

Decision 06-02-020 February 16, 2006

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Joint Application of Telscape Communications, Inc. (U-6589-C) and Gemini Partners, Inc., for approval of change of control.

Application 05-11-006
(Filed November 9, 2005
amended
January 11, 2006)

OPINION GRANTING TRANSFER OF CONTROL

I. Summary

This decision grants the revised request of Telscape Communications, Inc. (Telscape) and Gemini Partners, Inc. (Gemini) collectively Joint Applicants, for approval of a change in control over Telscape. The matter is uncontested. This proceeding is closed.

II. Joint Applicants' Request

Joint Applicants state that a change of control is taking place in connection with the sale by Telscape's current shareholders of 100% of the stock in Telscape to a new investment entity that is being formed for the purposes of this transaction. The new entity will now be managed by Gemini, which will acquire shares of stock in Telscape; however, controlling shares of Telscape stock will be held by Gemini's affiliate, GP/T Holdings, LLC (GP/T). Ultimate control of GP/T will be held by Nathan Johnson and Matthew Johnson, who also control Gemini. No changes to Telscape's current operations or management are contemplated. Pursuant to Section 854 of the Public Utilities Code, Joint Applicants request Commission approval of the proposed change in control over Telscape.

III. The Parties

A. Telscape

Telscape is a wholly-owned subsidiary of Telscape Communications Holdings, Inc. (Holdings), which, in turn, is owned by various investors. Telscape is authorized by Decision (D.) 01-10-061 to provide limited facilities-based and resold local exchange and interexchange services in California. Telscape focuses on the provision of local and long distance telephone service to Spanish-language-dominant Hispanic households, and currently operates in California and Nevada. In addition, Telscape provides international facilities-based and resold services pursuant to authority issued by the Federal Communications Commission under 47 U.S.C. § 214. Telscape also holds authority to provide intrastate service in Arizona, Florida, Nevada, New Jersey, New York, and Texas, but currently operates only in California and Nevada. Telscape's principal place of business is 606 E. Huntington Drive, Monrovia, CA 91016. Tel: 626-415-1016, Fax: 626-252-3490.

B. Gemini

Gemini is a California-based investment and financial consulting company. Gemini provides a variety of financial and transaction-related services for small and medium-sized businesses, including equity and debt financial sourcing, merger and acquisition advice, and merchant banking. Through various affiliates and subsidiaries, Gemini holds investments in a number of industries. Gemini's principal place of business is 1080 Wilshire Blvd., Suite 500, Los Angeles, CA 90024. Tel: 310-696-4001, Fax: 310-696-4007.

C. GP/T Holdings, LLC

GP/T Holdings, LLC is a California-based investment company that holds and manages investments. Its address and telephone number are the same as

Gemini: 1080 Wilshire Blvd., Suite 500, Los Angeles, CA 90024. Tel.: 310-696-4001, Fax: 310-696-4007.

IV. Financial Showing

Joint Applicants furnished under seal, as Exhibit C to the application, the most recent audited financial statements for Telscape, along with updated, unaudited financials. Also, with the amended application Joint Applicants furnished under seal, a statement of unencumbered funds held by GP/T. These documents show that GP/T meets the Commission's financial standards applicable to parties seeking control of facilities-based carriers.

V. Motion for Protective Order

Pursuant to Pub. Util. Code § 583 and General Order (GO) No. 66-C, Joint Applicants request that the financial information and terms of the proposed transaction submitted in the application be kept under seal. Joint Applicants represent that the information is proprietary and sensitive, and the information, if revealed, would place Telscape and GP/T at an unfair business disadvantage. We have granted similar requests in the past and will do so here.

VI. Public Interest Considerations

The sole issue in this proceeding is whether, upon the acquisition of control by Gemini and GP/T, Telscape will continue to have requisite managerial, financial, and technical support to provide service, and whether granting this application is otherwise consistent with the public interest.

Joint applicants state that following the change of control, Telscape will continue to be managed by its existing principal executive management team and founders, Ruben Garcia and Philip Siegel. According to Joint Applicants, as set forth in Exhibit E to the application, Garcia and Siegel have extensive

backgrounds in business and telecommunications, and their significant expertise and abilities are proven by Telscape's current success in the market.

Joint Applicants further state that Ruben Garcia was an officer and managed the California operations of Telscape International, Inc. (International), a national telecommunications carrier that entered into Chapter 11 bankruptcy proceedings in 2001. Following that bankruptcy filing, Garcia and Telscape's current investors purchased International's California business, which had been operating successfully notwithstanding International's otherwise failing operations, and, since then, Garcia has led Telscape to its current position of financial and operating strength. Joint Applicants note that the acquisition of the Telscape assets from International was approved as part of the issuance of a certificate of public convenience and necessity to Telscape by D.01-10-061.

Telscape is a wholly-owned subsidiary of Holdings. According to Joint Applicants, the equity investment fund that currently owns controlling shares in Holdings is reaching the end of its established life. Under the terms of the fund's sunset provisions, the fund's managers are obligated to liquidate the fund's interests in Holdings at this time. Therefore, Telscape's management and remaining shareholders have worked closely with the fund's managers to negotiate a sale of the fund's shares to investors who have a demonstrated interest in promoting Telscape's continued operation in a manner consistent with the needs of Telscape's customers.

VII. Discussion

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

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 and 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).¹ 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.² The Commission may also consider if the transaction will serve the public interest.³ Where necessary and appropriate, the Commission may attach conditions to a transaction in order to protect and promote the public interest.⁴

For the following reasons, we conclude that it is reasonable to grant this § 854(a) application. First, Telscape 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 Telscape to raise capital, 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.

VIII. Categorization and Need for Hearing

In Resolution ALJ 176-3162, dated November 18, 2005, the Commission preliminarily categorized this proceeding as ratesetting, and preliminarily determined that hearings were not necessary. No protests have been received.

¹ D.95-10-045, 1995 Cal. PUC LEXIS 901, *18-19.

² D.00-06-079, p. 13.

³ D.00-06-005, 2000 Cal. PUC LEXIS 281, *4.

⁴ D.95-10-045, 62CPUC 2d 160, 167-68.

Given this status, public hearing is not necessary and it is not necessary to alter the preliminary determinations made in Resolution ALJ 176-3162.

IX. 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.

X. Assignment of Proceeding

Michael R. Peevey is the Assigned Commissioner and Bertram D. Patrick is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. Telscape is authorized by D.01-10-061 to provide limited facilities-based and resold local exchange and interexchange services in California.
2. Gemini and GP/T seek authority to acquire control of Telscape through purchase of Telscape stock.
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. Telscape will continue offering its current services and use the same name and authority after the transfer of control.
5. Telscape is current on reporting and transmitting the user fees applicable to its California operations.
6. Upon completion of the transaction, Telscape will continue to be operated by the same existing management team.
7. 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.
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. Gemini Partners Inc. (Gemini) and GP/T Holdings LLC. are authorized, pursuant to Pub. Util. Code §§ 851-854, to purchase stock in Telscape Communications, Inc. (Telscape), and to thereby acquire control over Telscape, as more fully described in the application and exhibits attached to the application.
2. The request of Gemini and Telscape, collectively Joint Applicants, to have the financial information filed with this 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 Joint 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's rules may then provide. This motion shall be filed no later than one month before the expiration date.

4. Joint Applicants 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.

5. Application 05-11-006 is closed.

This order is effective today.

Dated February 16, 2006, at San Francisco, California.

MICHAEL R. PEEVEY

President

GEOFFREY F. BROWN

DIAN M. GRUENEICH

JOHN A. BOHN

RACHELLE B. CHONG

Commissioners