

Decision 02-07-042 July 17, 2002

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Emergency Joint Application of Western Integrated Networks of California Operating LLC (U-6299-C) and SureWest TeleVideo for Expedited Ex Parte Approval of the Assignment of Assets and Authorization to Provide Telecommunications Services.

Application 02-06-029
(Filed June 20, 2002)

O P I N I O N

Summary

This decision grants the joint application of Western Integrated Networks of California Operating LLC (WINCO) and SureWest TeleVideo (SureWest) for approval for SureWest to acquire the assets, customer base, and certificates of public convenience and necessity (CPCNs) of WINCO.

Parties to the Transaction

WINCO is a Delaware limited liability company. Its principal place of business is located at 4601 DTC Boulevard, Suite 450, Denver, Colorado 80237. By Decision (D.) 00-01-031 and D.00-03-047, WINCO was granted CPCNs to operate in California as a limited facilities-based and resale provider of interexchange services (U-6299-C), and local exchange services (U-6324-C), respectively. WINCO's ultimate parent is Western Integrated Networks, LLC.

SureWest is a California corporation. Its principal place of business is located at 211 Lincoln Street, Roseville, California 95678. SureWest was formed for the purpose of receiving the assets, operating authorities and customer base that are the subject of this application. It is a subsidiary of SureWest

Communications that, in turn, is the parent of Roseville Telephone Company and other regulated and non-regulated entities.

Proposed Transaction

WINCO, along with its affiliates and its parent, filed for bankruptcy on March 11, 2002 under Chapter 11 of the United States Bankruptcy Code in the United States District Court for the District of Colorado (Bankruptcy Court). The applicants have asked the Bankruptcy Court to approve the proposed transaction whereby WINCO's assets, customer base, and CPCNs will be acquired by SureWest.

The applicants represent that the transaction will be transparent to customers. Customers will continue to receive service under the same rates, terms and conditions, subject to any subsequent changes SureWest may make, in accordance with the Commission's requirements, after the transaction is approved. The applicants say that, absent the proposed acquisition, customers' service would likely be interrupted because of the bankruptcy. In addition, customers will receive notification of the transaction as required by the Commission.

Discussion

Pub. Util. Code § 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 this and related sections is to enable the Commission, before any transfer of public utility property 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 which does not possess a CPCN desires to acquire control of a company which 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 WINCO possesses CPCN's to operate as a limited facilities-based and resale provider of local exchange and interexchange telecommunications services within California, we will apply the requirements for such authority to SureWest.

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 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.

SureWest provided a guarantee by SureWest Communications that demonstrates that it has sufficient resources to meet our financial requirements. It also provided information on its management that demonstrates that it has sufficient knowledge and experience to satisfy our requirements.

Absent the proposed acquisition, customers' service would likely be interrupted because of the bankruptcy. The proposed acquisition is intended to avoid such interruption. Therefore, the proposed transaction is not adverse to the public interest.

As discussed above, the applicant has satisfied our financial and experience requirements, and the proposed transaction is not adverse to the public interest. Therefore, we will grant the application.

Procedural Matters

In Resolution ALJ 176-3090, dated June 27, 2002, the Commission preliminarily categorized this application as ratesetting, and preliminarily determined that hearings were not necessary. No protests have been received. Therefore, a public hearing is not necessary, and it is not necessary to alter the preliminary determinations.

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

Findings of Fact

1. By D.00-01-031 and D.00-03-047, WINCO was granted CPCNs to operate in California as a limited facilities-based and resale provider of interexchange services, and local exchange services, respectively.
2. WINCO, its parent and its affiliates filed for bankruptcy on March 11, 2002 under Chapter 11 of the United States Bankruptcy Code.
3. The proposed transaction is subject to approval by the Commission and the Bankruptcy Court.
4. As a result of the proposed transaction, WINCO's assets, customer base, and CPCNs will be acquired by SureWest.
5. Absent the proposed acquisition, customers' service would likely be interrupted because of the bankruptcy.
6. SureWest has sufficient financial resources to meet the Commission's requirements to provide facilities-based and resold local exchange and interexchange services.

7. SureWest possesses the necessary technical expertise required by the Commission.

8. Notice of this application appeared on the Commission's Daily Calendar on June 24, 2002.

9. There were no protests to this application.

10. No hearings are necessary.

Conclusions of Law

1. The Commission will 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. SureWest meets the Commission's requirements for the issuance of a CPCN to provide facilities-based and resold local exchange and interexchange telecommunications services.

3. The acquisition of WINCO by SureWest is not adverse to the public interest.

4. In order to avoid delaying this transaction, the approval of the application should be made effective immediately.

O R D E R

IT IS ORDERED that:

1. Pursuant to Public Utilities Code Section 854, the joint application of Western Integrated Networks of California Operating LLC (WINCO) and SureWest TeleVideo (SureWest) for approval for SureWest to acquire the assets, customer base, and the certificates of public convenience and necessity of WINCO is approved.

2. This application is closed.

This order is effective today.

Dated July 17, 2002, at San Francisco, California.

LORETTA M. LYNCH

President

HENRY M. DUQUE

CARL W. WOOD

GEOFFREY F. BROWN

MICHAEL R. PEEVEY

Commissioners