

Decision \_\_\_\_\_

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Joint Application of Primus Telecommunications, Inc. (U-5513-C) and PTUS, Inc. for Approval of a Transfer of Control.

Application 13-06-016  
(Filed June 25, 2013)

**DECISION GRANTING APPLICATION****Summary**

In this decision we grant the joint application of Primus Telecommunications, Inc. (U-5513-C) (PTI or Applicant), and PTUS, Inc. (PTUS) to transfer control of PTI to PTUS, Inc.

**Parties to the Transaction**

Primus Telecommunications, Inc. (PTI), a Delaware corporation, is a wholly-owned subsidiary of Primus Telecommunications Holdings, Inc., (Holdings) which is, in turn, a wholly owned subsidiary of Primus Telecommunications Group, Incorporated (PGTI), a publicly-traded Delaware corporation. PGTI is a global facilities-based integrated provider of advanced telecommunications products and services, including traditional and IP voice, data, broadband Internet, collocation, hosting and outsourced managed services. The principal offices of PTI and PTGI are located at 460 Herndon Parkway, Suite 150, Herndon, VA 20170. PTI is authorized to provide interexchange telecommunications services in 49 states and the District of Columbia pursuant to certification, registration or tariff requirements, or on a deregulated basis. In

addition, PTI holds competitive local exchange carrier authority in eight (8) states, the District of Columbia, and the Commonwealth of Puerto Rico. PTI is also authorized by the Federal Communications Commission to provide interstate and international services as a non-dominant carrier.

In California, PTI is authorized to provide interexchange and local exchange telecommunications services pursuant to Decision (D.) 95-09-108 and D.00-06-069, issued on September 27, 1995 and June 23, 2000, respectively.

PTUS is a Delaware corporation newly formed for the purpose of completing the proposed transaction. PTUS' principal place of business is located at 805 Wright Brothers Blvd., SW, Suite 101, Cedar Rapids, Iowa 52404. PTUS is wholly owned by York Capital Management (York), a private investment firm established in 1991. York holds diversified investments and manages over \$15 billion in investments. In addition to making controlling investments in private companies (or companies that become private in connection with the transaction) York invests in publicly-traded debt and equity securities throughout the world in a variety of sectors.

### **The Proposed Transaction**

On May 20, 2013, PTUS, PTGI and their respective subsidiaries entered into an Equity Purchase Agreement whereby, among other things, PTUS will acquire all of the stock of PTI from PTGI's wholly-owned subsidiary, Holdings. The completion of the sale of PTI stock is conditioned on obtaining necessary federal and state regulatory approvals

No transfer of PTI'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 legal structure of PTI. They represent that the transaction will not affect the daily

management or operations of PTI, and after the transaction is consummated, PTI will continue to provide service at current rates, terms, and conditions.

Applicants represent that the transaction will be entirely transparent to customers of PTI. Following completion of the transaction, PTI will continue to be operated by highly-experienced, well-qualified management, operational and technical personnel.

### **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.”<sup>1</sup> 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 equivalents 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 PTI will not adversely impact its operations or financial status. Applicants have provided information that demonstrates that the acquiring company, PTUS, has sufficient managerial and technical expertise and sufficient financial resources to operate the acquired carrier.

Information provided about PTUS’s management team reflects its significant experience in a variety of industries, including the

---

<sup>1</sup> See D.03-12-033 at 6; D.01-06-007 at 15.

telecommunications industry. Applicants also state that to the best of their knowledge, no one associated with or employed by Applicant as an affiliate, officer, director, partner, or owner of more than 10% of Applicant was: previously associated with a telecommunications carrier that filed for bankruptcy; was sanctioned by the Federal Communications Commission or any state regulatory agency for failure to comply with any regulatory statute, rule, or order; or was previously associated with any telecommunications 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, nor is currently under investigation for similar violations. In addition, applicants have represented that there will be no change in PTI's management, operations, and service offerings and thus the transaction will not affect PTI's operations. Thus, the transaction satisfies the Commission's technical requirements. In accordance with D.13-05-035, Applicants have certified that PTI is in compliance with all Commission reporting, fee, and surcharge transmittals.

As for financial qualifications, the applicants have attached current bank statements and other financial information as Exhibit C, under seal, that demonstrate that PTUS 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 PTI's financial status.

We find that Applicants have demonstrated that PTUS has the financial and technical qualifications to acquire PTI.

We also find that the transaction is not adverse to the public interest. There will be no immediate changes to PTI's direct management or the service

that PTI provides as a result of the transfer. Applicants represent that PTI 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 PTI's customers. Accordingly, we find that the transaction is not adverse to the public interest.

The application is granted, subject to the terms and conditions set forth below.

**Request to File Under Seal**

Applicant requests that the financial information filed with the application be kept under seal. The financial information consists of current bank account balances. Applicant represents that the information is proprietary and sensitive. The information, if revealed, would place Applicant at an unfair business disadvantage. We have granted similar requests in the past and will do so here. Applicant's information will be kept confidential for a period of two years from the effective date of this decision or longer upon a showing of a need for further protection.

**Categorization and Need for Hearings**

In Resolution ALJ 176-3317, dated July 11, 2013 the Commission preliminarily categorized this proceeding as ratesetting and preliminarily determined that hearings were not necessary. Based on the record, we conclude that it is not necessary to alter the preliminary determinations in Resolution ALJ 176-3317.

**Comments on Proposed Decision**

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.

**Assignment of Proceeding**

Catherine J.K. Sandoval is the assigned Commissioner and Karl J. Bemederfer is the assigned Administrative Law Judge in this proceeding

**Findings of Fact**

1. Notice of this application appeared in the Commission's Daily Calendar of July 11, 2013.
2. Applicant seeks approval pursuant to Pub. Util. Code § 854 of a stock sale that will result in a change of control of Primus Telecommunications, Inc.
3. Primus Telecommunications, Inc. (U-5513-C) is a certificated local and interexchange carrier subject to the jurisdiction of this Commission.
4. There will be no change in the management structure or operations of Primus Telecommunications, Inc. as a result of its acquisition by PTUS, Inc.
5. PTUS, Inc. has satisfied the financial and experience requirements we impose on applicants for a Certificate of Public Convenience and Necessity.

**Conclusions of Law**

1. The proposed change of ownership is not adverse to the public interest.
2. This proceeding is designated a ratesetting proceeding; no protests having been received, no hearing is necessary.
3. Applicant's request to file its financial information under seal should be granted for two years.
4. The application should be approved.

**O R D E R**

**IT IS ORDERED** that:

1. Primus Telecommunications, Inc. is authorized pursuant to Section 854(a) of the Public Utilities Code to enter into a transaction whereby all of its outstanding shares of stock will be sold to PTUS, Inc.

2. Primus Telecommunications, Inc. (PTI) must obtain a performance bond of at least \$25,000 in accordance with Decision 13-05-035. The performance bond must be a continuous bond (i.e., there is no termination date on the bond) issued by a corporate surety company authorized to transact surety business in California, and the Commission must be listed as the obligee on the bond. Within five days of the effective date of the transfer of control, PTI must submit a Tier-1 advice letter to the Director of Communications, containing a copy of the carrier's executed bond, and submit a Tier-1 advice letter annually, but not later than March 31, with a copy of the executed bond.

3. Primus Telecommunications, Inc. must not allow its performance bond to lapse during any period of its operation. Pursuant to Decision 13-05-035, the Commission may revoke a Certificate of Public Convenience and Necessity if a carrier is more than 120 days late in providing the Director of the Communications Division a copy of its executed performance bond and the carrier has not been granted an extension of time by the Communications Division.

4. Applicant's request to have the financial information filed with the application kept under seal is granted for two years from the effective date of this order. During that period the information shall not be made accessible to or disclosed to anyone other than 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.

5. If Applicant believes that further protection of the information kept under seal is needed, it 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 of this order.

6. The authority granted herein shall expire if not exercised within one year of the date of this order.

7. Application 13-06-016 is closed

This order is effective today.

Dated \_\_\_\_\_, at San Francisco, California.