

Decision 12-05-021 May 24, 2012

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Joint Application of Cox California Telcom, LLC (U5684C) and Cox Communications California, LLC for Transfer of Control of Cox California Telcom, LLC from CoxCom, LLC to Cox Communications California, LLC Through An Internal Corporate Reorganization.

Application 11-09-009
(Filed September 14, 2011)

DECISION APPROVING THE JOINT APPLICATION OF COX CALIFORNIA TELCOM, LLC AND COX COMMUNICATIONS CALIFORNIA, LLC FOR TRANSFER OF CONTROL OF COX CALIFORNIA TELCOM, LLC FROM COXCOM, LLC TO COX COMMUNICATIONS CALIFORNIA, LLC THROUGH AN INTERNAL CORPORATE REORGANIZATION

Summary

This decision grants the joint application of Cox California Telcom, LLC and Cox Communications California, LLC for approval of a transaction in which CoxCom, LLC will transfer control of Cox California Telcom, LLC to Cox Communications California, LLC through an internal corporate reorganization in which Cox Communications California, LLC will acquire direct control of Cox California Telcom, LLC and CoxCom, LLC will acquire direct control of Cox Communications California, LLC.

This proceeding is closed.

1. Parties to the Transaction

Cox California Telcom, LLC (U5684C) (Cox) is a Delaware limited liability company. Cox has two Certificates of Public Convenience and Necessity (CPCN)

and provides local exchange and interexchange services in California.¹ Cox's principal business office is located at 3732 Mt. Diablo Boulevard, Lafayette, CA 94549. Cox Communications California, LLC (Cox CA) is a Delaware limited liability company with its principal business office located at 5651 Copley Drive, San Diego, CA 92111. Cox CA does not provide telecommunications services in or outside of the state and is not regulated by the Commission.² Upon completion of the reorganization, Cox CA will provide cable television and high speed internet services in California.³ CoxCom, LLC (formerly, CoxCom, Inc.) is a Delaware limited liability company. Its principal place of business is 1400 Lake Hearn Dr., Atlanta GA 30319.⁴ CoxCom, LLC is the current parent of Cox and currently provides cable television and high speed internet in California and other states.⁵

2. Proposed Transaction

Under the proposed transaction, Cox will be transferred from CoxCom, LLC to Cox CA pursuant to an internal corporate reorganization within the Cox network of companies. Cox CA will receive CoxCom, LLC's assets and will commence providing the cable television and high speed internet in California

¹ Decision (D.) 06-09-074 granted a CPCN to Cox for local exchange services and D.97-06-027 granted authority to Cox to offer inter and intra LATA services.

² Application (A.) 11-09-009 at 2.

³ *Id.*

⁴ Cox's Supplemental Information, dated January 26, 2012.

⁵ Cox California Telecom, LLC, Cox Communications California, LLC and CoxCom, LLC are jointly referred to as the Applicants.

that Cox Com, LLC currently provides. Cox CA will provide services in California only.⁶

The Applicants represent that the corporate reorganization, set forth in the proposed transaction, is intended to align Cox's various lines of business with a single corporate entity operating only in California.⁷ Cox California Telecom only operates in California. The proposed corporate reorganization will duplicate that telecommunications structure with respect to cable television and high speed internet in California. The Applicants assert that the proposed structure will streamline the administrative filings that CoxCom, LLC is currently required to and that Cox CA will be required to file on a going forward basis.⁸ Applicants believe that streamlined filings and a corresponding reduction in paper work will reduce operational burdens, benefiting their customers and shareholders.

3. Discussion

The CPCNs currently held by Cox will not be transferred, nor will any of its assets or customers. The proposed transaction will not modify or impact the financial condition of Cox and there will not be any change in Cox's officers or its operations as a result of the reorganization.⁹ The only change will be the insertion of Cox CA as the direct parent of Cox. Thus we need not apply the

⁶ Cox's Supplemental Information, dated December 14, 2011.

⁷ *Id.*

⁸ *Id.* at 2.

⁹ A.11-0-009 at 1.

Commission's criteria for determining whether a CPCN should be granted, or transferred.

Cox currently provides telecommunications services in California and will retain sufficient experience and expertise for continued operations post transfer of control. In addition, the ultimate ownership of Cox will remain the same. The proposed structure of this transaction will streamline the administrative filings that CoxCom, LLC is required to and that Cox CA will be required to file on a going forward basis. The streamlined filings and the corresponding reduction in paper work will reduce operational burdens. The transaction will be transparent to customers and the public.

Where 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 a CPCN. In this case, Cox CA will be an intermediate owner of Cox with ultimate ownership of Cox being retained by CoxCom, LLC and its parent Cox Communications, Inc.¹⁰

The instant application includes financial statements¹¹ and other evidence that demonstrates that the Applicants and Cox Communications, Inc. have sufficient resources to meet the Commission's financial requirements.

Applicants have indicated that Cox's current management will not change. We find the proposed transfer to meet the Commission's requirements; therefore, we authorize these transfers.

¹⁰ A.11-09-009, Exhibit B.

¹¹ *Id.*, Exhibit C (Confidential).

3. Protest

On October 20, 2011, the Greenlining Institute (Greenlining) filed a protest to the Application. In its protest, Greenlining states that it has insufficient information to form an opinion on the Applicants' assertion that the reorganization will not result in adverse consequences. Greenlining asserts that the proposed reorganization misses the opportunity for greater positive outcomes by failing to address the impact of the transfer on the Applicants' supplier diversity efforts and reporting structure in conformance with the Commission's General Order (GO) 156.¹² Greenlining recommends that the Commission withhold approval of the transaction unless the Applicants more directly comport with GO 156.¹³

Greenlining admits that as a provider of cable, broadband and wireless service in California, the Applicants are not subject to the reporting requirements of GO 156.¹⁴ Greenlining argues that the California Legislature encourages cable and satellite providers to voluntarily adopt supplier diversity plans.¹⁵ Greenlining acknowledges that Applicants have a supplier diversity program through their parent company, Cox Communications, Inc. and that they are "on the right track and...committed to supplier diversity."¹⁶ However, Greenlining

¹² Greenlining Protest at 1.

¹³ *Id.*

¹⁴ *Id.* at 2.

¹⁵ *Id.*

¹⁶ *Id.*

asserts, the Applicants differ from the GO 156 standards in a few critical ways largely centered on measurement and reporting.¹⁷

On October 31, 2011, Applicants filed a reply to the Greenlining protest. Applicants argue that there is no legal basis for the protest because, as Greenlining admits, GO 156 does not apply to the unregulated Cox entities.¹⁸ The Applicants argue that, after the reorganization, they will remain subsidiaries of CoxCom, LLC and Cox Communications, Inc. Applicants point out that the proposed transaction will not cause any change in their officers or operations; in their legal ownership or actual control nor in the Commission's regulatory oversight.¹⁹ The only change that will result from the reorganization is that Cox CA will become a direct parent of Cox.²⁰

On February 21, 2012, the assigned Commissioner issued a Scoping Memo and Ruling denying the Greenlining protest finding that it was outside of the scope of the proceeding.²¹

¹⁷ *Id.*

¹⁸ Reply to Protest at 1.

¹⁹ *Id.* at 3.

²⁰ *Id.*

²¹ The Commission nevertheless encourages Cox to develop a third-party certification process for their diverse suppliers, and to isolate its California-specific diverse procurement spend.

4. Determination

Pursuant to Pub. Util. Code § 852,²² 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. In addition, § 854 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.)

For the above reasons, the transaction is in the public interest and we will grant the application pursuant to §§ 852 and 854.

5. Categorization and Need for Hearings

In Resolution ALJ 176-3281, dated September 22, 2011, the Commission preliminarily categorized this application as ratesetting, and preliminarily determined that hearings were not necessary. On October 20, 2011 the Greenlining Institute filed a protest to the Application. On February 21, 2012, the assigned Commissioner issued a Scoping Memo and Ruling denying the Greenlining protest finding that it was outside of the scope of the proceeding. There is no apparent reason why the application should not be granted. Given

²² All Code references are to the Public Utilities Code, unless otherwise stated.

these developments, a public hearing is not necessary, and it is not necessary to disturb the preliminary determinations.

6. Comment on Proposed Decision

The proposed decision of Administrative Law Judge (ALJ) Colbert in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were filed by the Applicants on April 23, 2102, no reply comments have been received. Minor corrections and clarifications in response to the comments are incorporated in the decision.²³

7. Assignment of Proceeding

Mark J. Ferron is the assigned Commissioner and W. Anthony Colbert is the assigned ALJ in this proceeding.

8. Request to File Under Seal

Pursuant to Rule 11.4, Applicants have filed a motion for leave to file Exhibit C to the application as confidential material under seal. 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.

Findings of Fact

1. Cox is a Delaware limited liability company.
2. Cox CA is a Delaware limited liability company.
3. CoxCom, LLC is a Delaware limited liability company
4. Cox has a CPCN and provides local exchange and interexchange services in California.

²³ A non-substantive footnote (#23) was added by the Commission's own initiative.

5. CoxCom, LLC is the current parent of Cox and currently provides cable television and high speed internet in California and other states.

6. As a result of this transaction, Cox will be transferred from CoxCom, LLC to Cox CA pursuant to an internal corporate reorganization within the Cox network of companies.

7. As a result of the internal corporate reorganization, Cox CA will receive a transfer of CoxCom, LLC's California based assets and will be providing cable television and high speed internet services to California consumers.

8. The corporate reorganization, set forth in the proposed transaction, is intended to align Cox's various lines of business with a single corporate entity operating only in California.

9. As a result of this transaction, Cox CA will be an intermediate owner of Cox with ultimate ownership of Cox being retained by CoxCom, LLC and its parent, Cox Communications, Inc.

10. The operations, finances, and management of Cox will be unaffected by this transaction.

11. The proposed transaction will streamline the administrative filings that CoxCom, LLC is required to and that Cox CA will be required to file on a going forward basis.

12. Applicants have provided financial statements that demonstrate that they and Cox Communications, Inc., have sufficient resources to meet the Commission's financial requirements.

13. On October 20, 2011, Greenlining filed a protest to the Application.

14. On October 31, 2011, Applicants filed a reply to the Greenlining protest, arguing that it had no legal basis.

15. On February 21, 2012, the assigned Commissioner issued a Scoping Memo and Ruling denying the Greenlining protest finding that it was outside of the scope of the proceeding.

16. Pursuant to Rule 11.4, Applicants filed a motion for leave to file Exhibit C to the application under seal.

17. Notice of this application appeared on the Commission's Daily Calendar on September 20, 2011. There was one protest to this application.

18. No hearings are necessary.

Conclusions of Law

1. The Commission will apply the same requirements to a request for approval of an agreement for the transfer of control of providers of non-dominant resale local exchange and inter- and intra-LATA telecommunications services within California as it does to an initial applicant for authority to provide such services.

2. The CPCNs currently held by Cox will be retained.

3. Cox CA will be an intermediate owner of Cox with ultimate ownership of Cox being retained by CoxCom, Inc. and its parent, Cox Communications, Inc; the management and ultimate shareholder control of the companies will remain the same; and each company will have the required financial resources; as a result, this transaction meets the Commission's requirements for issuance of a CPCN to provide non-dominant resale local exchange and inter- and intra-LATA telecommunications services within California.

4. The Greenlining protest is outside of the scope of this proceeding.

5. This transaction is in the public interest.

6. Applicants' motion to file their Exhibit C to the application under seal should be granted for two years.

7. The decision should be effective immediately.

O R D E R

IT IS ORDERED that:

1. Pursuant to Pub. Util. Code §§ 852 and 854, the joint Application of Cox California Telcom, LLC and Cox Communications California, LLC for transfer of control of Cox California Telcom, LLC from CoxCom, LLC to Cox Communications California, LLC through an internal corporate reorganization is approved.
2. Within five days of the closing of the transaction, the surviving entities shall notify the Communications Division, by letter, of the consummation of the transaction.
3. The Assigned Commissioner's Scoping Memo and Ruling denying the Greenlining Institute protest is affirmed.
4. Cox California Telcom, LLC and Cox Communications California, LLC's request to file Exhibit C under seal is 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 will remain under seal and may not be viewed by any person other than the assigned Commissioner, the assigned Administrative Law Judge, the Assistant Chief Administrative Law Judge, or the Chief Administrative Law Judge, except as agreed to in writing by Cox California Telcom, LLC and Cox Communications California, LLC, or their successors in interest, or as ordered by a court of competent jurisdiction. If Cox California Telcom, LLC and Cox Communications California, LLC, or their successors in interest, believe that it is necessary for this information to remain under seal for longer than two years, Cox California Telcom, LLC and

Cox Communications California, LLC, or their successors in interest may file a new motion at least 30 days before the expiration of this limited protective order.

5. Application 11-09-009 is closed.

This order is effective today.

Dated May 24, 2012, at San Francisco, California.

MICHAEL R. PEEVEY

President

TIMOTHY ALAN SIMON

MICHEL PETER FLORIO

CATHERINE J.K. SANDOVAL

MARK J. FERRON

Commissioners