

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Joint Application of Cebridge Telecom CA, LLC (U6996C), Cequel Communications Holdings, LLC and Nespresso Acquisition Corporation for Expedited Approval of Indirect Transfer of Control of Cebridge Telecom CA, LLC, Pursuant to California Public Utilities Code Section 854(a).

Application 12-07-021
(Filed July 25, 2012)

DECISION AUTHORIZING TRANSFER OF CONTROL AND OPENING PENALTY PHASE**1. Summary**

Applicants Cequel Communications Holdings, LLC, (Cequel Holdings), its wholly-owned subsidiary Cebridge Telecom CA, LLC dba Suddenlink (Cebridge Telecom CA) (U6996C), and Nespresso Acquisition Corporation (Nespresso) are granted approval to consummate a transaction whereby Nespresso will acquire Cequel Holdings, and thereby acquire indirect control of Cebridge Telecom CA, which is a certificated subsidiary providing facilities-based local and interexchange services in California.

Application 12-07-021 remains open to consider whether the Commission should impose penalties for alleged violation of Public Utilities Code Section 854(a).

2. Parties to the Transaction

Cequel Communications Holdings, LLC, (Cequel Holdings) is a U.S. entity formed under the laws of Delaware, as a limited liability company, with principal offices at 12444 Powerscourt Drive, St. Louis, Missouri 63131. Cequel Holdings, through its wholly owned subsidiaries, owns and operates a multi-service communications business which provides cable television, broadband Internet access, and Voice Over Internet Protocol (VoIP) services to residential and commercial subscribers.

Cequel Holdings owns and controls 100% of the issued and outstanding equity ownership interests of Cebridge Telecom CA, LLC (Cebridge Telecom, CA), which is a U.S. entity formed under the laws of Delaware, as a limited liability company, with principal offices at 12444 Powerscourt Drive, St. Louis, Missouri 63131. Cebridge Telecom, CA has authority to provide facilities-based local exchange and interexchange telecommunications services in California pursuant to Decision (D.) 06-06-022 issued on June 16, 2006. At this time, Cebridge Telecom CA offers telecommunications services only to schools and libraries under the federal E-rate program.

Nespresso Acquisition Corporation (Nespresso) is a corporation, formed under the laws of Delaware, with principal offices at 667 Madison Avenue, New York, New York 10065. The initial investors in Nespresso are a number of funds or entities managed by BC Partners, Inc.,¹ a number of funds or entities

¹ A holding company organized under the laws of Guernsey, and located at Heritage Hall, La Merchant Street, St. Peter Port, Guernsey GY1 4HY, Channel Islands.

managed by the Canadian Pension Plan Investment Board,² and certain limited partner management employees of Cequel Holdings who will become members of the Nespresso management team. Nespresso's principal business is to act as a holding company for Cequel Holdings. Nespresso is not a telecommunications provider or a provider of any other communications services.

3. The Proposed Transaction

Under the terms of the Purchase and Sale Agreement, which is attached to the application as Exhibit G, Nespresso will acquire indirect control of Cebridge Telecom CA, through a purchase of the equity ownership interests of Cequel Holdings. As a result of the transaction, Nespresso will acquire ultimate control of Cebridge Telecom CA at the holding company level.

No transfer of Cebridge Telecom CA's Certificate of Public Convenience and Necessity (CPCN), assets, or customers will occur with this transaction. The applicants state that the transaction will not cause any immediate change in the direct ownership or legal structure of Cebridge Telecom CA. They represent that the transaction will not affect the daily management or operations of Cebridge Telecom CA, and after the transaction is consummated, Cebridge Telecom CA will continue to provide service at current rates, terms, and conditions. Applicants further assert that the transaction will not eliminate existing or potential competitors, and will enhance Cebridge Telecom CA's ability to compete, to the ultimate benefit of consumers.

² An investment management organization incorporated in Canada which invests the assets of the Canada Pension Plan and is located at One Queen Island Street East, Suite 2600, P.O. Box 101, Toronto, ON M5C 2W5, Canada.

4. Discussion

The primary standard, by which the Commission reviews whether a transaction should be approved under Section 854(a), is whether the transaction will be “adverse to the public interest.”³ As part of its determination, and where a company acquiring control of a certificated telecommunications carrier does not possess a CPCN in California, the Commission applies the same requirements that govern a new applicant seeking a CPCN to exercise the type of authority held by the company being acquired. Specifically, the company must demonstrate a minimum of \$100,000 in cash or cash equivalent and demonstrate adequate technical expertise in telecommunications or a related business.

The applicants have provided information that reflects that the proposed change in ultimate ownership of Cebridge Telecom CA will not adversely impact its operations or financial status. Applicants have provided information that demonstrates that the acquiring company, Nespresso, has sufficient managerial and technical expertise and sufficient financial resources to operate the acquired carrier.

Information provided about Nespresso’s management team under Exhibit F to the application, and in response to the October 3, 2012 and October 8, 2012 rulings of the Administrative Law Judge (ALJ) reflects its significant experience in a variety of industries, including the telecommunications industry. Applicants also state that to the best of their knowledge, no one associated with or employed by Applicants as an affiliate, officer, director, partner, or owner of

³ See D.03-12-033 at 6; D.01-06-007 at 15.

more than 10% of any of them: (a) was previously associated with a telecommunications carrier that filed for bankruptcy; (b) was sanctioned by the Federal Communications Commission or any state regulatory agency for failure to comply with any regulatory statute, rule, or order; (c) was previously associated with any telecommunication carrier that has been found either civilly or criminally liable by a court of appropriate jurisdiction for a violation of Section 17000 *et seq.* of the California Business and Professions Code, or for any actions which involved misrepresentations to consumers; or (d) is currently under investigation for similar violations. In addition, Applicants have represented that there will be no change in Cebridge Telecom CA's management, operations, and service offerings and thus the transaction will not affect Cebridge Telecom CA's operations. Thus, the transaction satisfies the Commission's technical requirements.

As for financial qualifications, the applicants have attached unaudited consolidated 1) balance sheets, 2) statements of operations, 3) statements of comprehensive income, 4) statements of cash flows, and 5) statements of changes in member's equity for 2011 and the three months ended March 31, 2012, for Cequel Communications Holdings I. LLC, as Exhibit C. Applicants also submitted the July 18, 2012 equity commitment letter by and between Nespresso and its investors, as Exhibit E and E-1, under seal. The financial statements and the equity commitment letter reflect that Nespresso has more than sufficient cash or cash equivalents to meet the Commission's requirements for acquiring a CPCN. Accordingly, the transaction meets the requisite financial requirements and there is no basis to find that the transaction will adversely affect Cebridge Telecom CA's financial status.

We find that Applicants have demonstrated that Nespresso has the financial and technical qualifications to acquire Cebridge Telecom CA.

We also find that the transaction is consistent with the public interest. There will be no immediate changes to Cebridge Telecom CA's direct management or the service that Cebridge Telecom CA provides as a result of the transfer. Applicants represent that Cebridge Telecom CA will continue to operate in the same manner after the transaction is completed as it operates today. The applicants also assert that there will be no interruption or disruption of service to customers. The transaction will thus be seamless for Cebridge Telecom CA's customers. Finally, the applicants note that the transfer of control will enable Cebridge Telecom CA to become a stronger competitor and allow it to compete with other, larger telecommunications providers in California. Increased competition will benefit consumers and the telecommunications marketplace. Accordingly, we find that the transaction is consistent with the public interest.

On November 15, 2012 the Joint Applicants informed the assigned ALJ that they planned to close the transaction on November 16, 2012, approximately 13 days prior to the Commission's scheduled consideration of this decision. Joint Applicants asserted that they had received all necessary approvals from the Federal Communications Commission and all other regulatory authorities with jurisdiction over this transaction, except the Commission, and that the action in closing the transaction prior to Commission approval was made necessary by significant sums of interest they were paying on a \$500 million bond offering they had recently completed in order to finance the pending transaction. On November 16, 2012 the Joint Applicants informed the assigned ALJ that the transaction had closed.

5. California Environmental Quality Act (CEQA) Compliance

The application proposes no new construction and thus, there is no possibility that the transaction will have a significant adverse impact on the environment. The proposed transaction does not constitute a “project” under CEQA, California Public Resources Code, Section 21000 *et seq.*

6. Waiver of Comment Period

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Section 311(g)(2) of the Public Utilities Code and Rule 14.6(c)(2) of the Commission’s Rules of Practice and Procedure, the otherwise applicable 30-day period for public review and comment is waived.

7. Categorization and Need for Hearings

In ALJ-Resolution 176-3298, the Commission preliminarily categorized this proceeding as ratesetting, and preliminarily determined that hearings were not necessary. Based on the record, the Commission concludes that a public hearing is not necessary at this time, and the preliminary determinations in ALJ-Resolution 176-3298 therefore will not be altered. Public hearings may, however, be necessary in the penalty phase of this proceeding.

8. Assignment of Proceeding

Catherine J.K. Sandoval is the assigned Commissioner and Richard W. Clark is the assigned ALJ in this proceeding.

9. Request to File Under Seal

Pursuant to Rule 11.4, applicants filed a motion for leave to file Exhibits E, E-1, G, and G-1 to the application as confidential materials under seal. Applicants represent that the information is competitively sensitive and proprietary and disclosure could place them at an unfair business disadvantage

if disclosed. The motion is unopposed. We grant Applicants' motion to treat Exhibits E, E-1, G, and G-1 to the application as confidential.

Findings of Fact

1. Cequel Holdings is a Delaware limited liability company.
2. Cebridge Telecom CA is a Delaware limited liability company and a wholly-owned subsidiary of Cequel Holdings.
3. In D.06-06-022, Cebridge Telecom CA the Commission approved the Application of Cebridge Telecom CA (U6996C) and authorized it to provide facilities-based local exchange and interexchange telecommunications services in California.
4. The proposed transaction will result in Nespresso becoming the ultimate parent of Cebridge Telecom CA.
5. The applicants have demonstrated that they have sufficient financial resources and the technical expertise to operate as a provider of local exchange services and interexchange services.
6. The transaction affecting the indirect transfer of control closed on November 16, 2012, prior to Commission approval of the transaction.
7. No new construction is being proposed in the application.
8. No one associated with or employed by Applicants as an affiliate, officer, director, partner, or owner of more than 10% of any of them: (a) was previously associated with a telecommunications carrier that filed for bankruptcy; (b) was sanctioned by the Federal Communications Commission or any state regulatory agency for failure to comply with any regulatory statute, rule, or order; (c) was previously associated with any telecommunication carrier that has been found either civilly or criminally liable by a court of appropriate jurisdiction for a violation of Section 17000 *et seq.* of the California Business and Professions Code,

or for any actions which involved misrepresentations to consumers; or (d) is currently under investigation for similar violations.

9. The Applicants have filed a motion for leave to file under seal confidential materials in Exhibits E, E-1, G, and G-1.

10. Notice of this application appeared on the Commission's Daily Calendar on July 25, 2012. There were no protests to the application.

11. No hearings are necessary in this phase of the proceeding.

Conclusions of Law

1. The Commission applies the same requirements to a request for approval of an agreement for the indirect transfer of control of providers of local exchange and interexchange services, as it does to an initial applicant for authority to provide such services.

2. Nespresso meets the Commission's requirements for an acquiring company of an authorized provider of local exchange and interexchange telecommunications services.

3. The indirect transfer of control of Cebridge Telecom CA proposed in the application would not be adverse to the public interest.

4. It can be seen with certainty that the proposed transfer will not have any adverse impact on the environment.

5. The application should be approved, however the proceeding remains open to consider whether the Commission should impose penalties for alleged violation of Public Utilities Code Section 854(a).

6. The matter is uncontested, and the decision accordingly should be effective on the date it is signed.

O R D E R

IT IS ORDERED that:

1. Pursuant to Public Utilities Code Section 854(a), the indirect transfer of control of Cebridge Telecom CA, LLC (U6996C) to Nespresso Acquisition Corporation in accordance with the documents and agreement submitted in conjunction with Application 12-07-021, is authorized.

2. Applicants' unopposed motion to file confidential documents in Exhibits E, E-1, G, and G-1 to the application is granted. The information will remain under seal for a period of two years after the date of this order. During this two-year period, this information will remain under seal and may not be viewed by any person other than Commission staff, the assigned Commissioner, the assigned Administrative Law Judge, the Assistant Chief Administrative Law Judge, or the Chief Administrative Law Judge, except as agreed to in writing by the Applicants or as ordered by a court of competent jurisdiction. If Applicants believe that it is necessary for this information to remain under seal for longer than two years, Applicants may file a new motion at least 30 days before the expiration of this limited protective order.

3. Application 12-07-021 remains open to consider whether the Commission should impose penalties for alleged violation of Public Utilities Code Section 854(a).

This order is effective today.

Dated _____, at San Francisco, California.