

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Joint Application of TAG Mobile, LLC (U-4411-C), TAG Mobile Bankruptcy Sale Entity, LLC, and Softel Holdings, LLC For Approval of the Reorganization of TAG Mobile, LLC's Regulated Assets into TAG Mobile Bankruptcy Sale Entity, LLC and the Transfer of Control of TAG Mobile Bankruptcy Sale Entity, LLC to Softel Holdings, LLC.

Application 21-11-008

DECISION AUTHORIZING THE REORGANIZATION OF THE REGULATED ASSETS OF TAG MOBILE, LLC. INTO TAG MOBILE BANKRUPTCY SALE ENTITY AND THE TRANSFER OF THE SAME TO SOFTEL HOLDINGS, LLC.

Summary

This decision grants the unopposed application for the reorganization of the regulated assets of TAG Mobile, LLC into a new company, TAG Mobile Bankruptcy Sale Entity, LLC. The decision also grants authority to Softel Holdings, LLC. to acquire 100% of TAG Mobile Bankruptcy Sale Entity, LLC.

This proceeding is closed.

1. Background

TAG Mobile, LLC. (TAG Mobile), TAG Mobile Bankruptcy Sale Entity, LLC. (New TAG), and Softel Holdings, LLC. (Softel) (collectively Joint

Applicants) filed their Joint Application on November 5, 2021. On November 30, 2021, Joint Applicants filed a Motion to Expedite Joint Application Approval. The motion was denied on January 12, 2022.

Rulings were issued on January 12, March 10, and September 9, 2022, directing the Joint Applicants to provide additional information to supplement the application. The Joint Applicants filed timely responses to the rulings.

On February 7, 2023, an Order to Show was issued, directing Softel to answer regarding violations of Commission Rules. On March 3, 2023, Softel proposed a settlement to the Order to Show cause. A written settlement proposal was filed on April 24, 2023. The settlement offer was contingent upon approval of the Joint Application.

A prehearing conference was held on January 28, 2022. The assigned Commissioner issued a Scoping Memorandum and Ruling on April 20, 2022.

2. Submission Date

This matter was submitted on April 20, 2022, upon the issuance of the assigned Commissioner's Scoping Memorandum and Ruling. The record was subsequently reopened to gather more information. The record closed on April 24, 2023 upon the filing of Softel's post-Order to Show Cause Hearing brief.

3. Proposed Transaction

TAG Mobile was issued a Wireless Identification Registration (WIR) by the Commission (Carrier Number U4411C) in June 2011. The WIR authorized TAG Mobile to operate as a facilities-based carrier and mobile wireless reseller of commercial mobile radio services (CMRS) to the public in California. The Commission later designated TAG Mobile as an Eligible Telecommunications Carrier (ETC) to provide federal and California Lifeline Wireless services. TAG Mobile entered into bankruptcy in 2017. A bankruptcy trustee has operated TAG

Mobile since 2018. In 2020 the bankruptcy court authorized the Trustee to sell TAG Mobile's regulated assets. In October 2021, the court approved Softel's offer to purchase TAG Mobile.

The parties propose to transfer 100% of TAG Mobile's regulated assets subject to the purchase agreement to a new company, New TAG. Softel would then hold 100% of New TAG. Softel is 100% owned and controlled by Henry Hung Do (Mr. Do). Mr. Do owns and/or operates several telecommunications companies, some, or all of which would work in affiliation with Softel/New TAG.¹

The Joint Application seeks Commission approval of both transactions. No party to the proposed transfer has gross annual California revenues exceeding \$500 million.

3.1. TAG Mobile

TAG Mobile is a limited liability company organized under the laws of Texas. Its principal place of business is located in Plano, Texas. TAG Mobile's California operations are described above. TAG Mobile is designated as an ETC in 19 states where it provides wireless Lifeline services. Under the direction of the bankruptcy trustee, TAG Mobile formed New TAG as a wholly owned subsidiary.

3.2. New TAG

New TAG is a limited liability company organized under the laws of Texas. Its principal place of business is located in Dallas, Texas. At the time of the Joint Application, New TAG had no assets or debt. It was formed solely for the

¹ Subsequent references to Softel or New TAG refer to the entity operating the transferred assets upon completion of the sale.

purpose of acquiring the assets of TAG Mobile, including its wireless and ETC authorizations/designations. Upon receiving regulatory approval, New TAG will operate pursuant to those authorizations and designations in California and other states.

3.3. Softel

Softel is a limited liability company headquartered in Dallas, Texas. Softel was created for the purpose of this transaction and currently has no operations. Softel is wholly owned by Mr. Do.

Mr. Do owns 100% of several telecommunications companies, including:

- Cintex Wireless, LLC (doing business as SFone Wireless), a Delaware limited liability company that provides non-Lifeline wireless and other services throughout the country;
- NewPhone Wireless, LLC, a Louisiana limited liability company that provides non-Lifeline wireless and other services throughout the country;
- HTH Communications, LLC, a Texas limited liability company that distributes mobile devices in the United States;
- SofTel Technologies, LLC, a Texas limited liability company that provides distribution services to wireless providers;
- VTel Holdings, LLC, a Texas limited liability company that owns 100% of Air Voice Wireless. Air Voice Wireless, LLC is a Michigan limited liability company authorized to provide Lifeline and non-lifeline services in several states and U.S. territories, including California;
- TX Mobile, LLC, a Texas limited liability company that holds a T-Mobile underlying carrier contract used by Cintex Wireless, LCC, and NewPhone Wireless, LLC in states where those companies provide ETC service (not including California. TX Mobile is organized in the name

of Mr. Do's wife, though Mr. Do is the company's founder, President, and sole employee and the company operates from the headquarters of Mr. Do's other business.²

4. Jurisdiction

The Commission has broad authority to approve transfers of control involving Public Utilities (Pub. Util.) Code § 854(a). The Commission has adopted orders and rules defining to govern the merger, acquisition, or control of activities related to the direct or indirect merger, acquisition, and control of regulated telecommunications companies. (*Id.*, see Decision (D.) 95-12-056, App. C, D. 13-05-035, OP 14.) The Commission retains the same regulatory authority over the regulated entity that is possessed prior to the transaction.

5. Standard of Review

The Joint Applicants seek approval of the transfer pursuant to Pub. Util. Code Section 854, subdivision (a). The primary question is whether the transaction will be adverse to the public interest. The Commission attaches conditions to the approval of a transaction to protect and promote the public interest. (*See* D.00-06-079).

6. California Environmental Quality Act (CEQA)

The Commission must consider CEQA compliance in applications for authority to undertake any projects that are subject to CEQA review (Com. Rules of Practice and Procedure, Rule 2.4). CEQA applies only to "projects," defined as any "activity which may cause either a direct physical change in the

² The Commission finds that Mr. Do's is, for regulatory purposes in California, an owner of TX Mobile, LLC. The artifice of an uninvolved spouse-owner may hold legal distinction in other jurisdictions and under other laws governing the regulation of corporations, but for public utility regulatory purposes in California, the artifice is insufficient to shield such a company from review when ownership and related entity disclosure is required.

environment, or a reasonably foreseeable indirect physical change in the environment.” (Cal. Pub. Res. Code § 21065). Here, however, the proposed transfer is not a “project.” (Cal. Pub. Res. Code §§ 21000, *et seq.*) The CEQA Guidelines provide for an exemption “[w]here it can be seen with certainty that there is no possibility that the proposed activity in question may have a significant effect on the environment.” (CEQA Guidelines § 15061(b)(3)).

We have concluded on numerous occasions that a transaction which simply involves the transfer of equity interests does not require CEQA review because granting such an application would have no adverse environmental impact. The Joint Application proposes no new construction. Accordingly, there is no possibility that the transfer will have a significant adverse impact on the environment.

7. Certificate of Public Convenience and Necessity (CPCN)

When 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 the same requirements to the acquiring company as would be applied to an initial applicant seeking the type of CPCN held by the company being acquired. Here, neither New TAG nor Softel holds a CPCN in California.

An applicant who desires to operate as a provider of limited facilities-based and resold competitive local exchange and interexchange services carrier in California must demonstrate that it has access to \$100,000 cash or cash equivalent for operations of the company, plus the costs of deposits to be paid to other carriers. In addition, the company must make a reasonable showing of technical and managerial expertise in telecommunications or a related business.

7.1. Financial Qualifications

The Joint Applicants provided evidence of a Certificate of Deposit Receipt under seal with their March 14, 2022 Response to Administrative Law Judge (ALJ) Inquiry. The amount in evidence is sufficient to demonstrate that Softel possesses more than the minimum \$100,000 and that the funds are reasonably liquid. Accordingly, Softel has demonstrated that it has sufficient funds to meet its expenses, fulfilling the Commission's financial qualification requirements. Softel's financial documentation will be subject to verification and review by the Commission for one year to ensure such funds are available.

7.2. Technical and Managerial Expertise

Applicants must make a reasonable showing of managerial and technical expertise in telecommunications or related businesses in order to satisfy the requirements for a CPCN.

Joint Applicants have submitted information regarding the proposed management team should the transfer be approved. The information demonstrates that, post-acquisition, management leadership at Softel/New TAG will have sufficient technical expertise to qualify for a CPCN in California. The management team has experience revitalizing and improving troubled telecommunications companies, skills that will be necessary for the company after the lengthy bankruptcy.

7.3. Disclosures Required by D.13-05-035

Softel filed the disclosure described in Ordering Paragraph 14 of D.13-05-035 with the initial Joint Application. The Commission determined that the disclosure was incomplete and missing required information. Eventually, in

response to several rulings issued in this proceeding and the related Order to Show Cause proceeding, Softel's disclosures were determined to be complete.³

Softel's disclosures included a number of regulatory investigations and sanctions imposed against companies owned by Mr. Do and affiliated with Softel. In most of the circumstances disclosed, the Softel affiliate was subject to investigation or discipline by regulatory agencies for conduct that occurred under former management and ownership prior to their acquisition by Mr. Do's companies. In one matter, an affiliate was fined by the Louisiana Public Service Commission for failing to file regulatory reports in a timely manner. In another, an affiliate was sued by another entity. The lawsuit was ultimately resolved in favor of the Softel affiliate on its counterclaims.

Commission staff has thoroughly reviewed the disclosures, public records, and other information about Softel, its affiliates, and Mr. Do. Our review has demonstrated that Mr. Do has purchased several troubled telecommunications companies and, along with his management team, has shown improvement in those companies. We conclude that the transaction is not adverse to the public interest.

We do not arrive at this decision without some concern. In D.13-05-035 we adopted application requirements aimed at improving our ability to protect the public interest. One of our goals was to ensure that applicants provided the information necessary for the Commission to evaluate the applicants, rather

³ On February 7, 2023, the Assigned Commissioner and Administrative Law Judge issued a Joint Order to Show Cause instructing Softel to respond to allegations that it violated D.13-05-035 and Rule 1.1 of the Rules of Practice and Procedure. Softel agreed to a \$10,000 and other conditions in order to settle the Order to Show Cause. As part of the proposed settlement, Softel admitted to facts and errors in its disclosure. The Commission is satisfied that Softel's required disclosures are now complete.

than a process where Commission staff act as investigators hunting down information. This application raised several red flags. Joint Applicants proposed an unrealistic schedule, filed motions to accelerate the proceeding, and scheduled meetings in which they pushed for accelerated consideration. At the same time, they filed an incomplete application, negligently, in some cases, and willfully, in others, withholding information necessary for our review. Even after multiple rulings and an Order to Show Cause, Softel continues to cling to the artifice of the uninvolved spouse owner. Softel's shoddy disclosures give us pause, and in other circumstances may result in denial of the application. Our concerns are sufficiently assuaged in this matter by the facts of the information initially withheld (which make the decisions to withhold the information all the more confusing) and by the resolution of the Order to Show Cause. That resolution includes measures calculated to ensure Softel, Mr. Do, and counsel take greater care in future applications.

8. Safety Considerations

With the adoption of the *Safety Policy Statement of the California Pub. Util. Commission* on July 10, 2014, the Commission has, among other things, heightened its focus on the potential safety implications of every proceeding. The Commission considered the potential safety implications here and is satisfied that Softel/New TAG will meet the Commission's minimum safety goals and expectations.

9. Conclusion

The proposed transaction conforms with the requirements of the Pub. Util. Code and Commission rules for a transfer of ownership of telecommunications company to a new owner that lacks a CPCN. Accordingly, the proposed

transaction is approved subject to compliance with the terms and conditions set forth in the Ordering Paragraphs.

10. Request to File Under Seal

Pursuant to Rule 11.4, TAG, New TAG, and Softel have filed motions for leave to file exhibits to the application and other documents under seal. Specifically, Joint Applicants request that Exhibits S-1, S-2, S-3, T-1, T-2, T-3, T-4, and Attachment 3 of Softel's Post-Hearing Statement filed April 24, 2023. The Joint Applicants represent that the information is sensitive and that disclosure could place TAG and New TAG/Softel at an unfair business disadvantage. The Commission has granted similar requests in the past and does so here.

11. Summary of Public Comment

Rule 1.18 allows any member of the public to submit written comment in any Commission proceeding using the "Public Comment" tab of the online Docket Card for that proceeding on the Commission's website. Rule 1.18(b) requires that relevant written comment submitted in a proceeding be summarized in the final decision issued in that proceeding.

No public comments have been filed on the Docket Card in this proceeding.

12. Comments on Proposed Decision

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Pub. Util. Code Section 311, subdivision (g)(2) and Rule 14.6(c)(2), the otherwise applicable 30-day period for public review and comment is waived.

13. Assignment of Proceeding

Genevieve Shiroma is the assigned Commissioner and Jacob L. Rambo is the assigned ALJ in this proceeding.

Findings of Fact

1. TAG Mobile has been issued a WIR ,carrier number U-4411-C, authorizing it to operate as a facilities-based carrier and mobile wireless reseller of CMRS service in California. It is authorized by the Commission to provide federally-supported wireless Lifeline services in California.
2. The Joint Applicants request authorization to transfer the regulated assets of TAG Mobile to New TAG and for Softel to assume 100% ownership of New TAG pursuant to Pub. Util. Code Section 854(a).
3. New TAG is a company organized exclusively to receive the regulated assets of TAG Mobile upon approval of the Joint Application. New TAG does not currently hold a CPCN issued by the Commission.
4. Softel is a company organized exclusively to take ownership of New TAG upon approval of the Joint Application. Softel does not currently hold a CPCN issued by the Commission.
5. No party to the proposed transfer has California revenue in excess of \$500 million.
6. Softel provided information regarding how the authority is consistent with the Commission's Environmental and Social Justice Action Plan.
7. The Joint Application does not present safety, environmental, or social justice concerns.
8. The Joint Application proposes no new construction and only involves the transfer of equity interests. There is no possibility that the transfer will have a significant adverse impact on the environment.
9. The Joint Applicants provided financial documentation demonstrating that Softel meets the CPCN financial requirements.

10. The Joint Applicants have demonstrated that Softel's management possesses sufficient experience, knowledge, and technical expertise to operate the regulated assets of TAG Mobile/New TAG.

11. Softel has disclosed issues including lawsuits, sanctions, and other matters against affiliates with whom it shares joint ownership. The Commission has reviewed those issues.

12. Pursuant to Rule 11.4, the Joint Applicants filed motions for leave to file confidential materials, Exhibits S-1, S-2, S-3, T-1, T-2, T-3, T-4, and Attachment 3 of Softel's Post-Hearing Statement filed April 24, 2023, under seal.

Conclusions of Law

1. Pub. Util. Code Section 854(a) provides that control of a regulated utility may not transfer without first securing Commission authorization. The Commission may approve the transfer of control if the transfer is not adverse to the public interest.

2. The proposed transfer of the regulated assets of TAG Mobile to New TAG is not adverse to the public interest. TAG Mobile should be granted authority to transfer its regulated assets to New TAG, subject to the terms and conditions set forth in the Ordering Paragraphs.

3. The proposed transfer of control of New TAG from TAG Mobile to Softel is not adverse to the public interest. Softel should be granted authority to take ownership of New TAG, subject to the terms and conditions set forth in the Ordering Paragraphs.

4. The proposed transaction involves the transfer of equity assets only and is not subject to CEQA review.

5. Softel should be subject to the applicable Commission rules, decisions, General Orders, and statutes that apply to California public utilities.

6. TAG Mobile, New TAG Mobile, and Softel's motions to file Exhibits S-1, S-2, S-3, T-1, T-2, T-3, T-4, and Attachment 3 of Softel's Post-Hearing Statement filed April 24, 2023 under seal, should be granted for three years.

7. This proceeding should be closed.

O R D E R

IT IS ORDERED that:

1. TAG Mobile Bankruptcy Entity, LLC is granted authority to assume ownership of the regulated assets of TAG Mobile, LLC and to exercise all authority previously granted by the Commission.

2. Softel Holdings, LLC is granted authority to assume ownership of TAG Mobile Bankruptcy Entity, LLC.

3. The motions to file Exhibits S-1, S-2, S-3, T-1, T-2, T-3, T-4, and Attachment 3 of Softel's Post-Hearing Statement filed April 24, 2023 under seal pursuant to Rule 11.4 of the Commission's Rules of Practice and Procedure is granted. The exhibits shall remain sealed for a period of three years from the effective date of this decision. During this three-year period the information shall not be publicly disclosed except upon further order of the Commission or an Administrative Law Judge. If the Joint Applicants believe that it is necessary for the information to remain under seal for a period longer than three years, they may file a motion to extend this order, provided the motion is filed not less than 30 days prior to the expiration of this order.

4. Application 21-11-008 is closed.

This order is effective today.

Dated _____, 2023 at El Centro, California.