

Decision 05-04-048 April 21, 2005

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

Application of FirstEnergy Corp. for approval of the transfer of control of First Communications, LLC (U-6837-C) to McKinley Communications, LLC pursuant to Public Utilities Code Section 854.

Application 04-12-015  
(Filed December 14, 2004)

**OPINION AUTHORIZING A PARTIAL TRANSFER OF CONTROL  
OF FIRST COMMUNICATIONS, LLC TO  
MCKINLEY COMMUNICATIONS, LLC**

**Summary**

This decision grants the joint application of FirstEnergy Corp. (First Energy), First Communications, LLC (First Comm), and McKinley Communications, LLC (McKinley) for the partial transfer of control of First Comm from First Energy to McKinley, pursuant to Sections 852 and 854.<sup>1</sup>

**Parties to the Transaction**

First Energy is an Ohio corporation and a registered public utility holding company. First Energy currently holds a 65% ownership interest in First Comm. First Energy does not hold a CPCN which authorizes the provision of telecommunications services in California.

Boich presently holds the remaining 35% ownership interest in First Comm.

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<sup>1</sup> All Code references are to the Public Utilities Code, unless otherwise stated.

First Comm is an Ohio limited liability company that provides telecommunications in a number of states, including California. First Comm currently holds a California CPCN (U 6837-C), which authorizes the provision of resold interLATA and intraLATA telecommunications services.<sup>2</sup>

McKinley is an Ohio limited liability investment company. Neither McKinley nor any of its affiliates currently provide any telecommunications services on a common carrier basis. McKinley is controlled by Marbel Investments, LLC (Marbel), an Ohio limited liability company. Marbel is owned in equal shares by four individual investors, Marsh Belden, Timothy Belden, Susan Belden, and Katherine Belden.

### **Proposed Transaction**

Under this transaction, First Energy will sell McKinley a 33.15% interest in First Comm for \$11,700,000, subject to certain adjustments. Boich will also sell McKinley a 17.95% interest in First Comm for \$6,300,000. This transaction is subject to regulatory approvals, including approval by this Commission. After closing, McKinley will hold a 51% ownership interest in First Comm, First Energy will hold a 31.85% interest in First Comm, and Boich will hold a 17.15% ownership interest in First Comm.

First Comm will continue to hold its CPCN to provide resold intra LATA and interLATA telecommunications services in California.

Applicants represent that this change in ownership will benefit First Comm and its customers, because First Comm will thereby benefit from the financial resources and management experience of McKinley.

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<sup>2</sup> See Decision (D.) 03-10-066.

The applicants further represent that the transaction will be transparent to customers. There will be no change in the company name or key management of First Comm, because the transaction will be completed at the parent company level only. Customers will continue to receive service from First Comm under the same rates, terms, and conditions after the transaction is approved.

### **Discussion**

Under Section 852, no public utility, and no subsidiary, affiliate of, or corporation holding a controlling interest in, a public utility, shall purchase or acquire, take or hold, any part of the capital stock of any other public utility, organized or existing under the laws of this state, without prior Commission authorization. Section 854 further requires Commission authorization before a company may “merge, acquire, or control . . . any public utility organized and doing business in this state . . . “. The purpose of these and related sections is to enable the Commission, before any transfer of a public utility 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. Although McKinley does not hold a CPCN, First Comm has a CPCN to provide resold telecommunications services. We therefore apply the requirements for such authority to McKinley.

The Commission has established two major criteria for determining whether a CPCN should be granted. An applicant who desires to operate as a resale provider of interLATA and intraLATA service must demonstrate that it has a minimum of \$25,000 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.

McKinley has provided financial statements and other evidence that demonstrates that it has sufficient resources to meet our financial requirements. Since First Comm is expected to continue to operate under the same day- to -day management, we find that our requirement for technical expertise is satisfied, for the purposes of this transaction only.<sup>3</sup> The transaction will give First Comm access to the McKinley's financial and managerial resources. In addition, it will be transparent to customers. Therefore, the proposed transaction is in the public interest.

Therefore, we will grant the application pursuant to §§ 852 and 854.

### **Categorization and Need for Hearings**

In Resolution ALJ 176-3145 dated January 13, 2005, the Commission preliminarily categorized this application as ratesetting, and preliminarily determined that hearings were not necessary. No protests have been received. There is no apparent reason why the application should not be granted. Given these developments, a public hearing is not necessary, and it is not necessary to disturb the preliminary determinations.

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<sup>3</sup> We made no determination that McKinley would otherwise meet the technical and managerial requirements for authorization to provide telecommunications services in this state.

### **Comments on Draft Decision**

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

### **Assignment of Proceeding**

Susan P. Kennedy is the Assigned Commissioner and Myra J. Prestidge is the assigned Administrative Law Judge in this proceeding.

### **Findings of Fact**

1. First Comm is a subsidiary of First Energy and Boich.
2. By D.03-10-066, First Comm was granted a CPCN to provide resold interLATA and intraLATA telecommunications services.
3. McKinley does not hold a CPCN to provide telecommunications services in this state.
4. As a result of the transaction, McKinley will have a 51% ownership interest in First Comm, First Energy will retain a 31.85 ownership interest in First Comm, and Boich will have a 17.15 ownership interest in First Comm.
5. There will be no change in the name or the day-to-day management of First Comm as a result of the transaction.
6. First Comm customers will continue to receive service under the same rates, terms, and conditions after the transaction.
7. McKinley has sufficient financial resources to meet the Commission's requirements to provide resold interLATA and intraLATA telecommunications services.
8. Since First Comm will potentially have access to McKinley's financial resources, this transaction will improve the financial stability of First Comm.

9. Since First Comm's day-to-day management will remain the same, McKinley has met the requirements for technical and managerial expertise to provide telecommunications services, for the purposes of this transaction only.

10. Notice of this application appeared on the Commission's Daily Calendar on December 23, 2004. There were no protests to this application.

11. 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 resale provider of inter-LATA and intraLATA telecommunications services within California as it does to an applicant for authority to provide such services.

2. McKinley meets the Commission's requirements for the issuance of a CPCN to provide resold interLATA and intraLATA telecommunications services, for the purposes of this transaction only.

3. This transaction is in 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 Pub. Util. Code §§ 852 and 854, the joint application of FirstEnergy Corp.(First Energy), First Communications, LLC (First Comm), and McKinley Communications, LLC (McKinley) for approval of the indirect transfer of partial control of First Comm to McKinley is approved.

2. Applicatin04-12-015 is closed.

This order is effective today.

Dated April 21, 2005, at San Francisco, California.

MICHAEL R. PEEVEY  
President  
GEOFFREY F. BROWN  
SUSAN P. KENNEDY  
DIAN M. GRUENEICH  
Commissioners