Decision **ALTERNATE DRAFT DECISION OF COMMISSIONER LYNCH**
(Mailed 3/18/2004)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In Re Application of WilTel Communications, LLC (U-6146-C) Pursuant to Public Utilities Code Section 854 for Expedited Ex Parte Approval of a Transfer of Control.	Application 03-10-032 (Filed October 6, 2003)
In Re Application of WilTel Communications, LLC (U-6146-C) Pursuant to Public Utilities Code Section 854 for Expedited Ex Parte Approval of a Transfer of Control.	Application 03-10-033 (Filed October 6, 2003)

DECISION AUTHORIZING TRANSFER OF CONTROL AND IMPOSING A FINE

Summary

This decision grants Application (A.) 03-10-032 of WilTel Communications, LLC (U-6146-C) (WTC), formerly known as Williams Communications, LLC, for approval of the transfer of control of WTC from Williams Communications Group, Inc. (old WCG) to WilTel Communications Group, Inc. (new WCG).[1] In addition, we grant WTC's A.03-10-033 for approval of the acquisition of a controlling interest in new WCG, resulting in a controlling interest in WTC, by Leucadia National Corporation (Leucadia).[2] In both cases the approvals are prospective in nature.

[1] Hereafter this transaction will be referred to as "Wiltel's First Transaction."

[2] Hereafter this transaction will be referred to as "Wiltel's Second Transaction."

Also, we impose fines totaling 20,000 for failure to obtain advance approvals of the two transfers.

Parties to the Transactions

WTC is a Delaware limited liability company. Its principal place of business is located at One Technology Center, Tulsa, Oklahoma 74103. By Decision (D.) 00-07-039, WTC was granted a certificate of public convenience and necessity (CPCN) to provide limited facilities-based and resold local exchange telecommunications services. WTC is not an incumbent local exchange carrier, nor is it affiliated with one.

Old WCG was a Delaware Corporation that owned 100% of WTC. It was a publicly traded company with no single shareholder owning more than five percent of its common stock after April 23, 2001. Its principal place of business was located at One Technology Center, Tulsa, Oklahoma 74103.

New WCG is a publicly traded Nevada corporation that owns 100% of WTC. Its principal place of business is located at One Technology Center, Tulsa, Oklahoma 74103.

Leucadia is a publicly traded financial services holding company. It was not engaged in the telecommunications business prior to its investment in new WCG. Its principal executive offices are located at 315 Park Avenue South, New York, New York 10010-3607.

WilTel's First Transaction (A.03-10-032)

On April 22, 2002, old WCG filed for bankruptcy with the United States Bankruptcy Court for the Southern District of New York (Bankruptcy Court). On September 30, 2002, the Bankruptcy Court approved a plan of reorganization (POR) for old WCG. The POR provided for the creation of new WCG, a new holding company, and the transfer of the ownership of WTC from old WCG to new WCG.

Under the POR Leucadia acquired 44%, and bondholders of old WCG received 54%, of new WCG's common stock. No single bondholder received more than five percent of new WCG's common stock. Two percent of new WCG's common stock is reserved for distribution in a settlement of a class action suit brought by holders of old WCG's preferred and common stock.

WTC informs this Commission that the transaction did not and will not impair or jeopardize its provision of service to the public. WilTel also informs us that there were no changes in rates, terms or conditions of service as a result of the transfer. It further represents that the long-term effect will be to enhance WTC's access to capital. WTC states that, while there were management changes as a result of the transaction, it retained executives and managers with experience in telecommunications.

Discussion

Whether to Approve (A.03-10-032) WilTel's First Transaction

WTC requests authority under Public Utilities Code § 854 for a transfer of control through implementation of the POR.[3] Section 854(a) states that no person or corporation shall acquire control of any public utility organized and doing business in this state without first securing authorization to do so from the Commission, and any such acquisition 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).[4] The two standards used by the Commission to determine if a transaction should be authorized under § 854(a)

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[3] All references are to the Public Utilities Code unless otherwise specified.

[4] D.95-10-045, 1995 Cal. PUC LEXIS 901, *18-19; and D.91-05-026, 40 CPUC2d 159, 171.

are whether the transaction will adversely affect the public interest[5] and whether the transaction will serve the public interest.[6] Here the second standard is more appropriate. The applicant seeks nunc pro tunc approval of a transaction, the applicant has sought to limit comment or review, it is reasonable to expect the applicant to make a showing that is commiserate with the latter, more rigorous, standard. In the instant proceeding WTC's seeking nunc pro tunc approval, its seeking expedited review that didn't allow for the customary 30-day comment period on the application, and its not allowing any comments on a draft order before the transfer of control took effect establish the latter standard as more appropriate.

Where necessary and appropriate, the Commission may attach conditions to a transaction in order to protect and promote the public interest.[7] Pursuant to this authority, our approval is conditioned upon the parties submitting to the jurisdiction and regulatory oversight of this Commission. Specifically, in furtherance of our regulatory oversight of WCG, WTC and Leucadia may also be required to submit to Commission discovery and investigation. Thus, parties are reminded that, where a non-regulated company acquires control of a regulated

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5 D.00-06-079, p. 13; D.00-06-057, p. 7; D.00-05-047, p. 11 and Conclusion of Law (COL) 2; D.00-05-023, p. 18; D.99-03-019, p. 14; D.98-08-068, p. 22; D.98-05-022, p. 17; D.97-07-060, 73 CPUC2d 601, 609; D.70829, 65 CPUC 637, 637; and D.65634, 61 CPUC 160, 161.

6 D.00-06-005, 2000 Cal. PUC LEXIS 281, *4; D.99-04-066, p.5; D.99-02-036, p. 9; D.97-06-066, 72 CPUC2d 851, 861; D.95-10-045, 62 CPUC2d 160, 167; D.94-01-041, 53 CPUC2d 116, 119; D.93-04-019, 48 CPUC2d 601, 603; D.86-03-090, 1986 Cal. PUC LEXIS 198 *28 and COL 3; and D.8491, 19 CRC 199, 200.

7 D.95-10-045, 62 CPUC2d 160, 167-68; D.94-01-041, 53 CPUC2d116, 119; D.90-07-030, 1990 Cal. PUC LEXIS 612 *5; D.89-07-016, 32 CPUC2d 233, 242; D.86-03-090, 1986 Cal. PUC LEXIS 198 *84-85 and COL 16; and D.3320, 10 CRC 56, 63.

utility, rather than limit the Commission's regulatory authority, such transactions effectively expand Commission oversight by obliging the controlling entity, in this case Leucadia, to cooperate with the Commission's regulatory obligations.

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. Since WTC possesses a CPCN to provide limited facilities-based and resold local exchange telecommunications services within California, we will apply the requirements for such authority to new WCG.

The Commission has established two major requirements for determining whether a CPCN should be granted. An applicant who desires to provide limited facilities-based and resold local exchange services 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.

WTC provided a copy of new WCG's most recent U. S. Securities and Exchange Commission (SEC) Form 10-Q that demonstrates that new WCG has sufficient resources to meet our financial requirements. Since WTC continues to operate under many of the same managers, we find that our requirement for technical expertise is also satisfied.

In addition to satisfying the above requirements, WilTel represents that there were no changes to WTC's rates, terms or conditions of service as a result of the transaction and that WTC's customers and the public were not harmed by the transfer of control. However, as previously noted, we must determine whether the transaction will serve the public interest. The record reveals that, the transfer of control associated with the transaction will provide WTC increased access to capital and thereby allow it to better compete in the market.[8] Though the claimed benefits of greater competition are often speculative, Old WCG's dealings with the bankruptcy court prior to the transaction confirm the tangible nature of this benefit in this instance. We therefore conclude that WilTel has satisfied the applicable requirements and it is therefore reasonable to grant A.03-10-032 to the extent it requests prospective authority under § 854(a) for the transfer of control of WTC from old WCG to new WCG.

The purpose of § 854(a) is to enable the Commission to review a proposed acquisition before it takes place in order to take such action as the public interest may require.[9] Granting A.03-10-032 on a retroactive basis would thwart the purpose of § 854(a). Therefore, we deny A.03-10-032 to the extent it requests retroactive authority under § 854(a) for the transfer of control. Since we do not grant retroactive authority, the transfer of control is void under § 854(a) for the period of time prior to the effective date of this decision. WTC and new WCG are at risk for any adverse consequences that may result from having implemented the transfer of control without Commission authority.

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[8] Application of Wiltel Local Network LLC For Approval Of An Indirect Transfer of Control And Request For Expedited Ex Parte Relief, pp.4-5.

[9] D.99-02-061, 1999 Cal. PUC LEXIS 56 *12; D.98-07-015, 1998 Cal. PUC LEXIS 526 *7; D.98-02-005, 1998 Cal. PUC LEXIS 320 *8; D.97-12-086, 1997 Cal. PUC LEXIS 1168 *8; and San Jose Water Co. (1916) 10 CRC 56, 63.

Whether to Penalize WTC for Failure to Comply with § 854(a)

WTC failed to comply with § 854(a) by effectuating the transfer of control without Commission authorization. Violations of § 854(a) are subject to monetary penalties under § 2107 which states that any public utility which violates or fails to comply with any provision of the Constitution of this state, or which fails or neglects to comply with any part or provision of any order, decision, decree, rule, direction, demand, or requirement of the Commission, in a case in which a penalty has not otherwise been provided, is subject to a penalty of not less than five hundred dollars, nor more than twenty thousand dollars for each offense.

For the following reasons, we conclude that WTC should be fined for its failure to comply with § 854(a). First, any violation of § 854(a), regardless of the circumstances, is a serious offense that should be subject to fines. Second, the imposition of a fine will help to deter future violations of § 854(a) by WTC and others.

To determine the size of the fine, we shall rely on the criteria adopted by the Commission in D.98-12-075 as discussed below.

1. Severity of the Offense

In D.98-12-075, the Commission held that the size of a fine should be proportionate to the severity of the offense. To determine the severity of the offense, the Commission stated that it would consider the following factors:[10]

> **Physical harm:** The most severe violations are those that cause physical harm to people or property, with violations that threatened such harm closely following.

[10] 1998 Cal. PUC LEXIS 1016, *71 - *73.

> **Economic harm**: The severity of a violation increases with (i) the level of costs imposed upon the victims of the violation, and (ii) the unlawful benefits gained by the public utility. Generally, the greater of these two amounts will be used in setting the fine. The fact that economic harm may be hard to quantify does not diminish the severity of the offense or the need for sanctions.
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> **Harm to the Regulatory Process:** A high level of severity will be accorded to violations of statutory or Commission directives, including violations of reporting or compliance requirements.
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> **The number and scope of the violations:** A single violation is less severe than multiple offenses. A widespread violation that affects a large number of consumers is a more severe offense than one that is limited in scope.

WTC did not report any physical or economic harm to others as a result of its violation of § 854(a). In addition, there is no record evidence that WTC significantly benefited from its unlawful conduct or that its actions affected any consumers. However, this scarcity of criticism may well result from the shortened time allowed to develop and file protest on the application presented to this Commission and the transaction in the bankruptcy proceeding.

2. Conduct of the Utility

In D.98-12-075, the Commission held that the size of a fine should reflect the conduct of the utility. When assessing the conduct of the utility, the Commission stated that it would consider the following factors:[11]

> **The Utility's Action to Prevent a Violation:** Utilities are expected to take reasonable steps to ensure compliance with applicable laws and regulations. The utility's past

[11] 1998 Cal. PUC LEXIS 1016, *73 - *75.

> record of compliance may be considered in assessing any penalty.
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> **The Utility's Actions to Detect a Violation:** Utilities are expected to diligently monitor their activities. Deliberate, as opposed to inadvertent wrongdoing, will be considered an aggravating factor. The level and extent of management's involvement in, or tolerance of, the offense will be considered in determining the amount of any penalty.
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> **The Utility's Actions to Disclose and Rectify a Violation:** Utilities are expected to promptly bring a violation to the Commission's attention. What constitutes "prompt" will depend on circumstances. Steps taken by a utility to promptly and cooperatively report and correct violations may be considered in assessing any penalty.

WTC did not take reasonable steps to comply with §854(a). Although WTC and old WCG were required to implement the POR, WTC did not file A.03-10-032 before it took effect. WTC states that it did not file earlier because it did not believe, at the time, that it was required to comply with the requirements of §854 since the bankruptcy court approved the transaction. In effect, WTC asserts that the Bankruptcy Court's approval of the transaction preempts P.U. Code §854(a). WTC assertion in this regard is contrary to law and without foundation.[12]

We find that WTC could have given the Commission prior notice by filing the application prior to implementation of the POR. This would have allowed the Commission to consider the POR on an expedited basis prior to its execution.

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[12] See the November 19, 2003 decision of the Ninth Circuit Court of Appeals in PG&E v People of the State of California, No. 02-116990, D.C. No. CV-02-01550-VRW.

3. Financial Resources Available to WTC

In D.98-12-075, the Commission held that the size of a fine should reflect the financial resources of the utility. When assessing the financial resources of the utility, the Commission stated that it would consider the following factors:[13]

> **Need for Deterrence**: Fines should be set at a level that deters future violations. Effective deterrence requires that the Commission recognize the financial resources of the utility in setting a fine.
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> **Constitutional limitations on excessive fines:** The Commission will adjust the size of fines to achieve the objective of deterrence, without becoming excessive, based on each utility's financial resources.

WTC provided new WCG's most recent SEC Form 10-Q that shows new WCG's current assets of approximately $500 million dollars, and revenues of over $600 million for the first six months of 2003. The financial statements also indicate that new WCG has incurred a net loss for the same reporting period. From this information, we conclude that WTC, through its parent new WCG, has the financial resources to pay a fine imposed by the Commission for violations of Section 854(a). We will weigh this information accordingly when setting the amount of the fine.

4. Totality of the Circumstances

In D.98-12-075, the Commission held that a fine should be tailored to the unique facts of each case. When assessing the unique facts of each case, the Commission stated that it would consider the following factors:[14]

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[13] 1998 Cal. PUC LEXIS 1016, *75 - *76.

[14] 1998 Cal. PUC LEXIS 1016, *76.

> **The degree of wrongdoing**: The Commission will review facts that tend to mitigate the degree of wrongdoing as well as facts that exacerbate the wrongdoing.
>
> **The public interest**: In all cases, the harm will be evaluated from the perspective of the public interest.

WTC was required to implement the POR, but should have exercised better judgment and filed A.03-10-032 in a timely manner to allow the Commission adequate time to review the POR before it took effect. No one was harmed by WTC's failure to comply with § 854(a) and WTC does not appear to have materially benefited from its unlawful conduct. These facts indicate that the public interest was not significantly harmed by WTC's violation of § 854(a). In setting the fine, we will consider the relatively small harm to the public interest from this violation.

5. The Role of Precedent

In D.98-12-075, the Commission held that any decision which imposes a fine should (1) address previous decisions that involve reasonably comparable factual circumstances, and (2) explain any substantial differences in outcome.[15]

In D.00-09-035, we held that our precedent of meting out lenient treatment to those who violate § 854(a) had failed to deter additional violations; and we indicated that henceforth we would impose fines in order to deter future violations of § 854(a). In both D.00-12-053 and D.03-05-033, the Commission fined telecommunications carriers $5,000 for failure to obtain advance approval under §854(a) for transfers of control. The facts of this case are similar to those addressed in D.03-09-069, which involved implementation of an order of a bankruptcy court and the applicant's failure to make a timely application to the Commission. In that

[15] 1998 Cal. PUC LEXIS 1016, *77.

instance, the requirement to implement a bankruptcy court's order mitigated against the seriousness of the violation. As a result, we imposed a fine of $2,500. Here too there is a requirement to implement a bankruptcy court's order. However, the bankruptcy court order at issue here was approved almost two years before the instant application was filed.[16] Ultimately WTC's only explanation for its failure to file is that it believes Commission approval of the indirect transfer of control described herein is not required pursuant to current bankruptcy law.[17] This unfounded assertion does not mitigate the seriousness of the violation.

Conclusion:

With regard to WilTel's First Transaction we conclude based on the facts of this case that WTC should be fined $10,000 for violating § 854(a). The fine is meant to deter future violations of § 854(a) by WTC and others.

WilTel's Second Transaction (A.03-10-033)

Leucadia acquired additional new WTC common stock through a private purchase, and owned 47.4% of new WCG's common stock at the time A.03-10-033 was filed. The remaining 52.6% of WCG's common stock was widely distributed among public shareholders. Leucadia and new WCG entered into an agreement that contemplated the initiation of an exchange offer through which Leucadia would acquire 100% ownership of new WCG. As a result, Leucadia would acquire ownership of WTC. On November 5, 2003, subsequent to the filing of A.03-10-033, WTC completed the transaction. WTC represents that it did so because it believed that delaying completion would have jeopardized its ability to participate in

[16] Application of Wiltel Local Network LLC For Approval Of An Indirect Transfer of Control And Request For Expedited Ex Parte Relief, p.5.

[17] Id.

negotiations to acquire assets, through other transactions, that were important to its success in providing telecommunications services. WTC represents that the transaction will not affect the day-to-day management of WTC.

Discussion

Whether to Approve A.03-10-033

Since WTC possesses a CPCN to provide limited facilities-based and resold local exchange telecommunications services within California, we will apply the requirements for such authority to Leucadia.

WTC provided a copy of Leucadia's most recent SEC Form 10-Q that demonstrates that Leucadia has sufficient resources to meet our financial requirements. Since there will be no change in WTC's management due to the proposed transaction, our requirement for technical expertise is satisfied.

In addition to satisfying the above requirements, there will be no change to WTC's rates, terms or conditions of service as a result of the proposed transaction. Thus, WTC's customers and the public will not be not harmed. However, as previously noted, we must also determine whether the transaction will serve the public interest. The record reveals that, the transfer of control associated with the transaction will provide WTC increased access to capital and thereby allow it to better compete in the market.[18] We therefore conclude that WilTel has satisfied the applicable requirements and it is therefore reasonable to grant A.03-10-032 to the extent it requests prospective authority under § 854(a) for the transfer of control of WTC from old WCG to new WCG.

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[18] Application of Wiltel Local Network LLC For Approval Of An Indirect Transfer of Control And Request For Expedited Ex Parte Relief, pp.4-5.

However, as discussed for A.03-10-032, we deny A.03-10-033 to the extent it requests retroactive authority for the transfer of control. Here too, the transfer of control is void under § 854(a) for the period of time prior to the effective date of this decision. WTC, new WCG, and Leucadia are at risk for any adverse consequences that may result from having implemented the transfer of control without Commission authority.

Whether to Penalize WTC for Failure to Comply with § 854(a)

The circumstances of this violation are similar to those for A.03-10-032, except that WTC does not argue that it acted pursuant to an order of the Bankruptcy Court.[19] WCG's only explanation is that it wished to move forward with other transactions. We find no mitigation in this explanation. In this instance, since there is no mitigation, and this is WCG's second violation of §854(a), a correspondingly higher fine is appropriate. Therefore, we will impose a fine of $10,000.

Comments on Alternate Draft Decision

The alternate draft decision in this matter was mailed to the parties in accordance with § 311(e), and Rule 77.6 of the Commission's Rules of Practice and Procedure. Comments were filed on _______, and replies were filed on _____.

Categorization and Need for Hearings

In ALJ 176-3121 dated October 16, 2003, the Commission preliminarily categorized these applications as ratesetting, and preliminarily determined that hearings were not necessary. No protests have been received. There is no apparent

[19] Leucadia has total current assets in excess of $900 million, and revenues of approximately $144 million for the first six months of 2003. In contrast to new WCG, it did not show a loss for the same period.

reason why the applications should not be granted. Given these developments, a public hearing is not necessary.

Assignment of Proceeding

Susan P. Kennedy is the Assigned Commissioner and Jeffrey P. O'Donnell is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. Notice of A.03-10-032 and A.03-10-033 appeared in the Daily Calendar on October 16, 2003.
2. By D. 00-07-039, WTC was granted a CPCN to provide limited facilities-based and resold local exchange services.
3. Old WCG was a Delaware Corporation that owned 100% of WTC.
4. On April 22, 2002, old WCG filed for bankruptcy with the Bankruptcy Court.
5. On September 30, 2002, the Bankruptcy Court approved a POR for old WCG that provided for the creation of new WCG, and the transfer of the ownership of WTC from old WCG to new WCG.
6. WTC retained executives and managers with experience in telecommunications after the transfer of the ownership of WTC from old WCG to new WCG.
7. New WCG has sufficient resources to meet our financial requirements.
8. WCG represents that there were no changes to WTC's rates, terms or conditions of service as a result of its acquisition.
9. The public may benefit from WTC's acquisition by new WCG to the extent the transaction enhances its ability to compete due to increased access to capital.
10. There were no protests to A.03-10-032.
11. The imposition of a fine will help to deter future violations of § 854(a) by WTC and others.

12. WTC's violation of § 854(a) did not cause any physical or economic harm to others, and there is no evidence that WTC significantly benefited from its unlawful conduct or that its actions affected any consumers.

13. WTC did not file A.03-10-032 before the POR took effect.

14. WTC, through its parent new WCG, has the financial resources to pay a fine in the range normally applied by the Commission for violations of § 854(a).

15. There is no record evidence showing that anyone was harmed by WTC's failure to comply with § 854(a).

16. Leucadia has sufficient resources to meet our financial requirements.

17. There will be no change in WTC's management due to the proposed acquisition of new WCG by Leucadia.

18. There will be no change to WTC's rates, terms or conditions of service as a result of the acquisition of new WCG by Leucadia.

19. WTC's customers, and the public, will not be not harmed by the acquisition of new WCG by Leucadia.

20. The public may benefit from the transfer of control to the extent the acquisition of new WCG by Leucadia enhances WTC's ability to compete due to improved access to capital.

21. There were no protests to A.03-10-033.

22. The circumstances of the violation of §854(a) in A.03-10-033 are similar to those for A.03-10-032, except that there is no claim that non-compliance resulted from an order of the Bankruptcy Court.

23. WTC went forward with the second transaction, without waiting for approval of A.03-10-033.

24. The circumstances of the violation of §854(a) in A.03-10-033 are similar to D.00-12-053 and D.03-05-033 where $5,000 fines were imposed.

25. In D.03-09-069, the fine was reduced by $2,500, compared to D.00-12-053 and D.03-05-033, in recognition of the need to implement a bankruptcy court's order.

26. In A.03-10-033, there is no mitigation, and this is WTC's second violation of §854(a), it is therefore appropriate to increase the otherwise applicable fine.

27. Hearings are not required on A.03-10-032 or A.03-10-033.

Conclusions of Law

1. Section 854(a) states that no person or corporation shall acquire control of any public utility organized and doing business in this state without first securing authorization to do so from the Commission, and any such acquisition without that prior authorization shall be void and of no effect.

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

3. The two standards used by the Commission to determine if a transaction should be authorized under § 854(a) are whether the transaction will adversely affect the public interest and whether the transaction will serve the public interest..

4. In a situation where a company that does not possess a CPCN desires to acquire control of a company that does possess a CPCN, the Commission 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.

5. An applicant who desires to provide limited facilities-based and resold local exchange services 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.

6. An applicant who desires to provide limited facilities-based and resold local exchange services is required to make a reasonable showing of technical expertise in telecommunications or a related business.

7. New WCG satisfies the Commission's financial and technical requirements.

8. There is record evidence showing that WTC's customers and the public were harmed by its acquisition by new WCG.

9. WTC's acquisition by new WCG is in the public interest.

10. It is reasonable to grant A.03-10-032 to the extent it requests prospective authority under § 854(a) for the transfer of control of WTC from old WCG to new WCG.

11. The purpose of § 854(a) is to enable the Commission to review a proposed acquisition before it takes place in order to take such action as the public interest may require.

12. Granting A.03-10-032 on a retroactive basis would thwart the purpose of § 854(a).

13. Application.03-10-032 should be denied to the extent it requests retroactive authority under § 854(a) for WTC's acquisition by new WCG.

14. Since the Commission approval of A.03-10-032 is prospective only, WTC's acquisition by new WCG is void under § 854(a) for the period of time prior to the effective date of this decision, and WTC and new WCG are at risk for any adverse consequences that may result from having implemented the transfer of control without Commission authority.

15. WTC failed to comply with § 854(a) by effectuating the transfer of control without Commission authorization.

16. Violations of § 854(a) are subject to monetary penalties under § 2107 of not less than five hundred dollars, nor more than twenty thousand dollars for each offense.

17. Any violation of § 854(a), regardless of the circumstances, is a serious offense that should be subject to fines.

18. The Commission has held that the size of a fine should be proportionate to the severity of the offense.

19. The Commission has held that the size of a fine should reflect the conduct of the utility.

20. Since WTC did ultimately file A.03-10-032, its violation is not an extremely egregious offense.

21. In D.98-12-075, the Commission held that the size of a fine should reflect the financial resources of the utility.

22. In D.98-12-075, the Commission held that a fine should be tailored to the unique facts of each case.

23. In D.98-12-075, the Commission held that any decision which imposes a fine should (1) address previous decisions that involve reasonably comparable factual circumstances, and (2) explain any substantial differences in outcome.

24. In connection with A.03-10-032, WTC should be fined $10,000 for violating § 854(a).

25. Since WTC possesses a CPCN to provide limited facilities-based and resold local exchange telecommunications services within California, we will apply the requirements for such authority to Leucadia.

26. Leucadia satisfies the Commission's financial and technical requirements.

27. The acquisition of new WCG by Leucadia is in the public interest.

28. It is reasonable to grant A.03-10-033 to the extent it requests prospective authority under § 854(a) for the transfer of control of WTC from new WCG to Leucadia.

29. Application.03-10-033 should be denied to the extent it requests retroactive authority under § 854(a) for WTC's acquisition by Leucadia.

30. Since the Commission approval of A.03-10-033 is prospective only, WTC's acquisition by Leucadia is void under § 854(a) for the period of time prior to the effective date of this decision, and WTC, new WCG, and Leucadia are at risk for any adverse consequences that may result from having implemented the transfer of control without Commission authority.

31. WTC failed to comply with § 854(a) by effectuating the transfer of control to Leucadia without prior Commission authorization.

32. We find no mitigation in WTC's explanation that it went forward with the second transaction, without waiting for approval of A.03-10-033, for business reasons.

33. In connection with A.03-10-033, WTC should be fined $10,000 for violating § 854(a).

34. Application 03-10-032 and A.03-10-033 are ratesetting proceedings, and no hearings are necessary.

35. The following order should be effective immediately.

O R D E R

IT IS ORDERED that:

1. Application (A.) 03-10-032, filed by WilTel Local Network, LLC (WTC), for authority under Pub. Util. Code § 854 for a transfer of control of WTC from Williams Communications Group, Inc. to WilTel Communications Group, Inc. is granted to the extent it requests authority effective as of the date of this order.

2. Application 03-10-033 for a transfer of control of WTC to Leucadia National Corporation (Leucadia) is granted to the extent it requests authority effective as of the date of this order.

3. Application 03-10-032 and A.03-10-033 are denied to the extent that they request retroactive authority for the transfers of control.

4. WTC shall pay a fine in the amount of $20,000 for violating Pub. Util. Code § 854(a). It shall pay the fine within 20 days from the effective date of this order by tendering to the Fiscal Office of the California Public Utilities Commission a check in the amount of $20,000 made payable to the State of California General Fund.

5. Application 03-10-032 and A.03-10-033 are closed.

This order is effective today.

Dated ______________________, at San Francisco, California.

Cover Letter

Certificate of Service