

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

The Application of Empire One
Telecommunications, Inc. For Approval of a
Merger Agreement and Authority to Transfer
Ownership.

Application 05-04-028
(Filed April 28, 2005)

**ADMINISTRATIVE LAW JUDGE'S RULING REQUIRING
APPLICANT TO FILE ADDITIONAL INFORMATION WITHIN 30 DAYS
IN ORDER TO AVOID DISMISSAL OF APPLICATION**

On April 28, 2005, Empire One Telecommunications, Inc. (Empire 1), Fonix Corporation (Fonix) and TOE Acquisition Corporation (TOE) (together "Applicants") filed an application for Commission approval of a merger agreement dated November 19, 2004. Under the merger agreement, TOE, a wholly owned subsidiary of Fonix, would merge with Empire 1. Empire 1 would survive the merger and would become a wholly owned first-tier subsidiary of Fonix. Empire 1 currently holds a CPCN authorizing the provision of resold services in this state.

Upon review of this matter, I determined that additional information was necessary in order to process this application. I therefore most recently sent a letter to counsel for Applicants on August 11, 2005 and directed Applicants to submit a supplemental filing that would include certifications, additional information regarding the ongoing management of Empire 1 after the merger, and additional financial documentation by no later than September 1, 2005.

Applicant did not respond to this letter and failed to make the required supplemental filing or to request an extension of time in which to submit the necessary information.

Applicant has had a reasonable opportunity to provide the additional information needed to process this application.

Therefore, **IT IS RULED** that:

1. Applicants shall file a supplemental filing which contains the information stated on Exhibit A within 30 days of the date of this ruling.
2. Applicant shall also send a copy of the supplemental filing directly to me at 505 Van Ness Ave., Room 5041B, San Francisco, CA 94102 within 30 days of this ruling. In order to expedite review of this application, Applicants may also fax a copy of the supplemental filing to me at (415) 703-1723 or e-mail it to me at tom@cpuc.ca.gov.
3. Applicant shall make the supplemental filing in accordance with the Commission Rules of Practice and Procedure. Applicant may contact the Commission Public Advisor's Office at 1/866/849-8390 or 1/866/849-8391 for assistance with procedural questions.
4. If Applicant fails to make a satisfactory supplemental filing by no later than 30 days after the date of this ruling, the assigned ALJ shall seek Commission dismissal of the application without prejudice, based on Applicant's failure to complete the application.

Dated September 15, 2005, at San Francisco, California.

/s/ MYRA J. PRESTIDGE

Myra J. Prestidge
Administrative Law Judge

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Information Needed for Supplemental Filing – Application No. 05-04-028

In order for the Commission to approve this application for a merger and transfer of ownership, the applicant must show that Fonix Corporation (Fonix), as the company acquiring ownership of the telecommunications carrier, meets the requirements for the issuance of a certificate of public convenience and necessity (CPCN). Since the Empire One Telecommunications, Inc. (Empire 1) presently holds a CPCN authorizing the provision of resold services, the applicant must demonstrate that Fonix also qualifies for the issuance of a CPCN for resold services.

Please provide the following information, as applied to Fonix:

1. Certification

Please certify that the following is true. (Need not be notarized). If any of the following statements are not true, please explain.

- a. To the best of applicant's knowledge, neither applicant, any affiliate, officer, director, partner, nor owner of more than 10% of applicant, or any person acting in such capacity whether or not formally appointed, has been sanctioned by the Federal Communications Commission or any state regulatory agency for failure to comply with any regulatory statute, rule or order.
- b. No affiliate, officer, director, partner, or person owning more than 10% applicant, or anyone acting in such a capacity whether not formally appointed, held one of these positions with a telecommunications carrier that filed for bankruptcy, or has been found either criminally or civilly liable by a court of appropriate jurisdiction for a violation of § 17000 et seq. of the California Business and Professions Code, or for any actions which involved misrepresentations to consumers, and to the best of applicant's knowledge, is not currently under investigation for similar violations.

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2. Additional Information Regarding Ongoing Management of Empire 1

Please explain whether Fonix will retain key management personnel of Empire 1 after the merger and transfer of ownership takes effect. If Fonix plans to replace key management staff of Empire 1, please provide information on the background, experience, and qualifications of persons who will be responsible for the day to day operations to Empire 1.

3. Financial Information

Please provide **audited** financial statements or other acceptable documentation which demonstrates that Fonix meets the financial requirements for providing resold telecommunications services. Applicants for CPCNs authorizing the provision of resold services must show that they at least \$25,000 available for the operations of the company.

The acceptable forms of financial documentation are:

- a. An **audited** balance sheet and income statement demonstrating sufficient cash flow, as authorized in Decision (D.) 91-10-041 for nondominant interexchange services (NDIECs); **OR**
- b. Any of the following:
 1. Cash or cash equivalent, including cashier's check, sight draft, performance bond proceeds, or traveler's checks.
 2. Certificate of deposit or other liquid deposit, with a reputable bank or other financial institution;
 3. Preferred stock proceeds or other corporate shareholder equity, provided that use is restricted to maintenance of working capital for a period of at least 12 months beyond certification of the applicant by the Commission;

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4. Letter of credit, issued by a reputable bank or other financial institution, irrevocable for a period of at least 12 months beyond certification of the application by the Commission;
5. Line of credit or other loan, issued by a reputable bank or other financial institution, irrevocable for a period of at least 12 months beyond certification of the applicant by the Commission, and payable on an interest-only basis for the same period;
6. Loan, issued by a qualified subsidiary, affiliate of applicant, or a qualified corporation holding controlling interest in the applicant, irrevocable for a period of at least 12 months beyond certification of the applicant by the Commission, and payable on an interest-only basis for the same period;
7. Guarantee, issued by a corporation, copartnership, or other person or association, irrevocable for a period of at least 12 months beyond certification of applicant by the Commission;
8. Guarantee, issued by a qualified subsidiary, affiliate of applicant, or a qualified corporation holding a controlling interest in the applicant, irrevocable for a period of at least 12 months beyond certification of the applicant by the Commission.

A qualified subsidiary, affiliate, or corporation holding a controlling interest in the applicant must be either (1) a certificated going concern with active NDIEC operations in California, or (2) a going concern with active NDIEC operations outside California.

Note: The above language applies to nondominant interexchange carrier applications (D.91-10-041, App.A). The same requirements are applied to Competitive Local Exchange Carrier applications (D.85-12-056, App. A.)

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Unaudited financial statements and checking account statements are not acceptable.

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Administrative Law Judge's Ruling Requiring Applicant to File Additional Information Within 30 days in Order to Avoid Dismissal of Application Additional Information on all parties of record in this proceeding or their attorneys of record.

Dated September 15, 2005, at San Francisco, California.

/s/ JANET V. ALVIAR

Janet. Alviar

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.