

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Joint Application Under Public Utilities Code Section 851 and 854 for Approval of the Transfer of Assets and Control over the public utility operations of Utility Telephone, Inc. (U5807C) and Call America, Inc. (U6598C) by Call America Telecom, LLC.

Application 08-02-011
(Filed February 15, 2008)

DECISION GRANTING TRANSFER OF CONTROL**1. Summary**

This decision grants the request of Utility Telephone, Inc. (Utility), Call America, Inc. (Call America), and Call America Telecom, LLC (CAT), to transfer the assets and control over the public utility operation of Utility and Call America to CAT. This matter is uncontested. This proceeding is closed.

2. The Joint Applicants**2.1. Utility Telephone, Inc.**

Utility is a California corporation. Its principal place of business is 1121 Waterloo Road, Stockton, California 95205. By Decision (D.) 97-06-100, Utility was authorized to operate as a facilities-based and resale competitive local carrier (CLC) in the service areas of Pacific Bell Telephone Company (Pacific) and Verizon California Inc. (Verizon). Subsequently, Utility was authorized by D.02-01-006 to operate as a facilities-based interexchange carrier (IXC) throughout the state. By D.05-07-019, Utility was granted authority to operate as a facilities-based and resale CLC in the service areas of SureWest Telephone

(SureWest) and Citizens Telecommunications Company of California, Inc. (Citizens). Utility's current operations include the provision of local exchange, exchange access, and interexchange telecommunications services and related equipment and services to small and medium size business customers, and competitive access and other wholesale telecommunications services to other service providers in California and other western states.

2.2. Call America, Inc.

Call America is a California corporation and a subsidiary of Utility. Its principal place of business is 994 Mill Street, Suite 200, San Luis Obispo, CA 93401. By D.01-11-052, Call America fka Anew Telecommunications Corporation dba Call America was granted authority to operate as a facilities-based and resale CLC in the service areas of Pacific, Verizon, SureWest, and Citizens as a facilities-based and resale IXC through the state. Call America's current operations include the provision of local exchange, interexchange, and exchange access telecommunications services, along with other communications-related services to small and medium size business customers located primarily in the Central Coast region of California.

2.3. Call America Telecom, LLC

CAT is a California limited liability company. Its principal place of business is 81 David Love Place, Suite 100, Santa Barbara, California 93117. CAT is a start-up company, formed specifically for the transaction that is the subject of this application. It is an affiliate of Impulse Internet Services, LLC, which provides a wide range of IP-enabled data and voice communications services, Broadband Internet access, and related communications services to business and residential customers in California and other states.

3. The Proposed Transaction

The property subject to the proposed transaction includes the respective operating assets, operating authorities, and customer base and accounts of Utility and Call America. The basic purchase price and other terms of the transaction are described in a letter of intent submitted as Exhibit E to the application. The purchase price will be paid through a combination of cash, assumption of obligations, conveyances of ownership interests in CAT, or other consideration.

4. Qualifications and Fitness

Biographies for the CAT management team are included in the application. The biographies show that CAT's management team meets the Commission's requirements applicable to parties seeking control of facilities-based carriers.

Joint Applicant CAT states that: (a) neither the company, nor any of its affiliates, officers, directors, partners, or owners of more than 10% of its shares, nor any person acting in such capacity whether or not formally appointed, has been investigated or sanctioned by the Federal Communications Commission or any state regulatory agency for failure to comply with any regulatory statute, rule or order; and (b) except as noted below, no affiliate, officer, director, partner, or person owning more than 10% of the company, or anyone acting in such capacity whether or not formally appointed, held one of those positions with a telecommunications carrier that filed for bankruptcy, or has been found either criminally or civilly 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 and, to the best of the company's knowledge, is not currently under investigation for similar violations. In this regard, Joint Applicant CAT states that Call America's founder and

president, Jeff Buckingham, held a position with GST Telecom, the parent of GST Call America, which filed for bankruptcy in 2000, for reasons having nothing to do with Buckingham's employment with that company.

We note Joint Applicants' disclosure regarding Buckingham's prior employment with a company that filed for bankruptcy. Given Joint Applicant's assertions that Buckingham was not involved in the bankruptcy, we will not deny this application on the grounds of lack of fitness of Joint Applicants' management team.

5. Financial Showing

The Joint Applicants submitted under seal as Exhibit F two personal guarantees along with supporting financial documentation, establishing CAT's access to cash resources in the amount of \$100,000, plus additional amounts sufficient to cover any deposits that may be required by underlying carriers. Also included in Exhibit F to the application are updated financial statements for Utility and Call America. This documentation shows that CAT meets the Commission's financial standards applicable to parties seeking control of facilities-based carriers.

6. Public Interest Considerations

The sole issue in this proceeding is whether, upon the acquisition of control by CAT, Utility and Call America will continue to have requisite managerial, financial, and technical support to provide service, and whether granting this application is otherwise consistent with the public interest. The Joint Applicants believe that the proposed transaction will place the Joint Applicants, together with their affiliates, in a stronger competitive position through the ability to take advantage of operating synergies, enhanced access to capital, economies of scale and scope, and other factors, while continuing to

enable all existing customers to receive the same high-quality, personalized services they currently enjoy.

The Joint Applicants state that following approval and consummation of the proposed transaction, CAT will continue to provide existing telecommunications service to customers of Utility and Call America pursuant to the same rates, terms, and conditions that now apply. Consequently, this transaction will be transparent to them. Prior written notification of the transfer of telecommunications services will be furnished to customers at least 30 days prior to the transfer, in accordance with Public Utilities Code Section 2889.3 and the Commission's rules.

Further, Joint Applicants state that the transaction does not have a potential for resulting in either a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment pursuant to California Environmental Quality Act Guideline 15378.

7. Discussion

The Joint Applicants seek approval of the proposed transfer of control pursuant to Pub. Util. Code § 854(a), which, in relevant part, states:

No person or corporation ... shall merge, acquire, or control ... any public utility organized and doing business in this state without first securing authorization to do so from the commission ... Any merger, acquisition, or control, without that prior authorization shall be void and of no effect.

The Commission has broad discretion to determine if it is in the public interest to authorize a transaction pursuant to § 854(a).¹ The primary standard

¹ D.95-10-045, 1995 Cal. PUC LEXIS 901, *18-19.

used by the Commission to determine if a transaction should be authorized under § 854(a) is whether the transaction will adversely affect the public interest.²

For the following reasons, we conclude that it is reasonable to grant this § 854(a) application. First, following approval and consummation of the proposed transaction, CAT will continue to provide existing telecommunications service to customers of Utility and Call America pursuant to the same rates, terms, and conditions that now apply. Consequently, this transaction will be transparent to them. Second, the public may benefit from the transfer of control to the extent the transaction enhances the ability of CAT to raise capital, maintain and expand services and operations in California. Third, there is no opposition to the application. For these reasons, we see no reason to withhold authority for the transfer of control before us here.

8. Motion for Protective Order

Pursuant to Pub. Util. Code § 583 and General Order 66-C, Joint Applicants request that the financial information submitted in the application be kept under seal. Joint Applicants represent that the information is proprietary and sensitive, and the information, if revealed, would place Joint Applicants at an unfair business disadvantage. We have granted similar requests in the past and will do so here.

All sealed information should remain sealed for a period of two years after the effective date of this order. If Joint Applicants believe that further protection of the sealed information is needed beyond the two years, Joint Applicants shall comply with the procedure set forth in Ordering Paragraph 3.

² D.00-06-079, p. 13.

9. Categorization and Need for Hearing

In Resolution ALJ 176-3209, dated February 28, 2008, the Commission preliminarily categorized this proceeding as Ratesetting, and preliminarily determined that hearings were not necessary. There is no opposition to the application. Given this status, public hearing is not necessary and it is not necessary to alter the preliminary determinations made in Resolution ALJ 176-3209.

10. 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.

Assignment of Proceeding

Rachelle B. Chong is the assigned Commissioner and Bertram D. Patrick is the assigned Administrative Law Judge (ALJ) in this proceeding.

Findings of Fact

1. Joint Applicants request that CAT be granted authority to acquire the respective operating assets, operating authorities, and customer base and accounts of Utility and Call America.
2. Following approval and consummation of the proposed transaction, CAT will continue to provide existing telecommunications service to customers of Utility and Call America pursuant to the same rates, terms, and conditions that now apply.
3. The proposed transaction will place Joint Applicants, together with their affiliates, in a stronger competitive position through the ability to take advantage of operating synergies, enhanced access to capital, economies of scale and scope,

and other factors, while continuing to enable all existing customers to receive the same high-quality, personalized services they currently enjoy.

4. Under the Joint Applicants' proposal the proposed transfer will be transparent to California consumers.

5. There is no opposition to this application.

Conclusions of Law

1. This is a ratesetting proceeding and no hearing is necessary.

2. As this joint application only seeks approval for the transfer of operating authorities and related assets and transfer of control over existing public utility operations, it can be seen with certainty that there is no possibility that approval of this joint application may have a significant adverse effect on the environment.

3. This application should be approved and become effective immediately because it is not adverse to the public interest.

4. Approval of this application is not a finding of value of the rights and property being transferred.

O R D E R

IT IS ORDERED that:

1. Utility Telephone, Inc. (Utility), Call America, Inc. (Call America), and Call America Telecom, LLC (CAT) (collectively, the Joint Applicants) are authorized pursuant to Pub. Util. Code §§ 851-854 to implement the transfer of control as described in the application.

2. The request of Joint Applicants to have the financial information filed with this application 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 Law and Motion Judge.

3. If the Joint 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's rules may then provide. This motion shall be filed no later than one month before the expiration date.

4. CAT shall notify the Director of the Commission's Telecommunications Division in writing of the transfer of control, as authorized herein, within 30 days of completion of this transaction.

5. Joint Applicants shall provide prior written notification of the transfer of telecommunications services to existing customers at least 30 days prior to the transfer in accordance with Pub. Util. Code § 2889.3.

6. Application 08-02-011 is closed.

This order is effective today.

Dated _____, at San Francisco, California.