

Decision 03-04-044 April 17, 2003

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of Local Gateway Exchange, Inc. and Telephone Service Incorporated Which Will do Business in California as Friendlylec for Approval of an Order Approving Sale of Licenses and Bill of Sale and to Transfer the Certificate of Local Gateway Exchange, Inc., an NDIEC Operating in California, to Telephone Service Incorporated dba Friendlylec.

Application 02-12-003
(Filed December 4, 2002)

OPINION AUTHORIZING TRANSFER OF ASSETS

Summary

This decision grants the joint application Local Gateway Exchange, Inc. (LGE) and Telephone Service Incorporated (TSI), which will do business in California as Friendlylec, for approval of the acquisition of the assets of LGE, including its Certificate of Public Convenience and Necessity (CPCN), by TSI.

Parties to the Transaction

LGE is a Texas corporation authorized to do business in California. Its principal place of business is located at 700 N. Pearl Street, Suite 200, Dallas, Texas 75201. By Decision (D.) 99-07-036 and D.99-12-048, LGE was granted a CPCN to operate in California as a limited facilities-based and resale provider of local exchange services and interexchange services.

TSI is a Delaware corporation authorized to do business in California. Its principal place of business is located at 4935 Victor Street, Dallas, Texas 75214. It does not operate as a public utility in any state.

Proposed Transaction

LGE filed for bankruptcy in the United States Bankruptcy Court for the Northern District of Texas, Dallas Division (Court) on November 5, 2001. On September 19, 2002, the Court issued an order approving the sale of LGE's licenses and intellectual property to TSI. On September 25, 2002, the bankruptcy trustee for LGE (trustee) signed a bill of sale of LGE's licenses and intellectual property to TSI. The trustee and TSI verbally agreed that TSI would not operate under any state authorizations, including its California CPCN, until commission authorizations were obtained. The actual transfer would not be closed for regulatory purposes until such authorizations were obtained. LGE has no current customers. TSI has not operated in California, and will not do so until it has authorization.

The applicants represent that the transaction will provide a more solid financial base for continued operations. The applicants also represent that there will be no change in rates, terms, and conditions as a result of the transaction.

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 that does not possess a CPCN desires to acquire the CPCN 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 whose CPCN is being acquired. Since LGE possesses a CPCN 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 TSI.

The Commission has established two major criteria for determining whether a CPCN should be granted. An applicant who desires to operate as a limited 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, it must demonstrate that it has enough cash or cash equivalent to cover any deposits that may be required by other carriers in order to provide the proposed services. The applicant is also required to make a reasonable showing of technical expertise in telecommunications or a related business.

TSI provided a guarantee by its president and chief executive officer that demonstrates that it has sufficient resources to meet our financial requirements. TSI also provided information on its management that demonstrates that it meets our technical expertise requirement.

Since LGE has no current customers, there will be no effect on customers due to the proposed transaction. However, the transaction will provide a more solid financial base for continued operations. In addition, potential customers will be offered service under the same rates, terms, and conditions after the transaction is approved. Therefore, the proposed transaction is in the public interest.

As discussed above, TSI 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 176-3103, dated December 17, 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.

Assignment of Proceeding

Carl W. Wood is the Assigned Commissioner and Jeffrey P. O'Donnell is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. By D.99-07-036 and D.99-12-048, LGE was granted a CPCN to operate in California as a limited facilities-based and resale provider of local exchange and interexchange services.
2. As a result of the transaction, TSI will own the CPCN and intellectual assets of LGE.
3. LGE has no customers.
4. There will be no change in rates, terms, or conditions of service due to the proposed transaction.

5. TSI has sufficient financial resources to meet the Commission's requirements to provide facilities-based and resold local exchange and interexchange services

6. TSI possesses the necessary technical expertise required by the Commission.

7. Notice of this application appeared on the Commission's Daily Calendar on December 6, 2002.

8. There were no protests to this application.

9. No hearings are necessary.

Conclusions of Law

1. In a situation where a company that does not possess a CPCN desires to acquire the CPCN 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 whose CPCN is being acquired.

2. TSI meets the Commission's requirements for the issuance of a CPCN to provide limited facilities-based and resold local exchange and interexchange telecommunications services.

3. The transaction is in 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 Pub. Util. Code § 854, the joint application of Local Gateway Exchange, Inc. (LGE) and Telephone Service Incorporated (TSI), which will do

business in California as Friendlylec, for approval of the acquisition of the intellectual assets of LGE, including its Certificate of Public Convenience and Necessity, by TSI is approved.

2. TSI shall file tariffs reflecting the acquisition approved herein. The tariffs shall be effective not less than one day after approval by the Commission's Telecommunications Division. TSI shall not offer service to customers until its tariffs are effective, and shall comply with its tariffs.

3. TSI shall comply with all applicable rules adopted in the Local Exchange Competition proceeding (Rulemaking 95-04-043/Investigation 95-04-044), the Commission's rules and regulations for non-dominant interexchange carriers set forth in Decision (D.) 93-05-010 and D.90-08-032, as well as all other applicable Commission rules, decisions, General Orders, and statutes that pertain to California public utilities, subject to the exemptions granted in D.99-07-036 and D.99-12-048.

4. This application is closed.

This order is effective today.

Dated April 17, 2003, at San Francisco, California.

MICHAEL R. PEEVEY
President
CARL W. WOOD
LORETTA M. LYNCH
GEOFFREY F. BROWN
SUSAN P. KENNEDY
Commissioners