

Decision 03-10-004 October 2, 2003

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
ITC^DeltaCom Communications, Inc. d/b/a
ITC^DeltaCom for Authority to Transfer Stock.

Application 03-07-006
(Filed July 8, 2003)

OPINION GRANTING INDIRECT TRANSFER OF CONTROL

1. Summary

This decision grants Application (A.) 03-07-006 for Welsh, Carson, Anderson & Stowe VIII, L.P., WCAS Capital Partners III, L.P., and WCAS Information Partners, L.P. (collectively, "Welsh Carson") to acquire indirect control of ITC^DeltaCom Communications, Inc. (DeltaCom).

2. Background

DeltaCom is a wholly owned subsidiary of Interstate FiberNet, Inc. (IFN) which in turn is wholly owned by ITC, a corporation with its headquarters at 1791 O.G. Skinner Drive, West Point, Georgia 31833. DeltaCom is an Alabama corporation authorized to do business in the State of California. Its principal place of business is 4092 South Memorial Parkway, Huntsville, Alabama 35802. We granted DeltaCom a Certificate of Public Convenience and Necessity (CPCN) to resell inter-Local Access and Transport Area (LATA) and intra-LATA services in the State of California in Decision (D.) 97-05-026, dated May 6, 1997.

Welsh Carson is a private equity investment firm and limited partnership with managerial and financial expertise in the field of telecommunications. Welsh Carson presently owns 49.3% of the outstanding common shares of ITC,

representing 40.1% of the voting interest in ITC common stock outstanding on a fully diluted basis, assuming the conversion or exercise of all preferred stock, warrants, options, and other rights to acquire ITC's common stock. Following the transaction, Welsh Carson will own shares representing 59% of the voting interest in ITC common stock on a fully diluted basis.

3. Requested Authority

On July 8, 2003, Applicants filed this application requesting approval of an indirect transfer of control of DeltaCom to Welsh Carson. The proposed transaction is a private equity financial transaction wherein Welsh Carson will increase its existing ownership interest in DeltaCom's indirect parent, ITC. Pursuant to the proposed transaction, Welsh Carson debt and equity interests in BTI Telecom Inc. (BTI), a wholly owned subsidiary of DeltaCom, will be exchanged for shares of common stock in ITC, and Welsh Carson will invest an additional \$35 million in DeltaCom. Because the proposed transaction increases Welsh Carson's ownership interest in DeltaCom to more than 50%, the transaction results in the indirect transfer of control of DeltaCom.

Applicants state that the proposed transaction will enable DeltaCom to access funds that are critically needed to maintain and expand its service and operations. They contend that the transaction will not cause any changes to the current management or operations of DeltaCom and will be seamless and transparent to DeltaCom customers in California. Following the indirect transfer of control of DeltaCom's parent company to Welsh Caron, DeltaCom will continue to offer its current services with no changes in the rates, terms or conditions of service. There were no protests to the application.

4. Discussion

Applicants request authority under Pub. Util. Code §§ 851 through 854 for Welsh Carson to indirectly acquire control of DeltaCom through an equity financing transaction with DeltaCom's parent, ITC. Section 854(a) states, in relevant part, as follows:

No person or corporation...shall merge, acquire, or control...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 Commission has broad discretion to determine if it is in the public interest to authorize a transaction pursuant to § 854(a).¹ The primary standard used by the Commission to determine if a transaction should be authorized under § 854(a) is whether the transaction will adversely affect the public interest.² The Commission may also consider if the transaction will serve the public interest.³ Where necessary and appropriate, the Commission may attach conditions to a transaction in order to protect and promote the public interest.⁴

¹ D.95-10-045, 1995 Cal. PUC LEXIS 901, *18-19; and D.91-05-026, 40 CPUC 2d 159, 171.

² 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 CPUC 2d 601, 609; D.70829, 65 CPUC 637, 637; and D.65634, 61 CPUC 160, 161.

³ 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 CPUC 2d 851, 861; D.95-10-045, 62 CPUC 2d 160, 167; D.94-01-041, 53 CPUC 2d 116, 119; D.93-04-019, 48 CPUC 2d 601, 603; D.86-03-090, 1986 Cal. PUC LEXIS 198 *28 and COL 3; and D.8491, 19 CRC 199, 200.

⁴ D.95-10-045, 62 CPUC 2d 160, 167-68; D.94-01-041, 53 CPUC 2d 116, 119; D.90-07-030, 1990 Cal. PUC LEXIS 612 *5; D.89-07-016, 32 CPUC 2d 233, 242; D.86-03-090, 1986 Cal. PUC LEXIS 198 *84-85 and COL 16; and D.3320, 10 CRC 56, 63.

For the following reasons, we conclude that it is reasonable to grant this application for authority under § 854(a) for Welsh Carson to acquire indirect control of DeltaCom. First, there will be no change to rates, services, or operations of DeltaCom as a result of the transaction. Thus, DeltaCom's customers and the public will not be harmed by the change in control of its parent company. Second, Applicants have provided information indicating that Welsh Carson's management has the telecommunications experience and technical, managerial, and financial qualifications necessary to exercise control over DeltaCom. Third, the public may benefit from the indirect transfer of control to the extent the transaction enhances DeltaCom's ability to maintain and expand its services and operations in California. Fourth, there is no opposition to this application. For these reasons, we see no reason to withhold authority for the transfer of control before us here.

5. Category and Need for Hearing

In Resolution ALJ 176-3117, dated August 18, 2003, 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. Accordingly, pursuant to Pub. Util. Code § 311(g)(2), the otherwise applicable 30-day period for public review and comment is being waived.

7. Assignment of Proceeding

Geoffrey F. Brown is the Assigned Commissioner and Karl J. Bemederfer is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. DeltaCom is a provider of interLATA and intraLATA telecommunications services in California.
2. On July 8, 2003, DeltaCom filed A.03-07-006 for authority to transfer indirect control of DeltaCom to Welsh Carson.
3. Pub. Util. Code § 854(a) requires Commission authorization to transfer control of a public utility. Any transfer of control without Commission authorization is void under the statute.
4. Welsh Carson has the technical, managerial, and financial qualifications necessary to exercise indirect control of DeltaCom.
5. Applicants state that there will be no change in the management or operations of DeltaCom as a result of its indirect transfer to Welsh Carson.

Conclusions of Law

1. This is a ratesetting proceeding and no hearing is necessary.
2. A.03-07-006 should be approved because it is not adverse to the public interest and the public may benefit from DeltaCom's ability to maintain and expand its services and operations in California.

O R D E R

IT IS ORDERED that:

1. Application (A.) 03-07-006, for authority under Pub. Util. Code § 854(a) to transfer control of ITC^DeltaCom Communications, Inc. (DeltaCom) to Welsh, Carson, Anderson & Stowe VIII, L.P., WCAS Capital Partners III, L.P., and WCAS Information Partners, L.P. (Welsh Carson) is granted.
2. DeltaCom and Welsh Carson shall notify the Director of the Commission's Telecommunications Division in writing of the transfer of control, as authorized

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herein, within 10 days of this order. A true copy of the instrument(s) of transfer shall be attached to the notification.

3. Application 03-07-006 is closed.

This order is effective today.

Dated October 2, 2003, at San Francisco, California.

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

Commissioner Susan P. Kennedy, being necessarily
absent, did not participate.