

Decision \_\_\_\_\_

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

Joint Application of Centerbridge Capital Partners II, L.P. and IPC Network Services, Inc. (U7266C) for Authority for Centerbridge Capital Partners II, L.P. to Acquire Indirect Control of IPC Network Services, Inc. Under Public Utilities Code Section 854.

Application 15-01-010  
(Filed January 22, 2015)

**DECISION APPROVING ACQUISITION OF INDIRECT CONTROL BY  
CENTERBRIDGE CAPITAL PARTNERS II, L.P. OF IPC NETWORK  
SERVICES, INC. AND GRANTING LEAVE TO SUBMIT CONFIDENTIAL  
MATERIAL UNDER SEAL**

**Summary**

Pursuant to Section 854 of the Public Utilities Code,<sup>1</sup> we approve retroactively (*nunc pro tunc*), the proposed transaction whereby Centerbridge Capital Partners II, L.P. (Centerbridge) acquires indirect control of IPC Network Services, Inc. (IPC).

In addition, we grant the Joint Motion for Leave to Submit Confidential Material under Seal filed by Centerbridge and IPC (Centerbridge and IPC shall be jointly referred to as Applicants).

**1. Factual Background**

IPC is a Non-Dominant Interexchange Carrier telephone corporation (NDIEC), regulated by the Commission. Through its subsidiaries, IPC provides communications solutions to global trading enterprises, principally utilizing

---

<sup>1</sup> All statutory references herein are to the California Public Utilities Code unless otherwise indicated.

proprietary trading and communications equipment interconnected via resold private lines or IP-based transport services. In California, IPC provides resold interexchange telephone services to non-residential customers in the service areas of Verizon, AT&T, Level 3, and XO Communications, Inc., and has done so for over a decade. IPC serves no residential customers.

The Commission originally granted IPC operating NDIEC authority in 2004.

In 2010, the Commission adopted Decision 10-09-017, which imposed a performance bond requirement for registered carriers. IPC was unaware of the new requirement and therefore did not secure a performance bond.

On April 19, 2012, the Commission revoked IPC's operating authority by Resolution T-17359 for failure to obtain the required performance bond. IPC was unaware that its authority had been revoked, and continued to operate and submit the required fees and annual reports to the Commission. Following notice from Commission staff that IPC must either cease operations or file an application for a new Certificate of Public Convenience (CPCN), IPC filed Application 14-01-009. The Commission granted IPC a new CPCN in Decision 14-10-042.

Pursuant to an Agreement and Plan of Merger (Merger Agreement) dated December 1, 2014, Centerbridge, a private investment fund established in 2011 that has approximately \$4.5 billion in committed capital and focuses on private equity and distressed investments, seeks to acquire indirect control of IPC. Pursuant to the Merger Agreement, Centerbridge and one of its affiliates will indirectly acquire all or a majority of the equity and voting interests in IPC. IPC is the only California-regulated utility involved in the transactions contemplated

by the Merger Agreement. The closing of the transactions contemplated by the Merger Agreement was scheduled for shortly after month-end January, 2015.

Based on guidance provided by the Commission's Communications Division (CD) staff, Applicants believed that Commission approval can be obtained through the filing of an advice letter. On December 10, 2014, IPC filed Advice Letter No. 2 (AL 2) requesting Commission approval of the proposed indirect transfer of control.

On January 15, 2015, CD notified the Applicants that a formal Application for authority under Section 854 was required. At this time, Applicants had already established their schedule for closing the transactions contemplated by the Merger Agreement, including obtaining debt financing. The non-California regulatory approvals have either been obtained already or are on schedule to be obtained prior to the scheduled closing date.

On January 22, 2015, Applicants filed the Joint Application for Centerbridge to Acquire Indirect Control of IPC under Public Utilities Code Section 854 and a Joint Motion for Leave to Submit Confidential Material under Seal. In that application, Applicants requested retroactive(*nunc pro tunc*) approval of the transaction if a decision cannot be issued by the end of January, 2015.

On January 29, 2015, Resolution ALJ 176-3350 reached a preliminary determination that this proceeding was ratesetting and that no hearing would be necessary.

## **2. The Transaction**

IPC, a wholly-owned subsidiary of Gains Acquisition Corp. (Gains or Parent), is a New York corporation with its principal office in Jersey City, New Jersey. Gains Acquisition Corp. is wholly-owned by IPC Systems, Inc., in

part directly (8%) and in part through Westcom Holding Corporation, a Delaware corporation and a direct wholly-owned subsidiary of IPC Systems, Inc. (92%). IPC Systems, Inc. is solely (100%) owned by IPC Systems Holdings Corp., a Delaware corporation, which is solely (100%) owned by IPC Corp. IPC Corp. is owned by private equity funds affiliated with Silver Lake Partners, including Silver Lake Partners II, L.P., a Delaware limited partnership (Silver Lake), as well as current and former employees and management of IPC Corp. The ownership of Silver Lake is widely held by its general partner, Silver Lake Technology Associates II, L.L.C., a Delaware limited liability company. The Silver Lake owners of IPC Corp. will sell their shares of IPC Corp. for consideration and, after the completion of the transactions contemplated by the Merger Agreement, will have no remaining direct or indirect ownership interests in IPC Corp. or its subsidiaries, including IPC.

IPC holds a CPCN from the Commission to provide non-dominant interexchange telecommunications services in the service areas of Verizon, AT&T, Level 3, and XO Communications in California. Specifically, IPC provides resold interexchange telecommunications services to sophisticated financial institutions.

Centerbridge is a Delaware corporation with its principal place of business in New York, New York. Centerbridge is a private investment fund established in 2011 that has approximately \$4.5 billion in committed capital focusing on private equity. It does not hold any telecommunications regulatory authority.

Centerbridge seeks to acquire indirect control of IPC pursuant to the Merger Agreement, under which Centerbridge and one of its affiliates will indirectly acquire all or a majority of the equity and voting interests in IPC through a merger of an indirect subsidiary with and into an indirect parent entity

of IPC. The indirect parent entity of IPC, which will be the surviving entity in the merger, will become an indirect wholly-owned subsidiary of an entity that will be wholly-or majority-owned by Centerbridge and one of its affiliates. As a result of these transactions, indirect control of IPC will change hands.

The proposed indirect change in ownership of IPC will not have any near term effect on the operations of IPC or adversely affect any of the customers who receive services in connection with the ongoing operations of IPC. The transactions contemplated by the Merger Agreement will not cause any near term change to IPC's rates, terms, or conditions of service. IPC will also continue to provide services under its existing name. On June 3, 2015, the assigned Administrative Law Judge (ALJ) sent an e-mail to counsel for Centerbridge and requested clarification regarding the management of IPC.

On June 26, 2015, the Applicants' counsel confirmed through e-mail that the day-to-day management of IPC is materially the same as when it was granted a CPCN in October, 2014.<sup>2</sup>

### **3. Jurisdiction and Scope of Issues**

The Commission has established two major criteria for determining whether a CPCN should be granted or transferred. First, an applicant who desires to operate as a provider of resold interexchange services must demonstrate that it has a minimum of \$25,000 in cash or cash equivalent for operations of the company plus the costs of deposits to be paid to other carriers.<sup>3</sup> Second, an applicant is required to make a reasonable showing of technical expertise in telecommunications or a related business.<sup>4</sup>

---

<sup>2</sup> The e-mail chain is attached as Exhibit A to this decision.

<sup>3</sup> See D.91-10-041.

<sup>4</sup> See D.95-12-056 at Appendix C, Rule 4.A.

Section 854 requires that a public utility receive prior approval from the Commission before consummating any type of merger/ acquisition transaction. Specifically, Section 854(a) states:

(a) 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. In administering these sections of the Public Utilities Code, the Commission seeks “to ensure that a proposed transfer is not adverse to the public interest.”<sup>5</sup>

However, under Section 853, when the public interest so requires, the Commission has discretion to exempt a transfer that would otherwise be void under Section 854. The Commission “has inherent power to approve, retroactively [*nunc pro tunc*], a transfer of public utility control to reflect actual facts, provided such approval is found to serve the public interest.”<sup>6</sup>

The scope of issues in this proceeding are whether the Commission should (1) approve, the transaction that leads to the requested change in indirect control of IPC to Centerbridge and if so, (2) do so on a *nunc pro tunc* basis.

#### **4. Discussion of the Transaction**

##### **4.1 Indirect Transfer of Control Under the Merger Agreement**

In reviewing the transaction, we need both to determine whether the transaction meets the standards for a change of control, and whether the transaction meets the public interest standard of § 854(a).

Where a company that does not possess a CPCN desires to acquire control of a company or companies that do possess a CPCN, the Commission will apply

---

<sup>5</sup> See D.10-10-017 at 15.

<sup>6</sup> See D.00-09-033.

the same requirements to the acquiring company as would be applied to an initial applicant seeking a CPCN. The Commission has established two major criteria for determining whether a CPCN should be granted, or transferred.

First, an applicant who desires to operate as a provider of resold interexchange services must demonstrate that it has a minimum of \$25,000 in cash or cash equivalent for operations of the company plus the costs of deposits to be paid to other carriers. Second, an applicant is required to make a reasonable showing of technical expertise in telecommunications or a related business.

The instant application includes a Combined Statements of Operations for Centerbridge for fiscal year 2013. The statements show that Centerbridge has more than sufficient resources to meet the Commission's financial requirements.

We find that Centerbridge possesses the level of technical expertise necessary to qualify for a CPCN in California given that the day-to-day management of IPC has remained materially the same since the Commission granted CPCN authority to IPC in October, 2014.

As part of the application process, applicants for CPCN authority must disclose regulatory sanctions it has received and past bankruptcies. Exhibit G to the Joint Application contains IPC's disclosure relative to regulatory and financial history of IPC and its officers, directors and major shareholders. According to Exhibit G, in July 2012, Silver Lake was subpoenaed by the New York Attorney General's office, Taxpayer Protection Bureau, to provide information regarding its historical use of management fee waiver. Silver Lake has cooperated with the New York Attorney General's office and does not believe it or its personnel owe any taxes to New York arising out of its use of fee waiver program. In 2006, the Antitrust Division of the U.S. Department of

Justice (DOJ) requested Silver Lake to voluntarily provide information relating to bids for the purchase of businesses since 2003. After having complied with this initial request, Silver Lake did not receive any additional request from the DOJ until March, 2009, when the DOJ issued a Civil Investigative Demand, asking Silver Lake to provide certain information relating to one of Silver Lake's investments. Silver Lake has complied within this request as well and has not received any further inquiries from the DOJ in several years.

Applicants also revealed, in Exhibit G, that Mr. Neil Barua serves as both the Chief Executive Officer of IPC and an Operating Partner at Silver Lake. Prior to Silver Lake, Mr. Barua was an Operating Advisor at Francisco Partners, where he worked with several technology companies. Previously, Mr. Barua was part of the executive leadership team that took Global Crossing Telecommunications, Inc. through a restructuring and consequent sale to Level 3 Communications. Global Crossing filed for bankruptcy protection in 2002. Mr. Barua was promoted from within the company post-bankruptcy filing and held various officer-level positions post-filing to lead Global Crossing through the restructuring.

Other than the above disclosures, Applicants represent that no other persons associated with or employed by Applicants as an affiliate, officer, director, partner, or owner of more than ten percent of Applicant was previously associated with any telecommunication carrier that filed for bankruptcy, or was sanctioned by the Federal Communications Commission (FCC) or any state regulatory agency for failure to comply with any regulatory statute, rule or order. Nothing before us contradicts that assertion.

Next, in reviewing the specifics of this transaction, the Commission must determine whether the proposed transaction complies with the provisions of



§ 854. According to the Joint Application, the proposed indirect transfer of control is in the public interest, given that it will ensure the continued viability of IPC and the telecommunications services it provides to numerous customers.<sup>7</sup> In addition, Centerbridge intends to provide extensive financial resources and management expertise to expand the network and marketing potential of IPC, which will provide increased competition and enhanced service capabilities in the telecommunications market.<sup>8</sup>

---

<sup>7</sup> Joint Application at 12-13.

<sup>8</sup> *Id.* at 13.

#### **4.2. *Nunc Pro Tunc* Authority for Indirect Transfer of Control of IPC**

The next issue is whether the Commission should approve, retroactively (*nunc pro tunc*), the authority requested in the Joint Application.

The closing of the transactions contemplated by the Merger Agreement was scheduled for shortly after month-end January, 2015 based on, among other factors, the dates by which the Applicants expected to receive approvals from various state and federal regulators. Based on guidance from CD staff, Applicants filed AL 2 requesting Commission approval of the proposed indirect transfer of control on December 10, 2014. Applicants understood that AL 2 had an effective date of January 24, 2015. On January 15, 2015, CD staff notified the Applicants that a formal Application for authority under Section 854 was required. By the time CD staff apprised IPC of this different view, the Applicants had already established their schedule for closing the transactions contemplated by the Merger Agreement, including obtaining debt financing. The transactions contemplated by the Merger Agreement involve a number of time-sensitive interlocking transactions, and Applicants contend that adhering to the schedule is crucial.

The Commission has granted approval to transfers *nunc pro tunc*, i.e., with the same effect as if done earlier, where our examination of the transfer revealed no prejudice to ratepayers.<sup>9</sup> In this case, IPC customers would continue to receive telecommunications services under the same rates, terms, and conditions. In addition, the proposed transfer would provide IPC with additional financial resources that could eventually expand services provided to its customers.

---

<sup>9</sup> See D.00-04-014.

Circumstances beyond the Applicants' control prevented the Applicants from obtaining Commission authority in advance of the indirect transfer of control of IPC. Our examination of the proposed transactions contemplated by the Merger Agreement are demonstrably in the public interest and does not prejudice IPC customers. We grant, retroactively (*nunc pro tunc*), the Joint Application. This would be in keeping with the Commission's precedents.<sup>10</sup>

## 5. Conclusion

The transfer here promises improved service for California consumers. Applicants have not sought a transfer of IPC's CPCN, nor have they sought a change in the rates, terms and conditions under which IPC's service is offered to its customers. Applicants moved promptly to seek approval of the transaction. Exhibits attached to the application show that Centerbridge has the financial, managerial and technical ability to direct IPC's telecommunications services in California. We conclude that after-the-fact approval under Section 854 is appropriate, based on the record before us.

Based on a consideration of the terms of the proposed transaction, we find that approving this transaction is in the public interest. Since the transaction is in the public interest, it is also not adverse to the public interest. Thus, the proposed transaction, as described in the application, fulfills the requirements of § 854 and it is reasonable for the Commission to approve this transaction.

---

<sup>10</sup> The Commission has frequently granted approval of any acquisition of control it believes has occurred on a *nunc pro tunc* basis. See e.g. *Lake Forest Utility Co.*, D.09-03-032 (granting *nunc pro tunc* authority for the sale of assets of Lake Forest Utility Co. to Tahoe Park Water Co.); *In re Application of Atcall, Inc.*, D.99-12-039 (granting *nunc pro tunc* authority for transfer of control of telecommunications carrier); *Ionex Telecommunications, Inc.*, D.99-11-010 (approving transfer of control of non-dominant telecommunications carrier); *Pacific Fiber Link, LLC*, D.99-10-007 (granting *nunc pro tunc* authority to enter into corporate reorganization); *Interoute Telecommunications, Inc.*, D.99-06-016 (granting *nunc pro tunc* authority for stock acquisition agreements).

Since there are no other outstanding issues, this proceeding should be closed. Our order is effective retroactive to January 24, 2015 to avoid any potential disruption of the company's operations.

#### **6. Request to File Under Seal**

With their application, the Applicants filed a Motion for Leave to File Confidential Materials under Seal pursuant to Pub. Util. Code § 583 and General Order (GO) 66-C. The confidential materials include Exhibits D (Merger Agreement), E (IPC Financial Statements), and F (Centerbridge Financial Statements). Applicants assert that Exhibit D contains a copy of the non-public Merger Agreement, which is the governing document for the transaction that will lead to the indirect transfer of control of IPC to Centerbridge. Applicants contend that Exhibits E and F contain non-public financial account information pertaining to Applicants' operations. Applicants believe that public disclosure of Exhibits D, E, and F could subject them to potential fraud and unfair competitive disadvantage in connection with the business negotiations and dealings with vendors, customers, potential business partners and others. We have granted similar requests in the past and we agree that details of Exhibits D, E and F, if disclosed, could place applicants at an unfair competitive disadvantage, therefore, the motion is granted.

#### **7. Categorization and Need for Hearing**

In Resolution ALJ 176-3350, dated January 29, 2015, the Commission preliminarily categorized this application as ratesetting, and preliminarily determined that hearings were not necessary. We confirm that categorization here.

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, the otherwise applicable 30-day period for public review and comment is waived.

### **8. Assignment of Proceeding**

Liane M. Randolph is the assigned Commissioner and S. Pat Tsen is the assigned ALJ and the presiding officer in this proceeding.

### **Findings of Fact**

1. Notice of the Application appeared on the Daily Calendar on January 26, 2015 and no protest has been filed.

2. The parties seek retroactive (*nunc pro tunc*) approval of the proposed indirect transfer of control pursuant to Section 854 of the Public Utilities Code.

3. Centerbridge has shown sufficient financial resources to assume indirect control of IPC.

4. Centerbridge, through IPC's management, possesses sufficient experience, knowledge, and technical expertise to continue to provide interexchange services to the public.

5. Other than as already disclosed by the Applicants, no one associated with or employed by Centerbridge as an affiliate, officer, director, partner, or owner of more than 10% of Centerbridge; 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 telecommunication carrier that has been found either civilly or criminally 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, nor is currently under investigation for similar violations.

6. IPC will continue to provide service under its existing name, rates, terms and conditions of service and management of IPC has not changed with the indirect transfer of control.

7. Pursuant to Public Utility Code § 583 and GO 66-C, Applicants filed a motion for leave to file confidential materials under seal, including Exhibits D, E, and F to the application.

### **Conclusions of Law**

1. The proposed indirect transfer of control is in the public interest.
2. This proceeding is designated a ratesetting proceeding; no protests have been received; no hearing is necessary.
3. This Commission has discretion to exempt a transfer that would otherwise be void under Section 854.
4. The Commission has inherent power to approve, retroactively, a transfer of public utility control to reflect actual facts, provided such approval is found to serve the public interest.
5. The application should be approved, with approval retroactive to the date of consummation of the transfer, or January 24, 2015.
6. The joint motion of Centerbridge and IPC to file under seal its Exhibits D, E, and F to the Application, should be granted for two years.

## **O R D E R**

### **IT IS ORDERED** that:

1. Pursuant to Public Utilities Code Section 854, the indirect transfer of control of IPC Network Services, Inc. to Centerbridge Capital Partners II, L.P. is granted *nunc pro tunc*, effective as of January 24, 2015.

2. The Joint Motion for Leave to Submit Confidential Material under Seal filed by Centerbridge Capital Partners II, L.P. (Centerbridge) and IPC Network Services, Inc. (IPC) is granted. Exhibits D, E, and F 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 shall not be made accessible or disclosed to anyone other than the Commission staff, or on the further order or ruling of the Commission, the assigned Commissioner, the assigned Administrative Law Judge, the Law and Motion Judge, the Chief Judge, or the Assistant Chief Judge, or as ordered by a court of competent jurisdiction. If Centerbridge or IPC believes that it is necessary for this information to remain under seal for longer than two years, Centerbridge or IPC may file a new motion stating the justification for further withholding of the information from public inspection. This motion shall be filed at least 30 days before the expiration of today's limited protective order.

3. Application 15-01-010 is closed.

This order is effective today.

Dated \_\_\_\_\_, 2015, at San Francisco, California.

# ATTACHMENT A

ADMINISTRATIVE LAW JUDGE E-MAIL RULING

(September 8, 2014)



**From:** Tsen, S. Pat  
**Sent:** Monday, September 08, 2014 3:50 PM  
**To:** 'Renzo@starfone.net'  
**Subject:** A14-03-011 RB Communications CPCN Application

Good Afternoon,

The NDIEC registration application what you filed with the Communications Division has been re-assigned to be reviewed by the Administrative Law Judges Division. RB Communications' authority to operate was revoked and is not eligible to use the simplified registration process and must now file for a Certificate of Public Convenience and Necessity(CPCN) under section 1001 of the Public Utilities code.

You can find a sample application using instructions found at

<http://www.cpuc.ca.gov/NR/rdonlyres/F6BA3041-DAA5-45C4-9663-F8F9E7DD0C16/0/CPCNform022714.doc>

You can also find the Decision adopting the procedure for filing CPCNs at

<http://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M066/K368/66368352.PDF>

Please review the above information and file the required information with the Docket office.

Thank you

S. Pat Tsen  
Administrative Law Judge  
California Public Utilites Commission  
415-703-1216

**ALJ Division Vision:**

***Just, reasoned, efficient, and innovative resolution of matters in a manner that ensures due process and transparency, and respects the dignity of all participants.***