Decision 04-09-005 September 2, 2004

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of Reduced Rate Long Distance, LLC for Authority to Transfer Membership Interest. (U-6549-C).	Application 04-05-034 (Filed May 18, 2004)

OPINION AUTHORIZING TRANSFER OF CONTROL AND IMPOSING A FINE

TABLE OF CONTENTS

OPINION

1. Summary

This opinion grants Application (A.) 04-05-034 to the extent it requests prospective authority under Pub. Util. Code § 854(a)[1] to transfer indirect control of Reduced Rate Long Distance, LLC (RRLD) from David Butler and the BSM Family Limited Partnership (BSM) to the Dominion Business Group, Inc. (Dominion). The Application is denied to the extent it requests retroactive authority for the transfer. This opinion also requires RRLD to pay a fine of $5,000 for violating Section 854(a).

2. Parties to the Transaction

RRLD is a Nevada company that is authorized to provide interexchange telecommunications services in California pursuant to Decision (D.) 01-06-047.[2] RRLD has a certificate of authority from the California Secretary of State to transact business in California.

RRLD is wholly owned by Visia Communications, LLC (Visia), which is a Nevada company. Visia is jointly owned by David Butler and BSM. Butler is an individual who resides in Florida. BSM is a Nevada limited partnership.

Dominion is a Nevada corporation that is wholly owned by Robert Sorrentino. Sorrentino is an individual who resides in New Jersey.[3]

---

[1] All statutory references are to the Public Utilities Code unless otherwise indicated.

[2] Applicants represent that RRLD is authorized to provide long-distance telecommunications services in 47 states.

[3] See email from Applicants' counsel dated August 9, 2004.

3. The Application

Application 04-05-034 was jointly filed on May 18, 2004, by RRLD, Visia, David Butler, and BSM (collectively, "the Applicants"). Notice of A.04-05-034 appeared in the Commission's Daily Calendar on May 24, 2004. There were no protests or other responses to the Application.

Application 04-05-034 requests authority under Section 854(a) for Dominion to purchase Visia from Butler and BSM, including Visia's ownership interest in RRLD. The Applicants represent that will be no changes to the rates, terms, or conditions of service provide by RRLD, and that RRLD will retain its assets, property, and personnel. In addition, the phone numbers for customer service, billing inquiries, and liaison with Commission staff will stay the same.

The Applicants submit that it is in the public interest to approve A.04-05-034. According to the Applicants, the transaction will strengthen the financial status of Visia, which will enhance RRLD's ability to offer a broader range of products and services to the public.

4. The Amendment to the Application

The Applicants filed an amendment to A.04-05-034 on June 29, 2004, pursuant to a ruling issue by the assigned Administrative Law Judge (ALJ) on June 4, 2004. Notice of the amendment appeared in the Daily Calendar on July 1, 2004. There were no protests or other responses to the amendment.

The amendment provided the following information in response to the ALJ ruling. First, to demonstrate that Dominion is financially and technically qualified to assume indirect control of RRLD, the amendment contained (1) a bank statement that shows Dominion has at least $25,000 of cash, (2) an assertion that Dominion has sufficient additional financial resources to cover all deposits required by other telecommunications carriers, and (3) the qualifications of two of Dominion's key personnel (*i.e.*, Robert Sorrentino and Christine M. Stein).

Second, to demonstrate that Dominion is fit to assume indirect control of RRLD, the amendment provided the following information:

- Robert Sorrentino, the owner of Dominion, previously owned of Nationwide Telecom, Inc., a telecommunications carrier that went bankrupt. The Applicants assert that the bankruptcy was the result of a contractual dispute and not mismanagement.
- With respect to RRLD, Visia, Dominion, or any affiliate, officer, director, partner, or owner of more than 10% of any of these entities, the Applicants assert that they are not aware of (1) any complaints against these persons or entities alleging fraud or significant wrongdoing that have been decided by, or are currently pending at, the Commission, the Federal Communications Commission (FCC), or other state commissions; (2) any sanctions against these persons or entities imposed by the Commission, the FCC, or other state commissions for failure to comply with any regulatory statute, rule, or order; or (3) any current investigations or any finding of criminal liability against these persons or entities for a violation of Section 1700 *et seq.*, of the Cal. Business and Professions Code that involved misrepresentations to consumers.

Third, to demonstrate that approval of A.04-05-034 will not have a significant effect on the environment, the amendment states that the indirect transfer of control of RRLD will not result in any new construction or changes in (i) operations, or (ii) the use of existing property or facilities.

Finally, the Applicants admit in the amendment that the indirect transfer of control of RRLD occurred "in early 2004" without Commission authorization. As required by the ALJ ruling, the amendment provided certain information useful for determining whether, and to what extent, RRLD should be fined for the unauthorized transfer of control.

5. Regulatory Information Regarding the Parties to the Transaction

Commission staff reports that RRLD is current in its remittance of the various regulatory fees that it is required to collect from its customers. Commission staff also reports that one informal complaint (IC) was filed against RRLD during the last two years. The IC alleged slamming and was filed in June 2002. RRLD denied the allegation. The IC was closed by staff in September 2002 after RRLD refunded the disputed amount.

The Lexis database of decisions issued by the FCC and other state commissions was searched for the names of the parties to the transaction. This search found four slamming complaints filed by individual consumers at the FCC against RRLD.[4] Three of the complaints were found to have merit. The search also found that Nationwide Telecom, Inc., which was owed by Dominion's president, did not timely file its 1998 annual report at the Illinois Commerce Commission.[5]

6. Discussion

A. Approval Pursuant to Section 854(a)

Application 04-05-034 is subject to Section 854(a), which states, in relevant part, as follows:

> No person or corporation…shall merge, acquire, or control…any public utility…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.

---

[4] 2004 FCC Lexis 2171; 2003 FCC Lexis 3646; 2003 FCC Lexis 2769; and 2003 FCC Lexis 2386.

[5] 1999 Ill. PUC Lexis 858.

The Commission has broad discretion to determine if a transaction should be authorized pursuant to Section 854(a). The primary standard used by the Commission is whether the transaction will adversely affect the public interest. The Commission may also consider if the transaction will serve the public interest. Where necessary and appropriate, the Commission may attach conditions to a transaction in order to protect and promote the public interest.[6]

The Commission uses several criteria to decide if a transaction should be authorized pursuant to Section 854(a). The first criterion concerns the nature and merit of any protests to the proposed transaction.[7] There were no protests in this proceeding. Accordingly, this criterion has been met.

The second criterion is whether the person or entity acquiring a public utility has adequate financial resources to operate the utility. The specifics of this criterion vary depending on the circumstances of the acquirer and the utility being acquired. In this case, Dominion must demonstrate that it has (1) a minimum of $25,000 in cash or cash equivalent, and (2) sufficient additional financial resources to cover all deposits required by other telecommunications carriers in order to provide service in California.[8] Dominion provided information that demonstrates it satisfies this criterion.

The third criterion is whether the person or entity acquiring a public utility has sufficient business and technical expertise to operate the utility.[9] To satisfy this requirement, Dominion provided the following information regarding two of its key personnel:

---

[6] D.04-04-017, *mimeo.*, p. 3.

[7] D.01-12-012, 2001 Cal. PUC Lexis 1132, *4, and D.01-08-051, 2001 Cal. PUC Lexis 508, *6.

[8] D.97-12-078, 1997 Cal. PUC Lexis 1197, *6; and D.93-10-010, 49 CPUC 2d 197, 208.

[9] D.93-10-010, 49 CPUC 2d 197, 206.

> **<u>Robert Sorrentino, President</u>**: Mr. Sorrentino has both managed and acted as a consultant to operator service providers, payphone providers, long-distance carriers, and local exchange carriers. His business experience in the telecommunications industry includes contract negotiation, network services, provisioning, back office support, billing and collections, customer support, data systems, and day-to-day operations.
>
> **<u>Christine M. Stein, Secretary and Regulatory Director</u>**: Ms. Stein's business experience includes review and preparation of tax returns for corporations and partnerships. She also has experience in marketing, finance, and human resources.

The sufficiency of expertise may also be determined, in part, by whether anyone associated with the acquirer was previously connected with a company that filed for bankruptcy or went out of business.[10] In this case, the owner of Dominion, Robert Sorrentino, previously owned Nationwide Telecom, Inc., a telecommunications carrier that went bankrupt. The Applicants assert that the bankruptcy was the result of a contractual dispute and not mismanagement. Our search of Lexis found no indication that ratepayers or other telecommunications carriers were harmed by the bankruptcy. Based on the information provided by the Applicants and our search of Lexis, we conclude that Dominion has sufficient expertise to operate RRLD proficiently.

The fourth criterion is whether the parties to the proposed transaction have complied with regulatory and statutory requirements in California and other jurisdictions.[11] The record of this proceeding reveals three instances of noncompliance. First, the FCC has granted three slamming complaints against

[10] D.93-10-010, 49 CPUC 2d 197, 206.

[11] D.03-08-079, 2003 Cal. PUC Lexis 418, *17; and D.02-12-001, 2002 Cal. PUC Lexis 845, *9.

RRLD.[12] Second, Nationwide Telecom, Inc., which was owed by Dominion's president, did not timely file its 1998 annual report at the Illinois Commerce Commission. Finally, this opinion finds, *infra*, that RRLD violated Section 854(a). We find these instances of noncompliance, while serious, do not warrant the denial of A.04-05-034.

The fifth criterion is whether the proposed transaction will adversely affect the provision of service to the public.[13] The Applicants represent that the proposed transaction will not affect RRLD's rates, terms, or conditions of service. Based on this representation, we find that this criterion has been satisfied.

The final criterion is whether the transaction will benefit the public interest.[14] We find that the public may benefit from the indirect transfer of control of RRLD to the extent the transaction enhances RRLD's ability to improve and expand its services in California. In addition, California derives substantial benefits from the services provided by nondominant utilities. Thus, it is in the public interest to foster a business climate in California that is hospitable to such utilities. Accordingly, ordinary business transactions by nondominant utilities that are subject to Section 854(a), like the transaction before us here, should be approved absent a compelling reason to the contrary. No such reason has been alleged or shown in this proceeding.

For all of the preceding reasons, we conclude that it is reasonable to grant A.04-05-034 to the extent it requests prospective authority under Section 854(a) for the indirect transfer of control of RLLD from David Butler and BSM to

---

[12] One informal complaint alleging slamming was filed at the Commission. The complaint was resolved when RRLD refunded the disputed amount without admitting guilt.

[13] D.03-06-048, 2003 Cal. PUC Lexis 352, *7; and D.03-02-057, 2003 Cal. PUC Lexis 131, *5.

[14] D.04-04-017, *mimeo.*, p. 3.

Dominion. However, we deny A.04-05-034 to the extent it requests retroactive authority for the transfer. The purpose of Section 854(a) 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.[15] Granting A.04-05-034 on a retroactive basis would thwart the purpose of Section 854(a). Since we do not grant retroactive authority, the transaction is void under Section 854(a) for the period of time prior to the effective date of this Opinion. The parties to the transaction are at risk for any adverse consequences that may result from their having implemented the transfer of control without Commission authorization.

B. Penalty for Violating Section 854(a)

The Applicants and Dominion[16] violated Section 854(a) by transferring indirect control of RRLD without Commission authorization. Violations of Section 854(a) are subject to monetary penalties under Section 2107, which states, in relevant part, as follows:

> Any public utility which violates or fails to comply with any provision of the Constitution of this state or of this part, or which fails or neglects to comply with any part or provision of any order, decision, decree, rule, direction, demand, or requirement of the commission . . . is subject to a penalty of not less than five hundred dollars ($500), nor more than twenty thousand dollars ($20,000) for each offense.

For the following reasons, we conclude that RRLD — the public utility — should be fined for violating Section 854(a). First, it is vital that utilities comply with Section 854(a) so that the Commission may protect the public from harmful

[15] D.04-04-017, *mimeo.*, p. 5.

[16] For the sake of brevity, the remaining discussion of the monetary penalty will refer to the Applicants and Dominion as "the Applicants." Thus, any mention of the Applicants will implicitly include Dominion unless otherwise indicated.

transactions. Any failure to comply with Section 854(a), regardless of the circumstances, is a serious offense that should be subject to fines. Second, imposing a fine will help to deter future violations of Section 854(a) by the Applicants and others.

To determine the size of the fine, we will rely on the criteria adopted by the Commission in D.98-12-075. We address these criteria below.

i. Severity of the Offense

In D.98-12-075, the Commission held that the size of a fine should be proportionate to the severity of the offense. To determine severity, the Commission stated that it would consider the following factors[17]:

> **Physical harm**: The most severe violations are those that cause physical harm to people or property, with violations that threatened such harm closely following.
>
> **Economic harm**: The severity of a violation increases with (i) the level of costs imposed upon the victims of the violation, and (ii) the unlawful benefits gained by the public utility. Generally, the greater of these two amounts will be used in setting the fine. The fact that economic harm may be hard to quantify does not diminish the severity of the offense or the need for sanctions.
>
> **Harm to the Regulatory Process**: A high level of severity will be accorded to violations of statutory or Commission directives, including violations of reporting or compliance requirements.
>
> **The number and scope of the violations**: A single violation is less severe than multiple offenses. A widespread violation that affects a many consumers is a more severe offense than one that is limited in scope.

[17] 1998 Cal. PUC LEXIS 1016, *71 - *73.

The Applicants' violation of Section 854(a), while serious, was not an especially egregious offense. This is because the violation was a single offense that did not cause, or threaten to cause, any physical or economic harm to others. In addition, there is no evidence that the Applicants significantly benefited from their unlawful conduct. The only factor that indicates the violation should be considered a grave offense is our general policy of according a high level of severity to any violation of the Public Utilities Code.

ii. Conduct of the Utility

In D.98-12-075, the Commission held that the size of a fine should reflect the conduct of the utility. When assessing conduct, the Commission stated that it would consider the following factors[18]:

> **The Utility's Actions to Prevent a Violation**: Utilities must take reasonable steps to ensure compliance with applicable laws and regulations. The utility's past record of compliance may be considered in assessing any penalty.
>
> **The Utility's Actions to Detect a Violation**: Utilities are expected to diligently monitor their activities. Deliberate, as opposed to inadvertent wrongdoing, will be considered an aggravating factor. The level and extent of management's involvement in, or tolerance of, the offense will be considered in determining the amount of any penalty.
>
> **The Utility's Actions to Disclose and Rectify a Violation**: Utilities are expected to promptly bring a violation to the Commission's attention. What constitutes "prompt" will depend on circumstances. Steps taken by a utility to promptly and cooperatively report and correct violations may be considered in assessing any penalty.

[18] 1998 Cal. PUC LEXIS 1016, *73 - *75.

The Applicants state that they signed the agreement to transfer indirect control of RRLD in April 2003. The Applicants maintain that they believed at the time that it would take two years to close the transaction and, therefore, they had ample time to obtain the necessary regulatory approvals. However, when the transaction closed sooner than expected, the Applicants state that they promptly applied for the necessary regulatory approvals. The Applicants submit that they did not wantonly of willfully ignore Section 854(a), but always intended to comply with the statute.

Two aspects of the Applicants' conduct suggest that a larger fine is warranted. First, the Applicants did not disclose their violation of Section 854(a) until asked by the assigned ALJ. This suggests that the Applicants intended to conceal their violation. Second, the Applicants did not take reasonable steps to comply with Section 854(a). In particular, the Applicants knew in April 2003 that they would have to obtain Section 854(a) approval for the transaction, but did not file their application for approval until May 2004. On the other hand, the Applicants did ultimately file A.04-05-034, which supports the Applicants' assertion that they did not wantonly or willfully ignore Section 854(a), but always intended to comply with the statute.

iii. Financial Resources Available to the Utility

In D.98-12-075, the Commission held that the size of a fine should reflect the financial resources of the offender. The Commission also stated that it would consider the following factors when assessing financial resources[19]:

> **Need for Deterrence**: Fines should be set at a level that deters future violations. Effective deterrence requires

[19] 1998 Cal. PUC LEXIS 1016, *75 - *76.

> that the Commission recognize the financial resources of the utility in setting a fine.
>
> **Constitutional limitations on excessive fines**: The Commission will adjust the size of fines to achieve the objective of deterrence, without becoming excessive, based on each utility's financial resources.

The Applicants provided financial statements which show that RRLD, Visia, and Dominion had net income in 2003 of $559,844, $191,882, and $162,402, respectively. The Applicants also state that RRLD's intrastate revenues during 2001, 2002, and 2003 were $2,860, $29,426, and $11,468, respectively. In light of the relatively small size of the Applicants' net income and RRLD's operations in California, we conclude that a modest fine would be sufficient to deter the Applicants from further violations of the California Public Utilities Code.

iv. Totality of the Circumstances

In D.98-12-075, the Commission held that a fine should be tailored to the unique facts of each case. In order to do so, the Commission indicated that the following factors should be considered[20]:

> **The degree of wrongdoing**: The Commission will review facts that tend to mitigate the degree of wrongdoing as well as facts that exacerbate the wrongdoing.
>
> **The public interest**: In all cases, the harm will be evaluated from the perspective of the public interest.

Some of the facts of this case indicate that the degree of wrongdoing, though serious, was not egregious. In particular, there is no evidence that anyone was harmed by the Applicants' violation of Section 854(a) or that the Applicants materially benefited from their unlawful conduct. These same facts

[20] 1998 Cal. PUC LEXIS 1016, *76.

also indicate that the public interest was not seriously harmed by the Applicants' unlawful conduct. On the other hand, the degree of wrongdoing was exacerbated by the Applicants' failure to disclose their violation.

v. The Role of Precedent

In D.98-12-075, the Commission held that any opinion which imposes a fine should (1) address previous opinions that involve reasonably comparable factual circumstances, and (2) explain any substantial differences in outcome.[21]

The facts of this case are reasonably comparable to prior opinions that imposed fines of $5,000 for violations of Section 854(a).[22] Therefore, imposing a fine of $5,000 in the current proceeding would be consistent with precedent.

vi. Conclusion

We conclude that RRLD should be fined $5,000 for violating Section 854(a). This fine is meant to deter future violations of Section 854(a) by the Applicants and others. We emphasize that the size of the adopted fine is tailored to the unique facts and circumstances of this proceeding. We may impose larger fines in other proceedings if the facts so warrant.

7. California Environmental Quality Act

Under the California Environmental Quality Act (CEQA) and Rule 17.1 of the Commission's Rules of Practice and Procedure (Rules), we must consider the environmental consequences of projects that are subject to our discretionary approval.[23] Thus, in deciding whether to approve A.04-05-034, we must consider

---

[21] 1998 Cal. PUC LEXIS 1016, *77.

[22] The Commission imposed a fine of $5,000 for violating Section 854(a) in the following opinions: D.04-04-017, D.04-04-016, D.03-08-058, D.03-05-033, and D.00-12-053.

[23] Pub. Resources Code Section 21080.

if doing so will alter an approved project, result in new projects, change facility operations, etc., in ways that have an environmental impact.

The record of this proceeding indicates that approval of A.04-05-034 will not have a significant effect on the environment. In particular, the Application does not request authority for new construction, and the Applicants represent that approval of A.04-05-034 will not result in any to changes to RRLD's operations or use of existing property or facilities. Therefore, the proposed project qualifies for an exemption from CEQA pursuant to Section 15061(b)(3)(1) of the CEQA guidelines. Consequently, there is no need for further environmental review.

8. Category and Need for Hearing

In Resolution ALJ 176-3134, dated May 27, 2004, the Commission preliminarily categorized this proceeding as ratesetting and preliminarily determined that a hearing would not be necessary. The Applicants state that they do not want a hearing, even if a fine is imposed. Based on the record, we affirm that this is a ratesetting proceeding and that a hearing is not necessary.

9. Pub. Util. Code § 311(g)

The draft opinion of the Administrative Law Judge (ALJ) in this matter was mailed to the parties in accordance with Pub. Util. Code § 311(g)(1) and Rule 77.7 of the Rules of Practice and Procedure. The Applicants submitted comments by email on August 9, 2004, that recommended one non-substantive change to the draft opinion. These comments are reflected in the final opinion adopted by the Commission.

10. Assignment of Proceeding

Susan P. Kennedy is the assigned Commissioner and Timothy Kenney is the assigned ALJ in this proceeding.

Findings of Fact

1. RRLD is authorized by D.01-06-047 to provide intraLATA and interLATA telecommunications services as a nondominant interexchange carrier (IEC).

2. RRLD is owned by Visia.

3. Dominion purchased Visia from David Butler and BSM in early 2004. The purchase enabled Dominion to obtain indirect control of RRLD.

4. In A.04-05-034, as amended, RRLD, Visia, David Butler, and BSM jointly request authority under Section 854(a) to transfer indirect control of RRLD from David Butler and BSM to Dominion.

5. Notice of A.04-05-034 and the amendment to A.04-05-034 appeared in the Daily Calendar. There were no protests or other responses.

6. The transaction for which authority is sought in A.04-05-034 was consummated several months before A.04-05-034 was filed and without prior approval from the Commission.

7. Dominion has sufficient financial resources and expertise to acquire and operate RRLD in a way that serves the public interest.

8. The record of this proceeding indicates that approval of A.04-05-034 will not adversely affect RRLD's customers, other utilities, or the public at large.

9. Approval of A.04-05-034 may benefit the public by enhancing RRLD's ability to improve and/or expand its services in California.

10. California derives substantial benefits from the services provided by nondominant public utilities such as RRLD.

11. It is in the public interest for the Commission to foster a business environment that is hospitable to nondominant utilities.

12. For the reasons set forth in the two previous Findings of Fact (FOFs), it is in the public interest to approve ordinary business transactions by nondominant

utilities that are subject to Section 854(a), like the transaction at issue in this proceeding, absent a compelling reason to the contrary. No such reason has been alleged or shown in the instant proceeding.

13. In D.98-12-075 the Commission adopted the following criteria for determining the amount of a fine: (i) the severity of the offense, (ii) the conduct of the offender, (iii) the financial resources of the offender, (iv) the totality of the circumstances, and (v) the role of precedent.

14. The Applicants' and Dominion's failure to comply with Section 854(a) was a single violation that did not (i) result in actual or threatened harm to others, or (ii) significantly benefit the Applicants or Dominion.

15. The Applicants and Dominion did not disclose their violation of Section 854(a) until prompted by the assigned ALJ.

16. The Applicants and Dominion have relatively modest financial resources. RRLD's revenues from its operations in California are *de minimus*.

17. The facts of this proceeding are reasonably comparable to those in previous opinions wherein the Commission imposed fines of $5,000 for violations of Section 854(a).

18. Fining the Applicants and Dominion for violating Section 854(a) will help to deter future violations of the statute by the Applicants, Dominion, and others.

19. The Applicants represent that granting A.04-05-034 will not result in (i) any new construction, (ii) changes in operations, or (iii) changes in use of existing property or facilities.

20. Based on the previous FOF, it can be seen with certainty that granting A.04-05-034 will not have an adverse impact on the environment.

Conclusions of Law

1. This is a ratesetting proceeding.

2. There is no need for a hearing in this proceeding.

3. Section 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. Application 04-05-034 is subject to Section 854(a).

5. The Commission has broad discretion under Section 854(a) to approve, modify, or reject a proposed transfer of control.

6. A.04-05-034 should be granted pursuant to Section 854(a) for the reasons set forth in the body of this opinion and FOFs 5 and 7 through 12.

7. The authority granted by today's opinion pursuant to Section 854(a) should apply prospectively. Retroactive authority should not be granted.

8. The Applicants and Dominion violated Section 854(a) by consummating the transaction described in A.04-05-034 without Commission authorization.

9. Section 2107 provides the Commission with authority to impose a fine of between $500 and $20,000 for violations of the Public Utilities Code.

10. RRLD should be fined for violating Section 854(a). The amount of the fine should be based on the criteria set forth in D.98-12-075.

11. Applying the criteria in D.98-12-075 to the facts of this case, which are identified in the body of this opinion and FOFs 14 through 18, indicates that RRLD should pay a fine of $5,000 for violating Section 854(a).

12. For the reasons set forth in FOFs 19 and 20, it is not necessary to conduct an environmental review of the transaction described in A.04-05-034.

13. The following order should be effective immediately.

O R D E R

IT IS ORDERED that:

1. Application 04-05-034 is granted to the extent it requests prospective authority under Pub. Util. Code § 854(a), effective as of the date of this Order, to transfer indirect control of Reduced Rate Long Distance, LLC (RRLD) from David Butler and the BSM Family Limited Partnership to the Dominion Business Group, Inc. The Application is denied to the extent it requests retroactive authority for the transfer.

2. RRLD shall notify the Director of the Commission's Telecommunications Division in writing of the transfer of control, as authorized herein, within 10 days of this Order. A true copy of the instrument(s) of transfer shall be attached to the notification.

3. RRLD shall pay a fine of $5,000 for violating Pub. Util. Code § 854(a). Within 30 days from the effective date of this Order, RRLD shall remit to the Commission's Fiscal Office at 505 Van Ness Avenue, Room 3000, San Francisco, CA 94102, a check for $5,000 made payable to the California Public Utilities Commission. The Decision number on the first page of this Opinion shall appear on the face of the check.

4. Application 04-05-034 is closed.

This Order is effective today.

Dated September 2, 2004, at San Francisco, California.

MICHAEL R. PEEVEY
President
GEOFFREY F. BROWN
SUSAN P. KENNEDY

Commissioners

I will file a dissent.

/s/ CARL WOOD
Commissioner

I reserve the right to join Commissioner Wood's dissent.

/s/ LORETTA LYNCH
Commissioner