

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of MCCC ICG HOLDINGS LLC And, ICG COMMUNICATIONS, INC. To Complete a Transfer of Control of ICG TELECOM GROUP, INC. (U-5406-C) an Authorized Carrier.

Application 04-07-040
(Filed July 27, 2004)

**OPINION AUTHORIZING TRANSFER OF CONTROL
OF ICG TELECOM GROUP, INC. TO MCCC ICG HOLDINGS LLC****Summary**

This decision grants the joint application of MCCC ICG Holdings LLC (Buyer) and ICG Communications, Inc. (ICG) to transfer control of ICG Telecom Group, Inc. (ICG Telecom) to Buyer including the transfer of the certificate of public convenience and necessity (CPCN) of ICG Telecom, pursuant to Pub. Util. Code § 854.¹

Parties to the Transaction

Buyer is a newly formed limited liability company organized under the laws of the State of Delaware. Buyer's principal place of business is 201 North Union Street, Suite 300, Alexandria, Virginia 22314. Buyer is jointly owned by members of two families of private investment firms, managed by M/C Venture

¹ All subsequent Code references are to the Public Utilities Code, unless otherwise stated.

Partners (M/C Venture) and Columbia Capital, LLC (Columbia Capital). M/C Venture and Columbia Capital will each own a 50% interest in Buyer.

M/C Venture manages a family of investment companies headquartered at 75 State Street, Suite 2500, Boston, MA 02109. M/C Venture's interest in Buyer is to be held principally by M/C Venture Partners V, LP, a Delaware limited partnership, with minor interests by M/C Venture Investors, L.L.C. and Chestnut Venture Partners, Inc. M/C Venture currently holds a significant interest in several other telecommunications-related businesses, including Cavalier Telephone Corporation, Florida Digital Network, Inc. doing business as FDN Communications, NewSouth Communications Corp., and Coral Wireless, LLC.

Columbia Capital is a venture capital firm headquartered at 201 North Union Street, Suite 300, Alexandria, Virginia 22314. Columbia Capital, specializing in the communications and information technology industries, has managed investments in approximately 100 companies in the communications sector. Its interest in ICG will be divided among several Columbia Capital entities, including principally, Columbia Capital Equity Partners III L.P. (QP), a Delaware limited partnership, and Columbia Capital Equity Partners L.P. (Cayman), a Cayman Islands limited partnership. Columbia Capital Equity Partners III L.P., Columbia Capital Investors III L.L.C., and Columbia Capital Employee Investors III, L.L.C. will each hold less than a 10% interest of Buyer. Columbia Capital's managed funds also hold non-controlling interests in other telecommunications ventures including Dominion 700, Inc., Coral Wireless, LLC, and WCS Wireless License Subsidiary, LLC.

ICG, a Delaware corporation, is currently widely held, with only two entities owning or controlling more than ten percent of its outstanding securities.

Its principal offices are located at 161 Inverness Drive West, Englewood, Colorado 80112. ICG, through its operating subsidiaries, offers a range of resold and facilities-based services nationwide. These services are primarily offered to medium to large-sized businesses, Internet service providers, interexchange carriers, and other telecommunications carriers.

ICG Telecom, a Colorado corporation qualified to do business in California, is a wholly owned subsidiary of ICG Holdings, Inc., a wholly owned subsidiary of ICG. Its headquarters is located at 161 Inverness Drive West, Englewood, Colorado 80112. ICG Telecom provides local exchange and interexchange services within California pursuant to Decision (D.) 95-12-057 and D.94-07-071, respectively. In addition to its California operations, ICG Telecom, or its subsidiaries, are also authorized to provide interstate and international services and local and / or intrastate long distance services in every other state except Alaska.

Proposed Transaction

Applicants propose to complete a series of transactions whereby Buyer will acquire ICG and therefore indirectly own and control ICG Telecom. MCCC Merger Corporation, a newly created acquisition subsidiary wholly owned by Buyer will be merged with and into ICG with ICG being the surviving entity. As a result of that merger, ICG Telecom will become a wholly owned subsidiary of Buyer and Buyer will acquire indirect control of ICG Telecom. A chart depicting the pre- and post-transfer of control of ICG Telecom is attached to this order as Appendix A.

Applicants represent that the transaction will improve the financial stability of ICG Telecom because Buyer has agreed to provide substantial financing to ICG, including entering into a credit facility that includes a term

loan in the principal amount of \$2.4 million. Buyer has agreed under such credit facility to advance in excess of \$15 million to ICG while the transactions are pending. Furthermore, Buyer has agreed to hold the purchase price of more than \$6 million in escrow pending the closing of the transaction. These financial commitments are expected to maintain ICG's financial stability while Buyer restructures its operations.

The proposed transaction is to be completed in a seamless fashion that will not affect the current customers of ICG Telecom. There will be no transfer or assignment of the operating authority held by ICG Telecom or its customers or result in a name change by ICG Telecom. Immediately following the transaction, ICG Telecom will continue to conduct its operations in substantially the same manner in which those operations are currently conducted. Customers of ICG Telecom will continue to receive service under the same rates, terms, and conditions that currently apply to those services.

Discussion

Under § 852, no public utility, and no subsidiary, affiliate of, or corporation holding a controlling interest in, a public utility, shall purchase or acquire, take or hold, any part of the capital stock of any other public utility, organized or existing under the laws of this state, without prior Commission authorization. Section 854 further requires Commission authorization before a company may “merge, acquire, or control . . . any public utility organized and doing business in this state” The purpose of these and related sections is to enable the Commission, before any transfer of a public utility is consummated, to review the situation and to take such action, as a condition of the transfer, as the public interest may require. (San Jose Water Co. (1916) 10 CRC 56.)

In a situation where a company that does not possess a CPCN desires to acquire control of a company that does possess a CPCN, we will apply the same requirements as in the case of an applicant seeking a CPCN to exercise the type of authority held by the company being acquired. Although Buyer does not directly hold a CPCN, ICG Telecom has a CPCN to operate as a local exchange and interexchange carrier. We therefore apply the requirements for such authority to Buyer.

The Commission has established two major criteria for determining whether a CPCN should be granted. An applicant who desires to operate as a facilities-based and resale provider of local exchange and interexchange service must demonstrate that it has a minimum of \$100,000 in cash or cash equivalent, reasonably liquid and readily available to meet the firm's start-up costs. In addition, the applicant is required to make a reasonable showing of technical expertise in telecommunications or a related business. This latter condition has been satisfied as detailed in our prior discussion of the parties to the transaction and addressed in the application.

Buyer, a newly formed holding company, has no historical financial statements and will not have any significant operations prior to the consummation of the transaction. However, the investment companies supporting Buyer have substantial financial resources. M/C Venture manages over \$1 billion in assets and is currently investing in M/C Venture Partners V, a \$550 million venture capital fund raised in 2000 from institutional investors including the Nation's largest state and corporate pension funds, prominent university endowments and private trusts, as well as financial institutions. Columbia Capital's most recent private equity fund raised \$856 million in 2000 and the company currently has approximately \$1.4 billion under management.

Buyer's financial qualifications are further evidenced by the demonstrable financial commitment to the proposed transaction. Specifically, M/C Venture and Columbia Capital have agreed to loan \$2.4 million to ICG through a credit facility, to escrow \$6.35 million to finance the proposed transaction, and committed to advance more than \$15 million to Buyer to be used to fund ongoing operations through completion of the proposed transaction. Copies of the wire transfer of funds, proof of escrow funding, and commitment letters demonstrating the financial commitments are filed under seal as Exhibits C, D, E, F, and G. Buyer has provided evidence that demonstrates that it has sufficient resources to meet our financial requirements.

Buyer submitted the above financial material under seal because these documents are non-public financial documents and the information, if disclosed, could place Buyer at a competitive disadvantage. All information placed under seal should remain sealed for a period of two years from the date of this order, and during that period should not be made accessible or disclosed to anyone other than Commission staff except on the execution of a mutually acceptable protective order.

For the following reasons, we conclude that it is reasonable to grant this § 854 application. First, ICG Telecom will continue to operate as it has in the past, using the same name and authority. Second, the public may benefit from the indirect transfer of control to the extent the transaction enhances the ability of ICG Telecom to maintain and expand its services and operations in California. Third, there is no opposition to this application. For these reasons, we see no reason to withhold authority for the transfer of control before us here. The proposed transaction is in the public interest.

We grant the application pursuant to §§ 852 and 854.

Comments on Draft Decision

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to § 311(g)(2), the otherwise applicable 30-day period for public review and comment is being waived.

Categorization and Need for Hearings

In Resolution ALJ 176-3137 dated August 19, 2004, the Commission preliminarily categorized this application as ratesetting, and preliminarily determined that hearings were not necessary. No protests have been received. There is no apparent reason why the application should not be granted. Given these developments, a public hearing is not necessary, and it is not necessary to disturb the preliminary determinations.

Assignment of Proceeding

Susan P. Kennedy is the Assigned Commissioner and Michael J. Galvin is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. ICG Telecom is a wholly owned subsidiary of ICG Holdings, Inc.
2. ICG Telecom holds a CPCN to provide local exchange and interexchange services within California.
3. Buyer does not hold a CPCN to provide telecommunications services in this state.
4. As a result of the transaction, Buyer will own ICG and therefore will own and have ultimate control of ICG Telecom.
5. There will be no transfer or assignment of the operating authority held by ICG Telecom or its customers or result in a name change by ICG Telecom as a result of the transaction.

6. Customers of ICG Telecom will continue to receive service under the same rates, terms, and conditions that currently apply to those services.

7. Buyer has sufficient financial resources to meet the Commission's requirements to provide facilities-based and resold local exchange and interexchange services.

8. Buyer possesses the necessary technical expertise to meet applicable Commission requirements.

9. Notice of this application appeared on the Commission's Daily Calendar on July 30, 2004.

10. There were no protests to this application.

11. No hearings are necessary.

Conclusions of Law

1. The Commission will apply the same requirements to a request for approval of an agreement to acquire control of a facilities-based and resale provider of local exchange and interexchange telecommunications services within California as it does to an applicant for authority to provide such services.

2. Buyer meets the Commission's requirements for the issuance of a CPCN to provide facilities-based and resold local exchange and interexchange telecommunications services.

3. Buyer and ICG's request to file financial information under seal should be granted for two years.

4. The transaction is not adverse to the public interest.

5. In order to avoid delaying this transaction, this decision should be made effective immediately.

O R D E R

IT IS ORDERED that:

1. Pursuant to Pub. Util. Code §§ 852 and 854, the joint application of MCCC ICG Holdings LLC (Buyer) and ICG Communications, Inc. (ICG) for approval of the indirect transfer of control of ICG Telecom Group, Inc. (U-5406-C) to Buyer is approved.

2. Buyer and ICG's request to have their filed financial information kept under seal is granted for two years from the effective date of this decision. During that period the information shall not be made accessible or disclosed to anyone other than the 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 the Law and Motion Judge.

3. Buyer and ICG shall notify the Director of the Commission's Telecommunications Division in writing of the transfer of control, as authorized herein, within ten days of consummation of the transaction. A true copy of the instrument(s) of transfer shall be attached to this notification.

4. The authority granted by this decision shall expire if not exercised within 12 months after the effective date of this order.

5. Application 04-07-040 is closed.

This order is effective today.

Dated _____, at San Francisco, California.

APPENDIX A

Exhibit []: Illustrative Chart