

Decision 07-05-040 May 24, 2007

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of Application of Yak Communications (America) Inc. (U-6578-C), Yaktastic, Inc., and Blackbird Corporation for Approval *Nunc Pro Tunc* of a Transfer of Control of Yak Communications (America) Inc.

Application 07-03-002
(Filed March 1, 2007)

**OPINION GRANTING TRANSFER OF CONTROL
AND FINING APPLICANTS \$10,000 FOR THEIR SECOND VIOLATION OF
SECTION 854(a) OF THE PUBLIC UTILITIES CODE**

1. Summary

This decision grants the unopposed application¹ of Yak Communications (America) Inc. (Yak America), Yaktastic Inc. (Yaktastic), and Blackbird Corporation (Blackbird) (together, Applicants) for a transfer of control of Yak America to Blackbird effective today, on a prospective basis only. We deny Applicants' request for retroactive approval of this transaction, which was previously consummated without prior Commission approval, in violation of Section 854(a).²

¹ The application was filed on March 1, 2007. In Resolution ALJ 176-3189, dated March 15, 2007, we preliminarily categorized this proceeding as ratesetting and preliminarily determined that no hearings are necessary. No protests to the application were filed.

² All statutory references are to the Public Utilities Code, unless otherwise stated.

This decision also requires Applicants to pay a fine of \$10,000 based on their failure to obtain Commission authorization for this transfer of control, as required by Section 854(a), before the closing of the sale of Yak America to Blackbird. We note that Yak America, Yaktastic, and Yak Communications, Inc. (Yak) recently committed another violation of Section 854(a) by transferring Yak America to Yaktastic without prior Commission authorization.

2. The Applicants

Yak America is a Florida corporation with its principal place of business located in Aventura, Florida, and is a wholly-owned subsidiary of Yaktastic. Yak America holds a certificate of public convenience and necessity (CPCN) authorizing the provision of resold interexchange services in this state.³ According to the application, Yak America is authorized to provide resold interexchange services in 48 states and the District of Columbia.

Yaktastic is a recently formed Delaware corporation with its principal offices located in Tampa, Florida and owns Yak America.⁴ According to the application, Yaktastic is 100% owned by Mr. Anthony Lopez, a U. S. citizen, whose principal business is investment.

Blackbird is a newly formed Florida corporation with its offices located in Aventura, Florida. Blackbird is 100% owned by Mr. Jose Cadi, a U.S. citizen. Neither Blackbird nor Mr. Cadi holds a 10% or greater ownership interest in any other company that offers domestic or foreign telecommunications services.

³ See Decision (D.) 01-09-068.

⁴ Before the transfer of Yak America to Yaktastic, Yak owned Yak America.

3. Background

Yaktastic previously acquired Yak America from Yak on November 7, 2006. The transfer of Yak America to Yaktastic resulted from a decision by Yak's Board of Directors to approve an offer by Globalive Communications Corp. (Globalive), a Nova Scotia limited liability company, to acquire all of the outstanding shares of Yak's common stock. Since Yak America is subject to federal and state regulation, Yak and Globalive believed that this transaction would be simpler if Yak America were not one of the entities transferred to Globalive. Further, the owners of Yak had determined that their continued ownership of Yak America was no longer consistent with their investment objectives. Therefore, Yak wished to transfer Yak America to Yaktastic before consummating the sale of its common stock to Globalive.

Although Yak, Yak America, and Yaktastic obtained approval of this transaction from the Federal Communications Commission (FCC), the sale of Yak America to Yaktastic closed before the parties had obtained advance Commission approval of the transaction, in violation of Section 854(a). The parties subsequently sought retroactive Commission approval on a *nunc pro tunc* basis.^{5 6} In D.07-05-004, we approved the sale of Yak America to Yaktastic on a prospective basis only, and denied the request for approval on a *nunc pro tunc* basis. We also imposed a fine of \$5,000 based on this violation of Section 854(a).

⁵ See Application (A.) 06-10-031, as amended.

⁶ The phrase "*nunc pro tunc*" meaning "now for then", refers to those acts which are allowed to be done at a later time "with the same effect as if regularly done." (Blacks Law Dictionary, 4th Revised Ed. (1968), p. 1,218.)

4. The Proposed Transaction

In this application, Applicants request Commission approval of the transfer of control of Yak America to Blackbird, through Blackbird's acquisition of 100% of the issued and outstanding shares of capital stock of Yak America, on a *nunc pro tunc* basis. According to the application, the sale of Yak America to Blackbird closed on January 16, 2007. The application states that the FCC has already approved this transaction.

Applicants claim that they needed to quickly complete the transfer of Yak America to Blackbird before obtaining Commission approval in order to fill "management voids" following the sale of Yak America to Yaktastic. Applicants state that Yak America needed capable management, at both the senior management and the operation levels. According to the application, Yaktastic found it more difficult to operate Yak America's switching and billing functions than originally anticipated and began to question the continued availability of "casual calling" over the Yak America network. Yaktastic also became concerned that the financial performance of Yak America could not be sustained.

However, some of the former principals who had originally sold Yak America to Yaktastic developed a renewed interest in Yak America. One of them, Jose Cadi, who had retained a non-financial interest in Yak America, recently formed Blackbird and acquired Yak America from Yaktastic in order to serve the U.S. market. Since Mr. Cadi has engaged other former managers of Yak Communications as consultants in this matter, he has effectively restored the prior management of Yak America to the leadership of the company.

According to the application, after the transfer of Yak America to Blackbird, Yak America has continued to offer its customers the same services at the same rates, terms, and conditions pursuant to existing authorizations, tariffs,

contracts, and published rates and charges. The only change is that Yak America is now owned by Blackbird, rather than Yaktastic. The application states that no customers were disconnected as a result of the transfer, and that the transfer was necessary to ensure the continued availability of service to customers. Yak America will now have access to the financial resources of Blackbird for its operations.

5. Discussion

5.1. The Application Should be Approved on a Prospective Basis Only

In this application, Applicants request authority under Section 854 for Blackbird to acquire control of Yak America through the purchase of 100% of its capital stock. However, advance Commission approval of this transaction is required under Section 854.

Section 854 (a) states, in pertinent part:

No person or corporation, whether or not organized under the laws of this state, 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 Section 854(a).⁷ The primary standard used by the Commission to determine if a transaction should be authorized under Section 854(a) is whether the transaction will adversely affect

⁷ D.95-10-045, 1995 Cal. PUC LEXIS 901, *18-19; and D.91-05-026, 40 CPUC 2d 159, 171.

the public interest.⁸ The Commission may also consider if the transaction will serve the public interest.⁹ Where necessary and appropriate, the Commission may attach conditions to a transaction in order to protect and promote the public interest.¹⁰

For the following reasons, we conclude that it is reasonable to grant this application to the extent it requests prospective authority under Section 854(a) for Blackbird to acquire control of Yak America. First, there will be no change to the rates, services, or operations of Yak America as a result of the transaction. Therefore, Yak America's customers and the public will not be harmed by the change in control of Yak America. Second, since the transaction has reinstated Yak America's former management, we find that Blackbird's management has the telecommunications experience and technical and managerial qualifications necessary to exercise control over Yak America. Third, the transfer will give Yak America access to the financial resources of Blackbird. Fourth, there is no opposition to this application. For these reasons, we see no reason to withhold

⁸ D.00-06-079, p. 13; D.00-06-057, p. 7; D.00-05-047, p. 11 and Conclusion of Law (COL) 2; D.00-05-023, p. 18; D.99-03-019, p. 14; D.98-08-068, p. 22; D.98-05-022, p. 17; D.97-07-060, 73 CPUC 2d 601, 609; D.70829, 65 CPUC 637, 637; and D.65634, 61 CPUC 160, 161.

⁹ D.00-06-005, 2000 Cal. PUC LEXIS 281, *4; D.99-04-066, p. 5; D.99-02-036, p. 9; D.97-06-066, 72 CPUC 2d 851, 861; D.95-10-045, 62 CPUC 2d 160, 167; D.94-01-041, 53 CPUC 2d 116, 119; D.93-04-019, 48 CPUC 2d 601, 603; D.86-03-090, 1986 Cal. PUC LEXIS 198 *28 and COL 3; and D.8491, 19 CRC 199, 200.

¹⁰ D.95-10-045, 62 CPUC 2d 160, 167-68; D.94-01-041, 53 CPUC 2d 116, 119; D.90-07-030, 1990 Cal. PUC LEXIS 612 *5; D.89-07-016, 32 CPUC 2d 233, 242; D.86-03-090, 1986 Cal. PUC LEXIS 198 *84-85 and COL 16; and D.3320, 10 CRC 56, 63.

authority for the transfer of control on a prospective basis, because the transaction is not adverse to the public interest.

We deny this application to the extent it requests retroactive authority under Section 854(a) for Blackbird to acquire control of Yak America. The purpose of Section 854(a) is to enable the Commission to review a proposed acquisition, *before it takes place*, in order to take such action as the public interest may require.¹¹ Granting this application on a retroactive basis would thwart the purpose of Section 854(a). The Commission has enacted careful guidelines for scrutiny of the owners of telecommunications utilities, and we cannot condone the transfer of control of a telecommunications utility to an owner that has not passed through our approval process in advance.

Since we will not grant retroactive authority, Blackbird's acquisition of control over Yak America is void under Section 854(a) for the period of time before the effective date of this decision. Applicants are at risk for any adverse consequences that may result from their having completed the transfer of control without Commission authority.

5.2. Applicants Should be Fined for Their Failure to Comply with Pub. Util. Code Section 854(a)

Applicants failed to comply with Section 854(a) by transferring control of Yak America to Blackbird without Commission authorization. Violations of Section 854(a) are subject to monetary penalties under Section 2107, which states as follows:

¹¹ D.99-02-061, 1999 Cal. PUC LEXIS 56 *12; D.98-07-015, 1998 Cal. PUC LEXIS 526 *7; D.98-02-005, 1998 Cal. PUC LEXIS 320 *8; D.97-12-086, 1997 Cal. PUC LEXIS 1168 *8; and San Jose Water Co. (1916) 10 CRC 56, 63.

Any public utility which violates or fails to comply with any provision of the Constitution of this state or of this part, or which fails or neglects to comply with any part or provision of any order, decision, decree, rule, direction, demand, or requirement of the commission, in a case in which a penalty has not otherwise been provided, is subject to a penalty of not less than five hundred dollars (\$500), nor more than twenty thousand dollars (\$20,000) for each offense.

Under Section 2108, each date on which a continuing violation remains in effect constitutes a separate offense.

For the following reasons, we conclude that the Applicants should be fined for their failure to comply with § 854(a). First, any violation of Section 854(a), regardless of the circumstances, is a serious offense that should be subject to fines. Second, the imposition of a fine will help to deter future violations of Section 854(a) by the Applicants and others.

To determine the size of the fine, we shall rely on the criteria adopted by the Commission in D.98-12-075. We address these criteria below.

Criterion 1: Severity of the Offense

In D.98-12-075, the Commission held that the size of a fine should be proportionate to the severity of the offense. To determine the severity of the offense, the Commission stated that it would consider the following factors:¹²

Physical harm: The most severe violations are those that cause physical harm to people or property, with violations that threatened such harm closely following.

Economic harm: The severity of a violation increases with (i) the level of costs imposed upon the victims of the violation, and (ii) the

¹² 1998 Cal. PUC LEXIS 1016, *71 - *73.

unlawful benefits gained by the public utility. Generally, the greater of these two amounts will be used in setting the fine. The fact that economic harm may be hard to quantify does not diminish the severity of the offense or the need for sanctions.

Harm to the Regulatory Process: A high level of severity will be accorded to violations of statutory or Commission directives, including violations of reporting or compliance requirements.

The number and scope of the violations: A single violation is less severe than multiple offenses. A widespread violation that affects a large number of consumers is a more severe offense than one that is limited in scope.

Applicants' violation of Section 854(a), while serious, did not cause any physical or economic harm to others. The violation of Section 854(a) affected few, if any, consumers. However, our general policy is to accord a high level of severity to any violation of the Public Utilities Code. Further, the unauthorized transfer of Yak America to Blackbird is the second time that Yak America and Yaktastic have violated Section 854(a) in the recent past. However, this factor must be weighed against the other factors in determining the amount of the fine.

Criterion 2: Conduct of the Utility

In D.98-12-075, the Commission held that the size of a fine should reflect the conduct of the utility. When assessing the conduct of the utility, the Commission stated that it would consider the following factors:¹³

The Utility's Actions to Prevent a Violation: Utilities are expected to take reasonable steps to ensure compliance with applicable laws

¹³ 1998 Cal. PUC LEXIS 1016, *73 - *75.

and regulations. The utility's past record of compliance may be considered in assessing any penalty.

The Utility's Actions to Detect a Violation: Utilities are expected to diligently monitor their activities. Deliberate, as opposed to inadvertent wrongdoing, will be considered an aggravating factor. The level and extent of management's involvement in, or tolerance of, the offense will be considered in determining the amount of any penalty.

The Utility's Actions to Disclose and Rectify a Violation: Utilities are expected to promptly bring a violation to the Commission's attention. What constitutes "prompt" will depend on circumstances. Steps taken by a utility to promptly and cooperatively report and correct violations may be considered in assessing any penalty.

Although the transfer of Yak America to Blackbird closed on January 16, 2007, Applicants did not disclose their violation of Section 854(a) or file for Commission approval until March 1, 2007, approximately 45 days later. Applicants could have avoided this violation by filing a request for expedited Commission approval of the transaction before closing the sale of Yak America to Blackbird. This factor suggests that a larger fine may be appropriate. However, Applicants have admitted the violation and took steps to remedy it by requesting Commission approval of the transaction on a *nunc pro tunc* basis.

Criterion 3: Financial Resources of the Utility

In D.98-12-075, the Commission held that the size of a fine should reflect the financial resources of the utility. When assessing the financial resources of the utility, the Commission stated that it would consider the following factors:¹⁴

¹⁴ 1998 Cal. PUC LEXIS 1016, *75 - *76.

Need for Deterrence: Fines should be set at a level that deters future violations. Effective deterrence requires that the Commission recognize the financial resources of the utility in setting a fine.

Constitutional limitations on excessive fines: The Commission will adjust the size of fines to achieve the objective of deterrence, without becoming excessive, based on each utility's financial resources.

The audited financial statements for Yak and its subsidiaries show that as of June 30, 2006, the company had assets in the amount of \$49,526,000 and liabilities in the amount of \$14,929,000.¹⁵ Further, as of June 30, 2006, the company had net revenues of \$92,397,000 and a net loss of \$365,000. The interim audited financial statements for Yaktastic for the period from September 22, 2006 to October 31, 2006 show that the company had assets of \$40,100 and liabilities in the amount of \$43,741. Applicants have filed a certificate of deposit, which shows that Blackbird has \$100,000 available for the operations of the company. Although Yak and its subsidiaries incurred a financial loss in 2006, its financial statements indicate healthy amounts of equity. The financial position of Yaktastic, which was formed for the specific purpose of acquiring Yak America, is not strong. We will weigh these factors accordingly when setting the amount of the fine.

¹⁵ Applicants filed financial statements for Yak and its subsidiaries, because they do not have separate audited financial statements for Yak America for the past year.

Criterion 4: Totality of the Circumstances

In D.98-12-075, the Commission held that a fine should be tailored to the unique facts of each case. When assessing the unique facts of each case, the Commission stated that it would consider the following factors:¹⁶

The degree of wrongdoing: The Commission will review facts that tend to mitigate the degree of wrongdoing as well as facts that exacerbate the wrongdoing.

The public interest: In all cases, the harm will be evaluated from the perspective of the public interest.

The facts of this case indicate that the degree of wrongdoing, though not egregious, was sufficiently serious to warrant a substantial fine. First, Applicant did not file this application in advance in order to obtain prior Commission approval of the transfer of Yak America to Blackbird, in violation of Section 854(a) and did not disclose the violation or file an application for Commission approval until approximately 45 days after the transaction had closed. Applicants have not claimed ignorance of the requirements of Section 854(a), but proceeded to complete the transaction without our advance approval for their own business reasons. Although Applicants claim that they needed to transfer Yak America to Blackbird immediately in order to ensure that the company had appropriate management, Applicants could have filed an application for expedited Commission approval of the transaction and/or Blackbird could have consulted with Yaktastic regarding the management of Yak America pending our decision on the application. In addition, Yak America and Yaktastic recently

¹⁶ 1998 Cal. PUC LEXIS 1016, *76.

committed another violation of Section 854(a) by transferring Yak America to Yaktastic without prior Commission authorization.

In mitigation, Applicant did eventually file an application for Commission approval of the transaction, and no consumers were harmed by Applicants' failure to comply with Section 854(a). These same facts also indicate that the public interest was not significantly harmed by Applicants' violation of Section 854(a).

Criterion 5: The Role of Precedent

In D.98-12-075, the Commission held that any decision which imposes a fine should (1) address previous decisions that involve reasonably comparable factual circumstances, and (2) explain any substantial differences in outcome.¹⁷

In D. 00-09-035 and D. 00-12-053, we stated that although the Commission had in some instances approved applications for transfer of control on a *nunc pro tunc* basis, the Commission does not have a policy in favor of *nunc pro tunc* approvals.¹⁸ We also announced that in the future, we may deny such applications and may impose penalties for failure to obtain advance Commission authorization as required by Section 854(a).¹⁹ In recent years, we have generally declined to grant *nunc pro tunc* approvals of applications for the transfer of control of a public utility. Applicants and other public utilities have therefore

¹⁷ 1998 Cal. PUC LEXIS 1016, *77.

¹⁸ We noted that we based our past *nunc pro tunc* approval of certain transactions on the unique facts of each case.

¹⁹ Id.

been given notice that the Commission will require compliance with the requirements of Section 854(a) and may impose penalties for violations.

Here, Applicants have presented no circumstances which justify approval of their application on a *nunc pro tunc* basis. Despite their business need to move swiftly, Applicants still have a duty to comply with Section 854(a). Moreover, Applicants could have avoided this violation by filing the application earlier and requesting expedited Commission approval. In addition, this transaction is the second time that Yaktastic and Yak America has violated Section 854(a) by failing to obtain prior Commission approval of a transfer of control.

Although in the past, the Commission has not always imposed sanctions for violations of Section 854, in D.00-09-035 we held that our precedent of meting out lenient treatment to those who violate Section 854(a) had failed to deter additional violations. We therefore stated a policy of imposing fines for violations of Section 854(a) in order to deter future violations.²⁰ Therefore, requiring the Applicants to pay a fine for violating Section 854(a) would be consistent with D.00-09-035.

Conclusion: Setting the Fine

We previously concluded that the Applicants should be fined for their violation of Section 854(a). The application of the criteria adopted by the Commission in D.98-12-075 to the facts of this case indicates that a moderate fine is warranted. First, Applicants' violation of Section 854(a), though not egregious, was serious. Second, this violation was the second time that Applicants have

²⁰ D.00-09-035, pp. 10-11. D.00-09-035 required the applicants in that proceeding to pay a \$500 fine for violating Section 854(a). In D.00-12-053, the Commission imposed a fine of \$5,000 for a similar violation of Section 854(a).

transferred control of Yak America without first obtaining Commission approval in order to advance their own business objectives. Third, while Yak and its subsidiaries have incurred some losses during 2006, Applicants appear to have sufficient resources to pay a moderate fine. However, the public interest and the interests of consumers were not significantly harmed by the Applicants' violation of Section 854(a).

We conclude based on the facts of this case that the Applicants should be fined \$10,000 for this second violation of Section 854(a). The fine we impose today is meant to deter future violations Section 854(a) by the Applicants and other parties. We emphasize that the size of the fine we impose today is tailored to the unique facts and circumstances before us in this proceeding. We may impose larger fines in other proceedings if the facts so warrant. If Applicants again violate Section 854(a), we shall impose more serious sanctions.

6. Category and Need for Hearing

Based on the record, we find no need to alter the preliminary determinations as to categorization and the need for a hearing made in Resolution ALJ 176-3189, dated March 15, 2007.

7. Comments on Proposed Decision

The proposed decision of the Administrative Law Judge (ALJ) in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and Rule 14.2(a) of the Commission's Rules of Practice and Procedure. Comments were filed by Yak America and Blackbird on April 30, 2007.

In their comments, Applicants contend that the proposed decision fails to explain the reasons for the Commission's decision not to approve the transfer of Yak America to Blackbird retroactively, on a *nunc pro tunc* basis, and does not specify the Commission's policy on applications for *nunc pro tunc* approval of a transfer of control of a public utility. Applicants also argue that the transfer of Yak America to Blackbird qualifies for *nunc pro tunc* approval of the transaction.

We have made minor changes to the proposed decision in response to these comments.

8. Assignment of Proceeding

Rachelle B. Chong is the assigned Commissioner and Myra J. Prestidge is the assigned ALJ in this proceeding.

Findings of Fact

1. Yak America holds a CPCN authorizing the provision of resold interexchange services in California.
2. Yak America is a wholly-owned subsidiary of Yaktastic.
3. Yaktastic is a recently formed Delaware corporation.
4. Blackbird is a newly formed Florida corporation formed for the purpose of acquiring Yak America from Yaktastic.
5. Blackbird is owned by Jose Cadi, a U.S. citizen.
6. On October 26, 2006, Yak, Yak America, and Yaktastic filed A.06-10-041, seeking Commission authorization to transfer the control of Yak America to Yaktastic, through Yaktastic's acquisition of 100% of the issued and outstanding shares of the capital stock of Yak America.
7. The transfer of Yak America to Yaktastic was completed on approximately November 7, 2006, without prior Commission approval.

8. In D.07-05-004, we approved the transfer of control of Yak America to Yaktastic on a prospective basis only, and denied the request for *nunc pro tunc* approval of the transaction.

9. In D.07-05-004, we found that the transfer of control of Yak America to Yaktastic without prior Commission approval violated Section 854(a) and imposed a fine of \$5,000.

10. Applicants filed this application, seeking Commission authorization to transfer control of Yak America from Yaktastic to Blackbird, on March 1, 2007.

11. Although Applicants obtained advance FCC approval of the transfer of Yak America to Blackbird, the transaction closed on January 16, 2007, approximately 45 days before Applicants filed this application seeking Commission approval of the transaction.

12. Blackbird has the technical, managerial, and financial qualifications necessary to exercise control of Yak America.

13. Applicants state that this transfer will restore the previous management of Yak America to the leadership of the company.

14. Applicants state that Yak America will continue to offer customers the same services at the same rates, terms and conditions after the transfer of the company to Blackbird.

15. Applicants' failure to comply with Section 854(a) did not significantly harm the public, including customers.

16. Applicants' failure to obtain prior Commission approval of the transfer of Yak America to Blackbird is Yak America's and Yaktastic's second violation of Section 854(a) in the recent past.

17. Applicants have not claimed ignorance of the requirements of Section 854(a), but state that they needed to transfer the company to Blackbird quickly in order to ensure that Yak America had competent management.

18. Applicants could have avoided this second violation of Section 854(a) by filing an application for expedited Commission approval of the transfer of Yak America to Blackbird before the transaction closed.

19. Applicants took steps to report and remedy their violation of Section 854(a) by filing this application, approximately 45 days after the transfer of Yak America to Blackbird had been consummated.

20. Applicants have adequate financial resources to pay a moderate fine.

21. The Commission's lenient treatment of parties that violate Section 854(a) has not deterred subsequent violations of Section 854(a) by other parties.

22. The imposition of a moderate fine is necessary in order to deter Applicants and others from future violations of Section 854(a).

Conclusions of Law

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

2. Section 854(a) requires Commission authorization to transfer control of a public utility.

3. Any transfer of control of a public utility without prior Commission authorization is void under Section 854(a).

4. The Commission has a policy disfavoring *nunc pro tunc* approvals of the transfer of control of a public utility. Applicants have not shown sufficient reason to depart from that policy. Section 2107 gives the Commission authority to impose a penalty of between \$500 and \$20,000 for violations of the Public Utilities Code.

5. Under Section 2108, each day on which a violation of the Public Utilities Code or a Commission decision, rule or order continues to exist is a separate violation.

6. Under D.98-12-075, the Commission will consider the following criteria for determining the amount of a fine: (i) the severity of the offense, (ii) the conduct of the utility, (iii) the financial resources of the utility, (iv) the totality of the circumstances, and (v) the role of precedent.

7. This application should be approved on a prospective basis because the transfer of Yak America to Blackbird is not adverse to the public interest.

8. This application should be denied to the extent it requests retroactive or *nunc pro tunc* approval of the transfer of control of Yak America to Yaktastic.

9. Applicants violated Section 854(a) by transferring control of Yak America to Blackbird before receiving Commission authorization.

10. Applicants' violation of Section 854(a) is subject to monetary penalties under Section 2107.

11. Applicants should be fined for violating Section 854(a). The amount of the fine should be based on the criteria set forth in D.98-12-075.

12. Applicants' violation of Section 854(a), was a serious offense because this transaction is the second time in the recent past that Applicants have transferred control of Yak America without obtaining prior Commission authorization.

13. The public interest was not significantly harmed by Applicants' violation of Section 854(a).

14. The application of the criteria in D.98-12-075 to the facts of this case indicates that Applicants should pay a fine of \$10,000 for violating Section 854(a).

O R D E R

IT IS ORDERED that:

1. Application (A.) 07-03-002, for authority under Public Utilities Code Section 854(a) to transfer control of Yak Communications (America) Inc. (Yak America) to Blackbird Corporation (Blackbird), is granted to the extent it requests authority effective as of the date of this order.

2. A.07-03-002 is denied to the extent it requests retroactive or *nunc pro tunc* authority for the transfer of control of Yak America to Blackbird.

3. Blackbird and Yak America shall notify the Director of the Commission's Communications Division in writing of the transfer of control, as authorized herein, within 10 days of this order. A true copy of the instrument(s) of transfer shall be attached to the notification.

4. Blackbird Corporation, Yak America, and Yaktastic Inc., shall pay a fine in the amount of \$10,000 for violating Public Utilities Code Section 854(a). Applicants shall pay the fine within 30 days from the effective date of this order by tendering to the Fiscal Office of the California Public Utilities Commission a check in the amount of \$10,000 made payable to the State of California General Fund. Applicants shall file proof of payment at the Commission's Docket Office within 40 days of payment.

5. Yak America and Blackbird shall obtain Commission authorization as required by Section 854(a) before consummating the transfer of control of Yak America to any other entity.

6. A.07-03-002 is closed.

This order is effective today.

Dated May 24, 2007, at San Francisco, California.

MICHAEL R. PEEVEY
President
DIAN M. GRUENEICH
JOHN A. BOHN
RACHELLE B. CHONG
TIMOTHY ALAN SIMON
Commissioners