

Decision 12-03-038 March 22, 2012

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Joint Application of Wilshire Connection, LLC (U6076C), NTC Network, LLC (U6190C), and Wilcon Holdings, LLC for Authorization for a Transfer of Control.

Application 11-12-005
(Filed December 5, 2011)

**DECISION AUTHORIZING TRANSFER OF CONTROL
OF WILSHIRE CONNECTION AND NTC NETWORK
TO WILCON HOLDINGS**

Summary

This decision grants the unopposed joint application of Wilshire Connection, LLC (Wilshire) and its wholly-owned subsidiary NTC Network, LLC (NTC), for authorization pursuant to Public Utilities Code Section 854¹ to transfer the control of Wilshire and NTC, both California certificated telecommunications carriers, to Wilcon Holdings, LLC.

This proceeding is closed.

1. Parties to the Transaction

Wilshire Connection, LLC (Wilshire), a Delaware corporation, holds a certificate of public convenience and necessity (CPCN) authorizing the company to operate as a limited facilities-based and resale competitive local exchange and

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

interexchange carrier in California.² NTC Network, LLC (NTC), a California limited liability company, is a wholly-owned subsidiary of Wilshire and holds CPCN authority to operate as a full facilities-based and resale competitive local exchange and interexchange carrier in California.³

Wilshire and NTC operate on a consolidated basis under Wilshire's name to provide "last-mile" transport and interconnection facilities between multiple collocation facilities and carrier hotels in the downtown Los Angeles area for use by telecommunications carriers, internet access providers, and other high bandwidth users. Wilshire customers may lease conduit or dark fiber, or contract for transport services from Wilshire. Wilshire also provides collocation space in downtown Los Angeles.

Wilcon Holdings, LLC (Wilcon), a Delaware corporation, was formed to hold the limited liability company membership interests in Wilshire and NTC. Wilcon is a subsidiary of Pamlico Capital, which manages investments in middle market companies in various industries, including business and technology services, communications, and health care. Pamlico Capital, which was formerly known as Wachovia Capital Partners, was founded in 1988 and is based in Charlotte, North Carolina. Wilcon does not currently hold any California CPCN authority.

2. Proposed Transaction

Under the proposed transaction, Wilcon will acquire a 100% ownership interest in Wilshire, which, in turn, holds 100% of the membership interest in

² Wilshire's CPCN as a reseller was granted in Decision (D.) 98-10-037, with the limited facilities-based CPCN granted in D.99-10-025.

³ NTC's CPCN was granted in D.99-06-083.

NTC. Under the terms of the transaction, all membership, financial, and other interests in Wilshire Connection will be transferred from its current members to Wilcon in exchange for cash payments.

Applicants represent that the proposed transfer of control will be transparent to customers and will not result in any changes to services or charges for customers other than those that would otherwise occur during the normal course of business. Applicants state that after the merger, day-to-day management of Wilshire and NTC, through Wilcon, will be overseen by Mr. Jon DeLuca and the companies will continue to provide the same range of telecommunications services to customers in California. Wilshire and NTC will retain their CPCN authorities, and will provide service in California under their existing tariffs on file with the Commission.

Applicants state that this transaction will benefit Wilshire by allowing its current members to redeploy their capital into other investments, while Wilcon's investors view the proposed transaction as a business opportunity that will further their core investment management strategy.

3. Discussion

The Applicants request Commission authorization pursuant to § 854 for the transfer of control of Wilshire and its wholly-owned subsidiary NTC to Wilcon. Section 854 states, in relevant part, as follows:

No person or corporation...shall merge, acquire, or control either directly or indirectly 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 purpose of § 854 is to enable the Commission to review a proposed transaction, before it takes place, in order to take such action as the public

interest may require. The Commission has broad discretion under § 854 to approve or reject a proposed transaction. If necessary and appropriate, the Commission may attach conditions to a transaction in order to protect and promote the public interest.⁴

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

In confidential exhibits to the application, Applicants have provided financial statements which demonstrate that Wilcon meets the Commission's financial requirements for the issuance of a CPCN authorizing the provision of full and limited facilities-based services.

Wilcon has also presented the technical and managerial qualifications of Mr. Jon DeLuca, the manager who will be in charge of day-to-day operations of Wilshire and NTC after the merger. His extensive telecommunications experience meets the Commission's requirement for a showing of technical expertise in telecommunications.

⁴ D.01-06-007, 2001 Cal. PUC LEXIS 390, *24.

This transaction will provide Wilshire and NTC with increased access to capital and with the business expertise of Wilcon, which will allow Wilshire and NTC to become stronger competitors in California's telecommunications marketplace. The transaction will be transparent to customers, and will not harm the public. In addition, the application is unopposed.

We therefore find that the transaction is in the public interest and grant the application pursuant to § 854.

4. Request to File Documents Under Seal

Pursuant to Rule 11.4, Applicants have filed a motion for leave to file Exhibit C (transaction documentation), Exhibit D (financial statements), and Exhibit E (financial showing) to the application as confidential materials under seal. In addition, Applicants filed another motion to file under seal Exhibit 2 (bank statements) filed in response to the February 7, 2012 Administrative Law Judge (ALJ) request for additional information. Applicants represent that the information is sensitive, and disclosure could place them at an unfair business disadvantage. We have granted similar requests in the past, and do so here.

5. Categorization and Need for Hearings

In Resolution ALJ 176-3287, dated January 12, 2012, the Commission preliminarily categorized this proceeding as ratesetting and preliminarily determined that hearings were not necessary. Based on the record, we affirm that this is a ratesetting proceeding and that hearings are not necessary.

6. Waiver of Comment Period

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

7. Assignment of Proceeding

Catherine J.K. Sandoval is the assigned Commissioner and Julie A. Fitch is the assigned ALJ in this proceeding.

Findings of Fact

1. Wilshire is a Delaware corporation and NTC is a wholly-owned subsidiary of Wilshire incorporated in California.

2. In D.98-10-037, Wilshire was granted a CPCN authorizing the company to provide resale competitive local exchange and interexchange services in California. Wilshire's CPCN for limited-facilities based telecommunications services was granted in D.99-10-025.

3. In D.99-06-083, NTC was granted full facilities-based and resale competitive local exchange and interexchange authority in California.

4. Wilcon is a Delaware corporation that was formed to hold the limited liability company membership interests in Wilshire and NTC.

5. Wilcon is a subsidiary of Pamlico Capital, which was founded in 1988 and is based in Charlotte, North Carolina.

6. Wilcon does not currently hold any California CPCN authority.

7. Under the proposed transaction, Wilcon will acquire a 100% ownership interest in Wilshire, which, in turns, owns 100% of NTC.

8. After the merger, Wilshire and NTC will both retain their CPCN authority and will provide the same range of services to California customers under the same terms.

9. Wilshire and NTC will be managed by Wilcon after the transaction.

10. Applicants have filed financial documents under seal which show that Wilcon meets the Commission's financial requirements for issuance of a CPCN

authorizing the provision of facilities-based, limited-facilities-based, and resale competitive local exchange and interexchange service.

11. Applicants have demonstrated sufficient technical expertise in telecommunications to meet Commission requirements for approval of this transaction.

12. The proposed transaction will strengthen Wilshire and NTC's competitive position by increasing their access to capital and will combine the market access and expertise of Wilcon and Pamlico Capital.

13. Pursuant to Rule 11.4, Applicants have filed a motion for leave to file confidential materials contained in Exhibits C, D, and E to the application, as well as Exhibit 2 in the response to the February 7, 2012 ALJ request for additional information, under seal.

14. Notice of this application appeared on the Commission Daily Calendar on December 16, 2011.

15. No protests to this application were filed.

16. No hearing is necessary.

Conclusions of Law

1. Under § 854, the Commission must approve any transfer of control of a regulated utility in order to ensure that the transfer is in the public interest and is not adverse to the interests of customers interested in receiving service.

2. The Commission will apply the same requirements to a request for approval of an agreement for the transfer of control of a provider of telecommunications services within California as it does to an initial applicant for authority to provide such services.

3. Applicants have met the Commission's requirements for approval of a transfer of control.

4. This transaction is in the public interest.

5. Applicants' motion to file their Exhibits C, D, and E to the application, as well as Exhibit 2 in the response to the February 7, 2012 ALJ request for additional information, under seal should be granted for two years.

6. Since this matter is uncontested, the decision should be effective on the date it is signed.

O R D E R

IT IS ORDERED that:

1. Pursuant to Public Utilities Code § 854, the joint application of Wilshire Connection, LLC (Wilshire) and its wholly-owned subsidiary NTC Network, LLC, (NTC) for authorization to transfer the control of Wilshire and NTC to Wilcon Holdings, LLC, is approved.

2. Within five days of the closing of the transaction, the companies shall notify the Commission's Communications Division, by letter, of the consummation of the transaction.

3. The joint motion of Wilshire Connection, LLC (Wilshire), NTC Network, LLC (NTC), and Wilcon Holdings, LLC (Wilcon) to file their Exhibits C, D, and E to the application under seal is granted. The motion to file under seal Exhibit 2 in the response to the February 7, 2012 Administrative Law Judge (ALJ) request for additional information is also granted. The information will remain under seal for a period of two years after the date of issuance of this order. During this two-year period, this information may not be viewed by any person other than the assigned Commissioner, the assigned ALJ, the Assistant Chief ALJ, or the Chief ALJ, except as agreed to in writing by Wilshire, NTC, or Wilcon, or their successors in interest, or as ordered by a court of competent jurisdiction. If Wilshire, NTC, or Wilcon, or their successors in interest, believe that it is

necessary for this information to remain under seal for longer than two years, they or their successors in interest may file a new motion at least 30 days before the expiration of this limited protective order.

4. Application 11-12-005 is closed.

This order is effective today.

Dated March 22, 2012, at San Francisco, California.

MICHAEL R. PEEVEY

President

TIMOTHY ALAN SIMON

MICHEL PETER FLORIO

CATHERINE J.K. SANDOVAL

MARK J. FERRON

Commissioners