

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Sage Telecom, Inc. (U-6585-C), SP Sage LLC,
Application for Approval of Transfer of Control
of Sage Telecom, Inc. (U-6585-C) to SP Sage LLC.

Application 07-01-048
(Filed January 30, 2007)

**OPINION AUTHORIZING TRANSFER OF CONTROL
OF SAGE TELECOM, INC. TO SP SAGE LLC****Summary**

This decision grants the joint application of SP Sage LLC (Buyer) and Sage Telecom, Inc. (Sage) (U-6585-C) (collectively, Applicants) to transfer control of Sage to Buyer including the transfer of the certificate of public convenience and necessity (CPCN) of Sage Telecom, pursuant to Pub. Util. Code § 854.¹

Parties to the Transaction

Buyer is a limited liability company organized under the laws of the State of Delaware and qualified to transact business in California. Buyer's principal place of business is Two Greenwich Plaza, Greenwich, Connecticut. Buyer is owned by SP Sage Investments, LLC (SP Sage Investments), and is part of a family of entities that engage in credit-related services. SP Sage Investments, LLC, is managed by Edward Mulé, Robert O'Shea and Michael Gatto.

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

Sage, a Texas corporation, has principal offices located at 805 Central Expressway South, Suite 100, Allen, Texas, 75013-2789. Sage, together with its subsidiary, Sage Telecom of Texas, LP, (collectively, "Company") offers competitive local exchange and long distance telephone services and Internet access in twelve states. Sage is authorized to provide facilities-based competitive local exchange and long distance telephone services in California pursuant to the authority granted by Decision (D.) 01-10-018. The Company is also authorized by the Federal Communications Commission (FCC) to offer interstate and international telecommunications services.

Proposed Transaction

Sage, Silver Point Capital Fund, LP, (SPCF) and Christopher Williams (as the representative of the shareholders of Sage) entered into an Agreement and Plan of Merger (Agreement) dated December 31, 2006.² SPCF intends to assign its rights and interest in the Agreement to Buyer at or prior to closing. Pursuant to the Agreement, a subsidiary of Buyer formed specifically for this transaction will be merged with and into Sage with Sage surviving the merger. As a result, control of the Company will be transferred to Buyer and Sage will be a wholly-owned subsidiary of Buyer. A chart depicting the pre- and post-transfer of control of Sage is attached to this order as Appendix A.

Applicants represent that the transaction will provide the Company access to working capital needed to execute its business plan. Furthermore, the Company's management team may be supplemented with management selected by Buyer for their telecommunications expertise, strengthening the Company's

² The Agreement is filed under seal as Exhibit B.

ability to provide high quality, advanced services to its customers. Applicants represent that the transaction will enable the Company to strengthen its competitive position to the benefit of consumers.

The proposed transaction is to be completed in a way that will be transparent to and not affect the current customers of Sage. The transfer of control will not result in a change of carrier for customers, and there will be no transfer or assignment of the operating authority held by Sage. Immediately following the transaction, Sage will continue to conduct its operations in substantially the same manner in which those operations are currently conducted. Customers of Sage 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 possesses 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, Sage 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, an 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 holding company, has no historical financial statements and will not have any significant operations prior to the consummation of the transaction. However, SPCF, the Buyer's owner, has substantial financial resources. SPCF manages approximately \$4 billion in assets. Buyer's financial qualifications are further evidenced by the demonstrable financial commitment to the proposed transaction. Specifically, SPCF guarantees the financial obligations of Buyer, irrevocable for a period of at least twelve (12) months beyond certification of the applicant by the Commission. Financial information for SPCF demonstrating that it has a minimum of \$100,000 in cash or cash equivalent, and SPCF's guaranty demonstrating the financial commitment to Buyer is filed under seal as

Exhibit C.³ Buyer has provided evidence that demonstrates that it has sufficient resources to meet our financial requirements.

An applicant who desires to operate as a facilities-based and resale provider of local exchange and interexchange service must certify that neither applicant, any affiliate, officer, director, partner, nor owner of more than 10% of applicant, or any person acting in such capacity whether or not formally appointed, has been sanctioned by the FCC or any state regulatory agency for failure to comply with any regulatory statute, rule or order.

Applicants state that, while it has not been sanctioned by the FCC or any state regulatory agency for failure to comply with any regulatory statute, Sage entered into an Assurance of Voluntary Compliance (“AVC”) with the Indiana Attorney General regarding allegations over violations of the do not call rules.⁴ According to Applicant, Sage did not admit liability but agreed to pay a civil penalty of \$22,000. Sage also agreed to certain monitoring and compliance requirements such as providing, upon request, an electronic and paper record of all telephone sales calls made after the compliance date to the date of the request and cooperating with the Attorney General in investigating and resolving any and all future violations. Sage appears to be in compliance with the AVC, and there is no indication that Sage has been sanctioned by any other regulatory agency for failure to comply with any regulatory statute, rule or order.

³ Applicants also filed under seal financial information for Sage (Exhibit A).

⁴ The Order approving the Assurance of Voluntary Compliance was entered September 28, 2006.

For the following reasons, we conclude that it is reasonable to grant this § 854 application. First, Sage 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 Sage to maintain and expand its services and operations in California. Finally, 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.

Request for Confidential Treatment

Applicants request that financial statements of Sage filed as Exhibit A (filed January 29, 2007), the Agreement filed as Exhibit B (filed January 29, 2007), the Guaranty and financial statements of SPCF filed as Attachment A (filed March 14, 2007), and the amended Guaranty (filed March 14, 2007),⁵ be filed under seal and accorded confidential treatment as provided by G.O. 66-C. Applicants submitted the above financial material under seal because these documents are non-public financial documents and the information, if disclosed, could place Applicants at an extreme competitive disadvantage. Applicants request that the information placed under seal should remain sealed for a period of three years from the date of this order, and that during that period Applicants' information not be made accessible or disclosed to anyone other than Commission staff except on the execution of a mutually acceptable protective

⁵ The Guaranty filed on March 14 was amended and filed on March 26 to correct a typographical error.

order. We have granted similar requests in the past. However, we normally grant such requests for a period of two years, and will do so here.

We grant Applicants' request for confidential treatment of their financial information for a period of 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 Law and Motion Judge. If Applicants believe that further protection of the information kept under seal is needed, they may file a motion stating the justification for further withholding of the information from public inspection, or for such other relief as the Commission rules may then provide. This motion shall be filed no later than one month before the expiration date.

Categorization and Need for Hearings

In Resolution ALJ 176-3187 dated February 15, 2007, 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 circumstances, a public hearing is not necessary, and it is not necessary to disturb the preliminary determinations.

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

John Bohn is the assigned Commissioner and Richard Smith is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. Sage Telecom, Inc. (Sage) is a corporation organized under the laws of the State of Texas.
2. Sage holds a CPCN to provide local exchange and interexchange services within California.
3. SP Sage LLC (Buyer) does not hold a CPCN to provide telecommunications services in this state.
4. As a result of the transaction, Buyer will own Sage and therefore will own and have ultimate control of Sage.
5. There will be no transfer or assignment of the operating authority held by Sage or its customers or result in a name change by Sage as a result of the transaction.
6. Customers of Sage 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 February 2, 2007.
10. There were no protests to this application.
11. No hearings are necessary.

Conclusions of Law

1. The Commission should 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 financial fitness and requirements for the issuance of a CPCN to provide facilities-based and resold local exchange and interexchange telecommunications services.
3. Applicants' 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 Sage Telecom, Inc. (Sage) and SP Sage LLC (Buyer) (collectively, Applicants) for approval of the indirect transfer of control of Sage Telecom, Inc. (U-6585-C) to Buyer is approved.
2. All sealed information shall remain sealed for a period of two years after the effective date of this order. After two years, all such information shall be made public. If Applicants believe that further protection of the information kept under seal is needed beyond two years, they may file a motion stating the justification for further withholding of the information from public inspection, or

for such other relief as the Commission rules may then provide. This motion shall be filed no later than thirty days before the expiration of the two-year period granted by this order.

3. Applicants shall notify the Director of the Commission's Communications 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.

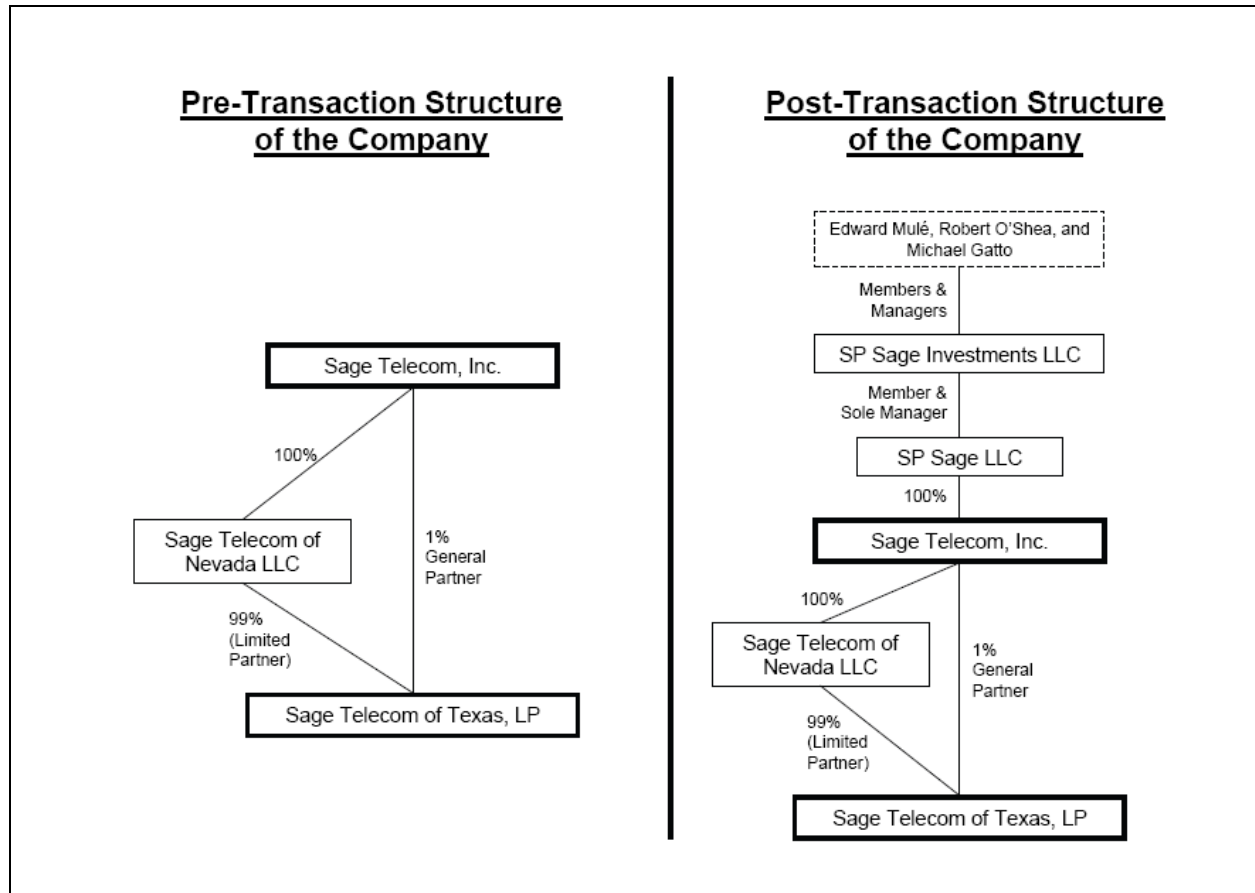
4. The authority granted by this decision shall expire if not exercised within 12 months after the effective date of this order.

5. Application 07-01-048 is closed.

This order is effective today.

Dated _____, at San Francisco, California.

Appendix A.



(End of Appendix A)