

Decision 07-11-038 November 16, 2007

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of MCI Communications Services, Inc. (U-5378-C) Pursuant to Public Utilities Code Section 851 for Authority to Transfer Certain Assets to GoAmerica Relay Services Corp., a wholly owned subsidiary of GoAmerica, Inc., a Delaware Corporation.

Application 07-08-019
(Filed August 16, 2007)

**OPINION GRANTING THE APPLICATION
OF MCI COMMUNICATIONS SERVICES, INC.
TO TRANSFER ASSETS TO GOAMERICA RELAY SERVICES CORP., A
WHOLLY OWNED SUBSIDIARY OF GOAMERICA, INC.**

Summary

This decision approves the transfer of the California Relay Call Center in Riverbank, California from MCI Communications Services, Inc. (MCI) to GoAmerica Relay Services Corp., a wholly owned subsidiary of GoAmerica, Inc. (collectively, GoAmerica).

Background

MCI seeks authorization to transfer to GoAmerica certain assets and facilities with which MCI currently provides call center services for the California Relay Service segment of the Commission's Deaf and Disabled Telecommunications Program.

The specific assets MCI seeks to transfer to GoAmerica are described in detail below. MCI and GoAmerica entered into an Asset Purchase Agreement (APA) on August 1, 2007, setting forth the terms and conditions of this asset sale

and purchase. A copy of the APA has been submitted to the Commission. Pursuant to the terms of the APA, the transaction will not close prior to approval by the regulatory agencies of several other states, and this Commission. MCI is endeavoring to obtain all necessary regulatory approvals by the end of November 2007. The company believes that this application does not present any controversial issues.

On August 16, 2007, MCI filed a motion asking that all the schedules and exhibits to the APA be placed under seal. An amended motion was filed on October 2, 2007, which narrowed the request to specific documents.¹ MCI presented an analysis showing that the documents contained commercially valuable information and employee compensation data, neither of which is otherwise available to the public.

MCI holds a certificate of public convenience and necessity from this Commission pursuant to which it provides intrastate interexchange telecommunications services and related services, including telecommunications relay services. MCI also provides "Call Center Services" for the California Relay Service pursuant to that certain California Relay Service Call Center Services Contract No. 03PS5313 between MCI and the Commission (the Call Center Contract). MCI is classified by this Commission as a nondominant interexchange carrier (NDIEC).

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- Asset Purchase Agreement, Schedules, Pages 41-73 and pages 84-100
- Exhibit A: Form of Facilities Use Agreement (Exh. B to Facilities Use Agreement)
- Exhibit B: Commercial Services Agreement Terms
- Exhibit E: Form of Transition Services Agreement (Exh. A to Transition Services Agreement)

GoAmerica is not a public utility certificated by this Commission and not an applicant. MCI provided the following about GoAmerica, on information and belief. (The full text of MCI's statement concerning GoAmerica's qualifications can be found in Attachment A):

GoAmerica

- is incorporated under the laws of the State of Delaware, and its principal office is located in Hackensack, New Jersey;
- holds a Certificate of Qualification from the California Secretary of State permitting it to transact intrastate business in California;
- since May 2004, has provided relay services for people who are deaf, hard of hearing, or speech-disabled including wireless and wireline access methods to both text and video relay services;
- began providing web-based interstate relay services March 2005 in partnership with Stellar Nordia Services, LLC ("Nordia"), a California-certified Telecommunications Relay Services (TRS) provider;
- in June 2006 obtained certification from the Federal Communications Commission as an interstate provider of both IP text and video relay services;
- is run by a seasoned management team, which has a deep understanding of business, operational, technology, regulatory, outreach, and customer care issues related to relay services; and
- is publically traded on the NASDAQ stock market, and has capital commitments to acquire the assets and facilities covered by the APA and to support the ongoing obligations of the Call Center Contract.

Assets to be Transferred

Generally, the assets to be transferred consist of MCI's call center located in Riverbank, California together with the equipment, facilities, and information

technology used for the provision of California Relay Call Center Services pursuant to the Call Center Contract, as well as the Call Center Contract itself.

MCI proposes to transfer to GoAmerica the equipment, facilities, and information technology used for the provision of California Relay Call Center Services pursuant to the Call Center Contract which has been submitted to the Commission. Section 16 of the Call Center Contract provides specific procedures for assignment of the contract, and requires prior written approval from the Director of the Commission's Communications² Division. That approval must then be confirmed by California's Department of General Services and the actual assignment accomplished via a formal contract amendment. Simultaneously with this application, MCI and GoAmerica are pursuing the assignment of the Call Center Contract in accordance with these procedures.

The specific assets to be transferred by MCI to GoAmerica are as follows:

A. Interests in Real Property

Under the terms of the APA, MCI will assign and transfer (or cause to be assigned and transferred) to GoAmerica all of MCI's rights and interests in specifically identified leases of improved real properties. Among these is the standard commercial single-tenant lease for the office building located at 6436 Oakdale Road, Riverbank, California, together with the ground lease for the parking facility at the same location. These are the leased facilities in California where MCI has operated its call center providing relay services.

B. Personal Property

² Formerly known as the Telecommunications Division, as referenced in the Call Center Contract.

MCI will sell to GoAmerica all of MCI's right, title and interest in the items of equipment, trade fixtures and furnishings located at the specified facilities and identified in Schedule 2.1.1(a) to the APA. These include:

1. Office furnishings (e.g., desks, chairs, filing cabinets, bookshelves).
2. Office equipment (e.g., telephones, pagers, fax machines, copiers).
3. Personal computing equipment (e.g., desktop and laptop computers, keyboards, monitors, docking stations, mice, printers).
4. Network hardware (e.g., servers, routers, switches, cards).

C. Intellectual Property

MCI will license (or cause to be licensed) to GoAmerica, pursuant to an Intellectual Property License Agreement identified in Section 2.1.2 of the APA, the software applications and rights under patents and patent applications identified in Schedule 2.1.1(g) to the APA.

D. Contracts Other Than Call Center Contracts

MCI will assign and transfer (or cause to be assigned and transferred) to GoAmerica all MCI's rights and interests under the Vendor Contracts, and Customer Contracts specifically identified in Schedule 2.1.1(d) and 2.1.1(e) to the APA.

E. The Call Center Contracts

This Commission approved the award to MCI of the Call Center Contract as part of the restructured California Relay Service in Resolution T-16741, dated June 19, 2003. This Call Center Contract was memorialized in agreement number 03PS5313 (dated March 17, 2004), signed by the Commission's Executive Director on April 8, 2004, and approved by the California Department of General Services on May 3, 2004. MCI and

GoAmerica are pursuing assignment of this contract in accordance with its terms.

MCI proposes to transfer the assets described herein as part of its ongoing strategy to simplify and focus its business.³ MCI's strategy is to focus on its core telecommunications products. The sale of MCI's nationwide interstate and intrastate TRS business to GoAmerica will enable MCI to concentrate its efforts on developing and growing its core business for the benefit of MCI's customers generally. TRS is a relatively small component of MCI's operations and MCI is not a major participant in the telecommunications relay industry.

While MCI transfers the assets with which it has been providing telecommunications relay services to its customers, those assets will be utilized by GoAmerica to continue to provide relay services to California TRS customers. For a period after the closing of the transaction, MCI will assist GoAmerica by providing certain transition services pursuant to a contract between MCI and GoAmerica. Thus, the transaction will have no impact on MCI's California customers. With respect to the transfer of MCI assets with which it has been providing California Relay Call Center Services, those assets will be utilized to provide Call Center Services, once the assignment of the Call Center Contract to GoAmerica has been approved. Thus, MCI concludes that the transaction will have no impact on the Call Center Services now being provided by MCI.

³ MCI also provides intrastate telecommunications relay services in the state of Tennessee and the District of Columbia. GoAmerica and MCI are taking the appropriate steps to have these contracts assigned and transferred to GoAmerica.

Discussion

In transfer of assets proceedings, the Commission's duty is to ensure that a proposed transfer will not be adverse to the public interest. (*Application of Dyke Water Co.* (1964) 63 CPUC 641.) As noted, neither the transfer of MCI assets used to provide relay services, nor the transfer of MCI assets used to provide Call Center Services for the California Relay Service will have any impact on the continued provision of those services. Thus, the transfer of assets will have no adverse impact on the public interest.

Similarly, this transfer of ownership will cause no operational or facilities changes. Thus, it can be seen with certainty that it will have no effect on the environment.

There are no protests. A public hearing is not necessary.

Categorization and Need for Hearing

In Resolution ALJ 176-3197, dated August 23, 2007, 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.

Waiver of Comment Period

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

Assignment of Proceeding

Timothy Alan Simon is the assigned Commissioner and Maribeth A. Bushey is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. The California Environmental Quality Act (CEQA) Guideline Section 15061(b)(3) provides that projects are exempt from CEQA review when it can be seen with certainty that the activity will not have a significant effect on the environment.

2. The proposed transfer will not affect the terms and conditions under which current customers receive service and, upon consummation of the transfer, GoAmerica alone shall be bound by the terms of the Call Center Contract.

3. GoAmerica is qualified technically and financially to support the services to be transferred.

4. No term of the proposed transfer contravenes statutory provisions or prior Commission decisions.

5. The transfer of assets is reasonable in light of the record, is consistent with law, and is in the public interest.

6. Transfer of the assets which MCI uses to deliver Call Center Contract 03PS5313 are linked to the approval of the assignment of this contract by the Department of General Services (DGS).

Conclusions of Law

1. The transfer of assets subject to this application is exempt from CEQA review pursuant to CEQA Guideline Section 15061(b)(3).

2. The transfer of assets should be approved with the exception that the transfer of the assets used in the provision of Call Center Contract 03PS5313

should be approved conditioned upon DGS approval of the assignment to GoAmerica of the Call Center Contract by DGS.

3. The amended motion of MCI for leave to file confidential materials under seal should be granted.

O R D E R

IT IS ORDERED that:

1. The application of MCI Communications Services, Inc. to transfer the assets and facilities as set forth in the Asset Purchase Agreement dated as of August 1, 2007 between MCI Communications Services, Inc. and GoAmerica Relay Service Corp, a wholly owned subsidiary of GoAmerica, Inc. (GoAmerica) is hereby granted.

2. The Commission's permission to transfer the assets used in the provision of the Call Center Contract (03PS5313) becomes effective only upon the approval of the assignment of this contract to GoAmerica by the Department of General Services.

3. The authority granted by this decision shall expire if not exercised by October 1, 2008.

4. Applicant's information filed as the following portions of the Asset Purchase Agreement:

- Schedules, Pages 41-73 and pages 84-100
- Exhibit A: Form of Facilities Use Agreement (Exh. B to Facilities Use Agreement)
- Exhibit B: Commercial Services Agreement Terms
- Exhibit E: Form of Transition Services Agreement (Exh. A to Transition Services Agreement)

shall be filed under seal and shall remain under seal for a period of two years after the date of this order. During this two-year period, this information shall remain under seal and shall not be viewed by any person other than the assigned Commissioner, the assigned Administrative Law Judge (ALJ), the Assistant Chief ALJ, or the Chief ALJ, except as agreed to in writing by Applicant or as ordered by a court of competent jurisdiction. If Applicant believes that it is necessary for this information to remain under seal for longer than two years, Applicant shall file a new motion at least 30 days before the expiration of this limited protective order.

5. Application 07-08-019 is closed.

This order is effective today.

Dated November 16, 2007, at San Francisco, California.

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

ATTACHMENT A
MCI Statement,
Excerpt from Application, Pages 3-5

GoAmerica Inc. and GoAmerica Relay Services Corp. (GSRE) are incorporated under the laws of the State of Delaware, and its their principal offices are located at 433 Hackensack Avenue 3rd Floor, Hackensack, NJ 07601. GoAmerica is a fast-growing provider of relay services for people who are deaf, hard of hearing, or speech-disabled. GoAmerica's current service portfolio includes wireless and wireline access methods to both text and video relay services marketed under its i711® brand.

GoAmerica first entered relay business in May 2004 by developing and managing the underlying wireless application technology for Sprint Relay Wireless. This technology enabled users to connect to a relay service from virtually anywhere using a choice of wireless handheld devices and pagers. In March 2005, GoAmerica began providing web-based interstate relay services under the i711® brand, in partnership with Stellar Nordia Services, LLC ("Nordia"), a California-certified Telecommunications Relay Services (TRS) provider.¹ In June 2006, GoAmerica itself obtained certification from the Federal Communications Commission as an interstate provider of both IP text and video relay services. The company now offers access to its i711 relay services through the web, AOL Instant Messenger, Research in Motion's BlackBerry devices,

¹ Under those arrangements, Nordia provides call center management functions for GoAmerica, which functions will be extended under the APA.

T-Mobile Sidekick devices, voice-initiated calling, webcam-equipped PCs, and set-top videophones.

Prior to entering the relay market, GoAmerica already had a history — since 1997 — of providing accessible communication services to deaf, hard of hearing, and speech-disabled consumers, and its business is exclusively focused on that market. GoAmerica’s mission is to “bring down barriers to effective communication for people who are deaf, hard of hearing or speech-disabled by providing innovative, high quality and dependable communication service.”

GoAmerica actively engages with the deaf and hard of hearing community on many fronts. The company has a visible presence at numerous national, regional, and local events and conferences that draw in deaf and hard of hearing consumers, in the form of outreach booths, spokespeople, demonstrations, training sessions, and financial sponsorships. GoAmerica has well-developed marketing and outreach network with over 80 independent contractors, a dozen of whom are based in California. The company publishes on its i711.com web site a variety of articles and videos created by deaf and hard-of-hearing authors, and fosters a sense of community by inviting comments from deaf relay users. Consumers are also actively enrolled in beta testing of relay features and in providing feedback. GoAmerica employs deaf people at all levels of its staff, and has deaf representation on its Board of Directors; hearing employees are offered cultural training and introductory classes in sign language.

GoAmerica is run by a seasoned management team, which has a deep understanding of business, operational, technology, regulatory, outreach, and customer care issues related to relay services. The company has a demonstrated record of product and user-friendly design innovations in relay services that are embraced by consumers and imitated by competitors. GoAmerica has a

successful business partner with Nordia, who expertly handles call center operations and equally understands applicable state and federal TRS regulations. The i711® relay services are operated in accordance with high-quality service level agreements, as evidenced by the very low rate of filed consumer complaints (0.01% for all calls handled from June 1, 2006 through May 31, 2007).

GoAmerica is publically traded on the NASDAQ stock market (stock ticker: GOAM), and financial information is readily available. The company has capital commitments to acquire the assets and facilities covered by the APA and to support the ongoing obligations of the CCS Contract. As such, the company is committed to serving the deaf, hard of hearing, and speech-disabled community for the long term.

(END OF ATTACHMENT A)