

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application by Ducor Telephone Company (U1007C) and Mr. Galen D. Norsworthy for approval of the involuntary transfer of control of Ducor Telephone Company (U1007C) to Mr. Galen D. Norsworthy.

Application 13-05-005
(Filed May 6, 2013)

DECISION GRANTING APPLICANT'S REQUEST APPROVING THE INVOLUNTARY TRANSFER OF CONTROL OF DUCOR TELEPHONE COMPANY (U1007C) TO MR. GALEN D. NORSWORTHY

1. Summary

This decision approves the involuntary transfer of control of Ducor Telephone Company to Mr. Galen D. Norsworthy. This proceeding is closed.

2. Background

Applicants Ducor Telephone Company (Ducor) and Mr. Galen D. Norsworthy (Norsworthy) seek Commission approval of the involuntary transfer of control of Ducor to Norsworthy following the death of Virgil A. Roome, the uncle of Norsworthy, on January 27, 2013. The Virgil A. Roome Trust currently holds all 3,140 outstanding shares of stock of Varcomm, Inc. (formerly known as Roome Enterprises, Inc.) and its subsidiaries Ducor, VarNet and VarBiz. Upon distribution of the Virgil A. Roome Trust, Norsworthy will inherit 75% of the Varcomm, Inc. stock, which will give him a controlling interest in Ducor.¹

¹ Ducor is a small incumbent local exchange carrier which owns and operates a telephone system in unincorporated portions of Kern, Tehama, and Tulare counties.

The Commission authorized Roome Enterprises, Inc. (Roome Enterprises, now known as Varcomm, Inc.) to acquire 100% of the stock of Ducor in Decision (D.) 86-08-050. Mr. Virgil A. Roome (Roome) then transferred his ownership interest in Ducor to Roome Enterprises. On January 23, 1993, Roome Enterprises changed its corporate name to Varcomm, Inc. through an amendment of its articles of incorporation, which was filed with the California Secretary of State on January 25, 1993. The Commission was notified of the name change of Ducor's holding company from Roome Enterprises to Varcomm by the filing of the Federal Communications Commission Form M annual report of Ducor for the year ending December 31, 1993, pursuant to General Order 104-A.

In response to inquiries of the assigned Administrative Law Judge (ALJ), the applicants reported that Roome, as settlor and trustee of the Virgil A. Roome Trust dated April 23, 2002, and amended and restated as of November 2, 2005 (Roome Trust), transferred ownership of all of his Varcomm stock to the Roome Trust, and they remain an asset of the Roome Trust following Roome's death. Under the terms of the Roome Trust, Norsworthy will inherit 75% of the Varcomm stock held by the trust. The Virgil A. Roome Trust dated April 23, 2002, as amended and restated, is currently being administered in Bakersfield, California. Norsworthy is a co-successor trustee of the Roome Trust.² Notices were sent pursuant to California Probate Code Section 16060, *et seq.* No objections to the terms of the trust were made, and the period to contest the trust has passed. It is anticipated that the estate administration will be in a position to distribute these assets by mid-November, 2013.

² The other co-successor trustee is Roome's nephew, Ronald L. Roome.

In further response to the inquiries of the ALJ following the Commission's recent adoption of D.13-05-035,³ the applicants provided detailed biographies and resumes of Ducor's key management personnel. All have extensive experience in the management of Ducor as well as industry background outside of Ducor. Norsworthy has served as President and Chief Executive Officer of Ducor since 2007. Prior to that, he had been Ducor's Executive Vice President since 1998. Ducor's current executive vice president has been with the company for 28 years and in the telecommunications industry for 32 years. Its vice president has held that position since 2003, and been employed by Ducor for 17 years. The leadership of Ducor will be unaffected by the involuntary transfer of control requested by the applicants.

The applicants also disclosed they were penalized by this Commission in 2007 for activities related to a joint application of a group of smaller independent local exchange carriers who were borrowers from the Rural Utilities Service (formerly known as the Rural Electrification Administration) to determine the ratemaking treatment of proceeds from the Rural Telephone Bank (RTB) dissolution in Application 07-12-026. The penalty adopted in D.11-03-030 was for alleged Rule 1 violations of the Commission's Rules of Practice and Procedure. On July 5, 2011, the California Court of Appeal for the State of California, Fifth Appellate District issued three opinions⁴ (one published, and

³ Decision Addressing Revisions to the Certification Processes for Telephone Corporations Seeking or Holding Certificates of Public Convenience and Necessity, and Wireless Carriers Seeking or Holding Registration.

⁴ The Ponderosa Telephone Co., Petitioner, v. Public Utilities Commission, Respondent; Calaveras Telephone Company et al., Real Parties in Interest, 197 Cal. App. 4th 48; 127 Cal. Rptr. 3d 844; and Calaveras Telephone Company et al., Petitioners, v. Public

Footnote continued on next page

two unpublished) annulling D.10-06-029, which was the basis for the Commission's order that addressed the substance of the RTB matter, and was the foundation of D.11-03-030. Following this action, the Commission adopted D.11-12-057 granting rehearing of D.11-03-030. This rehearing is currently pending before the Commission.

2.1. Jurisdiction

Section 701 provides "The Commission may supervise and regulate every public utility in the State and may do all things ... which are necessary and convenient in the exercise of such power and jurisdiction."⁵

3. Issue Before the Commission

The issue before the Commission is whether to approve the involuntary transfer of control of Ducor to Norsworthy as the result of his inheritance of 75% of the holding company Varcomm, which holds all Ducor stock. This inheritance will give Norsworthy a controlling interest in Ducor.

4. Discussion and Analysis

Norsworthy's late uncle, Roome, owned Ducor and other interests, the stock of which is in a holding company, Varcomm, Inc., established by Roome. Roome created a living trust and funded the trust with his interest in Ducor and other assets. The distribution plan of the Roome Trust provides for Norsworthy to inherit 75% of Varcomm stock provided Norsworthy survived Roome and

Utilities Commission, Respondent; Public Utilities Commission, Division of Ratepayer Advocates et al., Real Parties in Interest, 2011 Cal. App. Unpub. LEXIS 5062 and Happy Valley Telephone Company et al., Petitioners, v. Public Utilities Commission, Respondent; Calaveras Telephone Company et al., Real Parties in Interest, 2011 Cal. App. Unpub. LEXIS 5052 (both unpublished).

⁵ All statutory references are to the Public Utilities Code unless otherwise indicated.

satisfied other criteria. Norsworthy has met all of the requirements for distribution of this asset to him.

The applicants seek approval of the transfer of control to Norsworthy pursuant to Section 854. This section provides, in pertinent part:

No person or corporation, whether or not organized under the laws of this state, shall merge, acquire, or control either directly or indirectly any public utility organized and doing business in this state without first securing authorization to do so from the commission. The commission may establish by order or rule the definitions of what constitute merger, acquisition, or control activities which are subject to this section. Any merger, acquisition, or control without that prior authorization shall be void and of no effect. No public utility organized and doing business under the laws of this state, and no subsidiary or affiliate of, or corporation holding a controlling interest in a public utility, shall aid or abet any violation of this section.

Section 854 was added to ensure that no acquisition or transfer of control can be effected without the Commission first having an opportunity to consider whether the acquisition or transfer is in the public interest. However, its provisions cannot be applied to acquisitions through inheritance.

The Legislature has recognized this conflict. After the Commission approved a testamentary transfer of a small water company in 1982 (*Application of Bianca Gambi (1981) 7 CPUC2d 52*), the Legislature amended Section 853 of the Code to provide that the provisions of Section 854 would not apply to a transfer of ownership of a small water company from a decedent to a member of the decedent's family under the Probate Code or by will, trust, or other instrument.⁶ Similarly, the court recognized corporate stock has value, and one means of

⁶ Section 853(c).

acquiring control of a utility is through the acquisition of corporate stock. Section 854 requires that any individual who acquires sufficient stock to give him the voting power to elect officers who will direct the corporate affairs obtains control of that utility, and must seek prior authorization of this Commission to do so.

The estate of an heir vests in the heir at the time of the testator's death. "We do not believe that the Legislature in enacting *PU Code § 854* intended to inhibit the transfer of interests by operation of law under [then] *Probate Code § 300*. It would be impossible for the Commission to consider in advance the bequest clauses in individual wills setting up a potential bequest of stock in a public utility, or predict the circumstances which might exist at the time of the testator's death, where that bequest coming to passage would change control. In some situations it is certainly possible that the bequest causing a change of control would create a situation inimical to the public interest. Nonetheless, the rights of inheritance and testamentary disposition are well-settled law and subject to legislative control, and the Legislature in exercising its plenary power has created a scheme governing the descent of property in this State as set forth in the Probate Code. As we see it, absent evidence that any given devolution creating a change in control of the utility results in or creates a situation inconsistent with or adverse to the public interest, our role should be a ministerial one. Should the successor control appear to the Commission to be inconsistent with or adverse to the public interest, the Commission can remedy the situation. For example, the Commission may, after notice and hearing, conduct an investigation into the operations and practices of the person exercising control over the regulated entity. The Commission may then take such action as it finds to be necessary in the public interest.⁷

⁷ D.86-02-005.

5. Conclusion

Because we find nothing in the requested transfer to be inconsistent or adverse to the public interest, our role here is ministerial. Nevertheless, the Commission retains the authority to conduct an investigation into the operations and practices of Norsworthy in his exercise of control over this regulated utility in the future if circumstances warrant.

Ducor is a small rural LEC under rate of return in general rate case proceedings and a California High Cost Fund-A recipient. That status is not changed by the transaction approved here.

6. Categorization and Need for Hearing

In Resolution ALJ 176-3315 dated May 23, 2013, the Commission preliminary determined that hearings were not necessary. No protests have been received. A public hearing is not necessary.

7. 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.

8. Assignment of Proceeding

Catherine J.K. Sandoval is the assigned Commissioner and Dan H. Burcham is the assigned ALJ in this proceeding.

Findings of Fact

1. All of the issued stock of Ducor is held by Varcomm, Inc., a holding company established by Virgil A. Roome, decedent. These assets are part of the Virgil A. Roome Trust dated April 23, 2002, and amended and restated as of November 2, 2005. This trust is currently being administered in Bakersfield, California. Under the distribution plan of the trust agreement,

Galen D. Norsworthy, the decedent's nephew, will inherit 75% of Varcomm, Inc., which will give Norsworthy a controlling interest in Ducor.

2. The company and Norsworthy have applied here for the Commission's consent to transfer the subject stock to Norsworthy before the actual transfer occurs. While Norsworthy's beneficial interest in this stock vested upon the death of Roome and his satisfaction of all of the requirements for receipt of this inheritance, the applicants have properly applied for the approval of this transfer by the Commission prior to the actual transfer. It is anticipated that the estate will be in a position to distribute these assets in November, 2013.

3. Because this involuntary transfer of control is the result of the death of the majority stockholder of Ducor and is passing to Norsworthy by way of the administration of the Roome estate, there was no way for the Commission to review and analyze this transfer of control at an earlier time. This application comes before the Commission at the earliest reasonable time under the circumstances.

4. Norsworthy and other key management personnel have been in their current positions for many years. This transfer of control will not impact the day-to-day management and operations of Ducor.

Conclusions of Law

1. The inheritance of a controlling interest in Ducor by Galen D. Norsworthy will not impact the day-to-day operations of Ducor.

2. The transfer of control of Ducor to Norsworthy is in the public interest.

3. The involuntary transfer of control of Ducor to Norsworthy should be approved.

O R D E R

IT IS ORDERED that:

1. The involuntary transfer of control of Ducor Telephone Company to Mr. Galen D. Norsworthy is approved.
2. Application 13-05-005 is closed.

This order is effective today.

Dated _____, at San Francisco, California.