

Decision 05-11-012 November 18, 2005

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Joint Application and Request for Expedited
Ex Parte Treatment of San Carlos Telecom, Inc.
(U 5443 C) and Wave eXchange LLC for
Approval of Transfer of Control.

Application 05-08-035
(Filed August 26, 2005)

OPINION GRANTING TRANSFER OF CONTROL

1. Summary

This decision grants the request of San Carlos Telecom, Inc. (U 5443 C) (San Carlos) and Wave eXchange LLC (Wave eXchange) (collectively, the Applicants), pursuant to California Pub. Util. Code §§ 851-854, for approval of a transaction pursuant to which Wave eXchange acquires the portion of the outstanding shares of common stock that it does not already own, and thereby voting control of San Carlos. The transaction will not affect the California operations of San Carlos. The matter is uncontested. This proceeding is closed.

2. Background

San Carlos provides local service, principally in the form of access lines for large (greater than 25 lines) end-users and carrier customers and resold long distance services. San Carlos obtains the facilities necessary to provide its service from other carriers or uses its own facilities that have been installed in existing structures.

3. Applicants' Request

In 2000, the owners of San Carlos granted Wave eXchange an option to purchase voting control of San Carlos.¹

Applicants propose to transfer the voting control of San Carlos's stock to Wave eXchange an entity that already owns a significant although non-controlling interest in the company. According to Applicants, the transaction will not change the services that San Carlos provides to its California customers, the day to day management of San Carlos's operations will continue to be led by the same team of well-qualified telecommunications professionals, and California customers will not be affected.

4. The Parties

A. San Carlos Telecom, Inc.

San Carlos is a California corporation that is authorized to provide resold and facilities-based interexchange services throughout California² and resold facilities-based local exchange services in the service areas of SBC California and Verizon.³ William A. G. and LaDawn W. Wilde currently own fifty-one (51%) of the voting stock of San Carlos. William A. G. Wilde is the President of San Carlos. He also is an officer and board member of Wave eXchange and will continue in that capacity after the transaction is completed.

¹ A copy of this agreement and a subsequent amendment to extend the date by which the option must be exercised is attached as Exhibit 1 to the Application. With the Application is a motion requesting confidential treatment of this agreement and the amendment. The motion was granted by an Administrative Law Judge's (ALJ) ruling dated October 3, 2005.

² This authority was granted by Decision (D.) 95-01-042.

³ This authority was granted by D.98-03-066.

B. Wave eXchange LLC

Wave eXchange, a Delaware Limited Liability Corporation and a majority owned subsidiary of the Cambay Group, Inc., is a real estate and investment management company owning forty-nine (49%) of the voting stock in San Carlos. The Cambay Group, in turn, is the principal United States real estate subsidiary of British-Isles based Somerston Holdings Limited. A certified copy of Wave eXchange's Certificate of Formation and evidence of good standing from the Delaware Secretary of State is attached to the application as Exhibit 2. A certified copy of Wave eXchange's Certificate of Good Standing as a Foreign Limited Liability Company from the California Secretary of State is attached as Exhibit 3. Upon consummation of the transaction Wave eXchange will own one-hundred (100%) of the voting rights associated with it.

Wave eXchange invests in carrier hotel and carrier-neutral collocation services for network provider and enterprise customers. Customers include e-commerce and web-based industries. Its principal place of business is 2999 Oak Road, Suite 400, Walnut Creek, California, 94597. Copies of Wave eXchange's most recent financial statements demonstrating that it has at least \$100,000 of cash or cash equivalent, reasonably liquid and readily available are attached to the application as Exhibit 4.

William A. G. Wilde will continue to participate in the operations of San Carlos. A copy of Wilde's biography and the biographies of other key Wave eXchange employees, demonstrating their financial, managerial, and technical expertise to operate San Carlos after the acquisition is complete, are attached to the application as Exhibit 5.

Wave eXchange will continue to operate San Carlos in accordance with the terms and conditions of its existing facilities-based Certificate of Public

Convenience and Necessity (CPCN) issued in D.98-03-066. This will include, to the extent necessary, construction of any facilities necessary to provide services to its customers. Wave eXchange states that it does not at this time have any plans to construct new facilities but, to the extent such construction is necessary in the future Wave eXchange will fully comply with the requirements of its CPCN and the Commission's regulations in this regard.

5. Public Interest Considerations

Applicants state that the proposed transaction will serve the public interest in promoting local competition by combining the resources and business opportunities of Wave eXchange with the telecommunications expertise and facilities of San Carlos. Applicants believe that together the two companies can better serve the specialized telecommunications needs of business customers, providing new and innovative services and capabilities not available from each company separately or from currently existing competitive alternatives. According to Applicants, Wave eXchange has access to capital through related businesses that will provide San Carlos with the opportunity to capitalize on market forces that may require the infusion of additional capital.

6. Discussion

Applicants seek approval of the proposed transfer of control pursuant to Pub. Util. Code § 854. Section 854(a) states, in relevant part, as follows:

No person or corporation . . . shall merge, acquire, or control . . . any public utility organized and doing business in this state without first securing authorization to do so from the commission . . . Any merger, acquisition, or control without that prior authorization shall be void of no effect.

The Commission has broad discretion to determine if it is in the public interest to authorize a transaction pursuant to § 854(a).⁴ The primary standard used by the Commission to determine if a transaction should be authorized under § 854(a) is whether the transaction will adversely affect the public interest.⁵ The Commission may also consider if the transaction will serve the public interest.⁶ Where necessary and appropriate, the Commission may attach conditions to a transaction in order to protect and promote the public interest.⁷

For the following reasons, we conclude that it is reasonable to grant this § 854(a) application. First, San Carlos will continue to operate as it has in the past, using the same name and operating authority. Second, the public may benefit from the transfer of control to the extent the transaction enhances the ability of San Carlos to maintain and expand its services and operations in California. Third, there is no opposition to this application. For these reasons, we see no reason to withhold authority for the transfer of control before us here.

7. Categorization and Need for Hearing

In Resolution ALJ 176-3158, dated September 8, 2005, the Commission preliminarily categorized this proceeding as ratesetting, and preliminarily determined that hearings were not necessary. No protests have been received. Given this status public hearing is not necessary and it is not necessary to alter the preliminary determinations made in Resolution ALJ 176-3158.

⁴ D.95-10-045, 1995 Cal. PUC LEXIS 901, *18-19.

⁵ D.00-06-079, p. 13.

⁶ D.00-06-005, 2000 Cal. PUC LEXIS 281, *4.

⁷ D.95-10-045, 62 CPUC 2d 160, 167-68.

8. Expedited Approval

Applicants have requested expedited approval of this application by the Executive Director. Ordering Paragraph 1 of D.87-10-035 provides in relevant part that the Executive Director may grant noncontroversial applications by nondominant telecommunications carriers for authority to transfer assets or control under §§ 851-855.⁸ However, Wave eXchange does not qualify for expedited approval by the Executive Director because Wave eXchange is not a California certificated nondominant telecommunications carrier.

9. Waiver of Comment Period

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.

10. Assignment of Proceeding

Susan P. Kennedy is the Assigned Commissioner and Bertram D. Patrick is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. San Carlos possesses a CPCN to provide resold and facilities-based local exchange telecommunications services, and limited facilities-based competitive local exchange services within California under the U 5443 C corporate identification number.

2. Applicants seek authority for Wave eXchange to acquire control of San Carlos. Wave eXchange currently owns 49% of the voting stock of San Carlos and proposes to purchase the remaining 51% from William A. G. and

⁸ CPUC 2d 459 at 462 (1987).

LaDawn W. Wilde. Upon completion of the transaction Wave eXchange will own 100% of the voting stock of San Carlos.

3. Pub. Util. Code § 854(a) requires Commission authorization to transfer control of a public utility. Any transfer of control without Commission authorization is void under the statute.

4. Wave eXchange has sufficient cash and cash equivalence to provide the necessary funding for San Carlos.

5. San Carlos will continue offering its current services and use the same name and authority after the transfer of control.

6. San Carlos is current on reporting and transmitting the user fees applicable to its California operations.

7. Upon completion of the transaction, San Carlos will continue to be operated by the same existing management team.

8. There is no opposition to this application.

Conclusions of Law

1. This is a ratesetting proceeding and no hearing is necessary.

2. This application should be approved and become effective immediately because it is not adverse to the public interest and the public may benefit from ability of Wave eXchange to maintain and expand San Carlos' services and operations in California.

3. Approval of this application is not a finding of value of the rights and property being transferred.

O R D E R

IT IS ORDERED that:

1. Wave eXchange LLC is authorized pursuant to §§ 851-844 of the Public Utilities Code to acquire 100% of the ownership interests of San Carlos Telecom, Inc., as more fully described in the application and exhibits attached to the application.

2. San Carlos Telecom, Inc. and Wave eXchange shall notify the Director of the Commission's Telecommunications Division in writing of the transfer of control, as authorized herein, within 30 days of this order. A true copy of the instrument(s) of transfer shall be attached to the notification.

3. Application 05-08-035 is closed.

This order is effective today.

Dated November 18, 2005, at San Francisco, California.

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