request is granted.

Comments on Draft Decision

This is an uncontested matter in which the decision grants the relief requested. Applicants have requested expedited approval. Accordingly, pursuant to Pub. Util Code § 311(g)(2), the otherwise applicable 30-day period for public review and comment is being waived. Pursuant to Pub. Util. Code

§§ 851-854, the Executive Director may grant noncontroversial applications by nondominant telecommunications carriers to transfer assets or control.⁶

Categorization and Need for Hearings

In Resolution ALJ 176-3137, dated August 19, 2004, the Commission preliminary categorized this proceeding as ratesetting, and preliminarily determined that hearings were not necessary. Based on the record, the Commission concludes that a public hearing is not necessary; thus, the preliminary determinations in ALJ 176-3137 will not be altered.

Assignment of Proceeding

Susan P. Kennedy is the Assigned Commissioner and Jacqueline A. Reed is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. Resolution ALJ 176-3137 determined that this was a ratesetting proceeding and that hearings were not necessary.
2. Notice of this application appeared in the Commission's Daily Calendar of August 20, 2004.
3. No protests were filed.
4. Applicants sought review under Section 854 of the Public Utilities Code.
5. H.I.G. has sufficient financial resources to meet the Commission's requirements to operate as a nondominant reseller of interLATA and intraLATA interexchange services in the state.

⁶ *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.

6. Given joint applicants stated intention to retain the current managerial team of Evercom, H.I.G. will possess the necessary technical expertise required by the Commission.

7. No new construction is being proposed in this application.

8. H.I.G. has no complaints (alleging fraud or significant wrongdoing) pending against it before this Commission, the FCC or any other state Commission.

Conclusions of Law

1. An uncertificated entity seeking indirect control of a public utility in California should do so pursuant to Pub. Util Code § 854.

2. The indirect transfer of control of Evercom to H.I.G. is not adverse to the public interest.

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

4. It can be seen with certainty that the proposed transfer will not have any adverse impact on the environment.

5. H.I.G. meets the Commission's requirements for an acquiring company of authorized providers of local exchange and interexchange telecommunications services.

6. The application should be approved pursuant to Pub. Util. Code § 854(a); since the matter is uncontested, the decision should be effective on the date it is signed.

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

