

Decision 08-12-021 December 4, 2008

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Joint Application of Warburg Pincus Private Equity IX, L.P., Warburg Pincus Private Equity X, L. P. and Electric Lightwave, LLC (U5377C), Eschelon Telecom, Inc. (U6864C), and Advanced Telcom, Inc. (U6083C) for Approval of an Indirect Transfer of Control of Electric Lightwave LLC, Eschelon Telecom, Inc. and Advanced Telecom, Inc.

Application 07-09-012
(Filed September 18, 2007)

**DECISION GRANTING MOTION TO DISMISS APPLICATION FOR
APPROVAL OF INDIRECT TRANSFER OF CONTROL**

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DECISION GRANTING MOTION TO DISMISS APPLICATION FOR APPROVAL OF INDIRECT TRANSFER OF CONTROL

1. Summary

This decision grants the motion to dismiss filed by Warburg Pincus Private Equity IX, L. P. (WP IX), Warburg Pincus Private Equity X, L.P. (WP X), Electric Lightwave, LLC (ELI), Eschelon Telecom, Inc. (Eschelon) and Advanced Telecom, Inc. (Advanced Telecom), (together, Applicants), regarding the approval of a transaction in which WP X has acquired indirect control of ELI, Eschelon Telecom, Inc. and Advanced Telecom Inc., (dba Eschelon Telecom Inc).

Although we believe that this transaction represents a close call as to whether Section 854 applies, we note that the purpose of Commission prior Commission review of transfers under Section 854 is to protect the public interest.¹ In this case, as discussed below, the facts fail to clearly indicate the need for prior approval of this transaction under Section 854. We therefore grant Applicants' motion for dismissal of the application.

2. Parties to the Transaction

WP IX and WP X are limited partnerships with principal offices located at 466 Lexington Avenue, New York, NY 10017. WP IX and WP X transact no business in California other than ownership of investment interests in other businesses. Neither WP IX nor WP X holds a certificate of public convenience and necessity (CPCN) authorizing the provision of telecommunications services in California.

Both WP IX and WP X are affiliates of, and are controlled by, Warburg Pincus & Co. (WP), a global private equity firm. According to

¹ All Code references are to the Public Utilities Code, unless otherwise stated.

the application, WP has over \$20 billion of assets under management and has substantial experience in the information and communications technology sectors.

ELI is a limited liability company organized under the laws of Delaware, with its principal place of business located at 2101 NE Lloyd Blvd., Suite 500, Portland OR 97232. ELI's sole owner is Integra Holdings, Inc.² (Integra Holdings), which is in turn a wholly-owned subsidiary of Integra Telecom, Inc. (Integra). ELI holds a certificate of public convenience authorizing the company to provide resold and limited facilities-based intraLATA and interLATA telecommunications services (high-speed private lines services),³ low-speed private line services and switched toll services,⁴ facilities-based, local exchange services,⁵ and resold local exchange services⁶ in California.

Eschelon, founded in 1996, is a Delaware corporation with its principal place of business located at 730 Second Avenue South, Suite 900, Minneapolis, MN 55402, and is also owned by Integra Holdings and ultimately, Integra.⁷ Eschelon holds a CPCN authorizing the provision of

² According to the application, Integra Holdings' various operating subsidiaries are authorized to provide telecommunications services in a number of states and are also authorized by the Federal Communications Commission to provide interstate and international telecommunications.

³ See D.94-03-007.

⁴ See D.95-09-115.

⁵ See D.95-12-057.

⁶ See D.96-02-072.

⁷ According to the application, in Advice Letter Nos. 2 (Eschelon) and 59 (Advanced Telecom), filed on April 16, 2007, Eschelon advised the Commission of a transaction in which Integra Holdings acquired all of the outstanding equity

limited facilities-based and resold local exchange and resold interexchange services in California.

Advanced Telecom Inc. (dba Eschelon Telecom Inc.) is a Delaware company and a subsidiary of Eschelon. Advanced Telecom, Inc. holds a CPCN authorizing the provision of facilities-based interexchange services in California.

2.1. Factual Background and Procedural History

According to the application, on August 13, 2007, Integra entered into an agreement and plan of merger, which provided that Integra Recap., Co., an Oregon corporation, would be merged into Integra Telecom, with Integra Telecom to be the surviving corporation after the merger. The application states that since Integra's Board of Directors (Board) believed that it would be in Integra's best interests to recapitalize its capital stock through this transaction, either WP IX or WP X would invest at least \$245 million in order to obtain an equity stake in Integra as a part of the transaction. Certain current stockholders in Integra would then relinquish their ownership interests in the company by selling their holdings to WP IX or WP X. The application states that as a result of this transaction, either WP IX or WP X would acquire an equity interest in Integra of between 35% and 70%. Applicants have proceeded under the assumption, consistent with Commission precedent, that advance Commission approval of the transaction would only be required if the merger were to result in a transfer of 50% or greater interest in Integra.

interests of Eschelon. As a result of this transaction, Eschelon became a wholly owned direct subsidiary of Integra Holdings, and Advanced Telecom became an indirect subsidiary of Integra Holdings.

In subsequent filings, Applicants reported that WP X, rather than WP IX, would be the entity involved in the transaction and that on December 5, 2007, the parties consummated the transaction and closed the merger. According to Applicants, as a result of this merger, WP X acquired a 45.5% equity interest in Integra, when this interest is calculated on a fully diluted basis.⁸ However, if the options and warrants for common stock held by third parties were to be excluded from consideration in determining WP X's ownership interest, WP X's ownership interest in Integra immediately after the merger would have been 49.5%.

Applicants also reported that immediately after the closing of the transaction, WP X separately purchased warrants from certain other equity holders, which had wanted to participate in the transaction but had missed the deadline, and WP immediately exercised these options. After giving effect to the shares purchased in the transaction and the subsequent purchase of warrants, WP X's equity ownership interest in Integra increased to 48.6% when calculated on a fully diluted basis. Only when the options and warrants for common stock held by third parties are excluded from consideration in calculating WP X's ownership interest in Integra following the merger and purchase of warrants would WP X be found to hold a 51.2% ownership interest in Integra, the ultimate parent company of three California carriers, ELI, Eschelon, and Advanced Telecom, Inc.

⁸ A "fully diluted" basis means that in calculating the percentage of ownership interest, equity interests held in the form of options and warrants, most of which may be exercised for common stock at a nominal cost, are included.

On January 4, 2008, Applicants filed a Motion to Dismiss this application, which advised the Commission that the merger was consummated on December 5, 2007, but argued that the above transaction is not a transfer of control for which Commission approval is required under Section 854. In the alternative, the Motion to Dismiss asked the Commission to authorize any transfer of control resulting from this transaction.

3. Discussion

3.1. The Motion to Dismiss is Granted

Applicants request dismissal of this application, because neither the merger nor WP X's subsequent acquisition of options and additional shares of Integra common stock result in a transfer of control for which advance Commission approval is required under Section 854. We note that Applicant bears the burden of demonstrating that this application should be dismissed.

Under Section 852, 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. Section 854 further 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.”⁹

The Commission evaluates whether a transaction that results in a transfer of control, requires prior approval under Section 854 on a case-by-case basis, based on the relevant facts and circumstances¹⁰. Applicants acknowledge that in past decisions the Commission has considered factors such as:

- 1) whether the acquiring entity’s equity interest in the utility or its parent will be greater than 50%;¹¹
- 2) whether the acquiring entity has the power to appoint a majority of the members of the board of directors or to direct management of the utility or its parent entity;¹² and
- 3) whether the acquiring entity has actual or working control of the day-to-day business of the utility.¹³

Under our previous decisions, the acquisition of a 50% or greater ownership interest in a public utility has constituted “control directly or indirectly” for the purposes of Section 854.¹⁴ Here, where the options and

⁹ *San Jose Water Co. (1916) 10 CRC 56.*

¹⁰ D.07-10-001.

¹¹ D.86-02-059 (*In Re Pacific Telesis Group*), D.86-12-090 (*BellSouth Corp. and Mobile Communications Corp.*), D.98-12-056 (*MM Holdings Corp.*), and D.96-02-061 (*San Francisco Thermal.*)

¹² See D.93-11-063 (*In Re Paging Network of San Francisco*), D.96-02-061 (*San Francisco Thermal.*)

¹³ See D.94-01-025 (*In Re San Jose Water Company*), D.90363 (*WUI Inc. v. Continental Tel. Corp.*)

¹⁴ D.87478 (*In Complaint of Lee G. Gale v. Kenneth Teel, et al.*); D.03-06-069 (*Wild Goose*).

warrants for common stock held by third parties are considered to be exercised, WP X would have only a 48.6% interest in Integra. Only when the options and warrants are withheld from consideration in calculating WP X's ownership interest may a 51.2% ownership interest in Integra be found.

Our previous decisions do not specifically state whether we should consider the ownership interest acquired by WP X on a fully diluted basis or otherwise.¹⁵ We recognize, however, that until exercised, neither warrants nor options confer any ownership interest. Holders of options or warrants also cannot vote, elect management, or take any other act affecting corporate operations. Therefore, absent extenuating circumstances, ownership of greater than 50% of a company constitutes control. However, in order to exercise our responsibility under the statute, we consider all relevant circumstances of this case. Since the percentage of the interest acquired by WP X is only one factor to be considered typically in determining whether a transfer of control under Section 854 has occurred, we address other relevant factors below.

Notwithstanding majority ownership interest under the terms of the operating agreement, Applicants argue that no transfer of control has occurred because Integra's shareholders, including WP X, have only limited power to control the corporation, through their ability to appoint directors and their statutory and contractual rights to approve certain

¹⁵ D.03-08-079, cited by Applicants, does not directly state that the Commission should determine whether a transfer of control has occurred because of consideration of the ownership interest transferred on a fully diluted basis.

transactions, and that the day-to-day business of Integra is managed by its officers and managers.

Integra's Board consists of nine members. As a result of this transaction, WP X has the right to appoint three, and under some circumstances, four members of the Board.¹⁶ Two of three other substantial shareholders in Integra, Boston Ventures and Banc of America Capital Investors (Banc of America), remain shareholders of Integra after the merger. Boston Ventures may appoint two Board members. Banc of America may appoint one Board member, unless Banc of America's ownership interest falls below 5%. The remaining two Board members are to be selected by the Board as a whole (at large members). According to the application, the Chief Executive Officer of Integra, Dudley R. Slater, will hold an additional seat on the Board. Therefore, WP X does not have the power to directly appoint a majority of the members of the Board, nor does WP X have control over the Board.

Only if Banc of America's shares were to fall below 5% would WP X have power to appoint four members.¹⁷ Even under this scenario, WP X does not have direct control over the Board. Under such circumstances, WP X would have sufficient votes on the Board to control the selection of the two at-large members, and may thereby indirectly

¹⁶ According to Applicants, WP X could appoint a fourth member to Integra's Board only if Banc of America's ownership interest on a fully diluted voting shares basis were to fall below 5%. In this case, Banc of America would not appoint a member of the Board.

¹⁷ Currently, Banc of America shares are not below 5% and therefore, this scenario has not occurred.

control the composition of the Board.¹⁸ However, as applicant notes, under the Shareholders' Agreement, the two at-large Board members may not be affiliated with any primary institutional investor, such as WP X.¹⁹ Therefore, WP X would not have control over the Board even under the scenario where Bank of America shares fall below 5%.

Applicants also argue that WP X has not acquired control of Integra, because certain major corporate transactions, such as a sale or merger; the sale, lease or transfer of assets; the payment of dividends; the issuance of equity securities; material changes in Integra's business; the replacement of certain senior executive officers; and amendment of the Shareholder's Agreement, require approval by either a 66-2/3% or a 60% supermajority of the shareholders, and WP X does not have a 66-2/3% or 60% ownership interest.

In addition, WP X argues that a transfer of control requiring our prior approval under Section 854 has not occurred because WP IX will not have actual or working control of the day-to-day operations of Integra and its subsidiaries. Applicants state that the day-to-day business of Integra is

¹⁸ In this situation, WP X would have appointed four members, Boston Ventures would have appointed two members, Bank of America would appoint no members, and Slater, the Chief Executive Officer of Integra, would hold the remaining seat on the Board. WP X, Boston Ventures, and Slater would then vote to select the remaining two at-large members. Since WP X would have four votes, and Boston Ventures and Slater would only have three votes, WP IX could theoretically control the selection of the two large members.

¹⁹ Section 8.1(a)(ii)(E) of the Shareholders' Agreement states that the at-large members of the Board shall be "two (2) representatives not Affiliated with any Primary Institutional Investor designated by the Board (one of which shall initially be Richard A. Smith.) According to Applicant, Richard Smith is the former COE of Eschelon Telecom, Inc., a company acquired by Integra and for which WP X had no involvement.

managed by the officers of Integra, subject to the oversight of the Board, and that since WP X does not have the power to appoint a majority of Integra's Board or its senior officers, WP X does not control day-to-day operations of Integra or its subsidiaries.

Past Commission decisions do not establish a "bright line" test for determining when a transfer of control subject to our review under Section 854 has occurred.²⁰ The Commission has not promulgated regulations to define "control" in terms of clearly identifiable characteristics applicable to all cases.²¹ Instead, the Commission has relied on a fact-specific, case-by-case analysis.²² While some of our older decisions refer to a transfer of "actual or working control" as the threshold for Commission review under Section 854,²³ other decisions focus on whether the acquiring entity, directly or indirectly, will possess the power to direct or cause the direction of the management and policies of the utility, or has the ability to exercise this control.²⁴

In several past decisions, the Commission has rejected the concept that Section 854 does not require our advance review of a transfer of a utility when the transaction will not change the utility's underlying operations and day-to-day management. For example, in D.96-02-061, we stated that:

²⁰ D.03-06-099.

²¹ Id.

²² D.07-05-061.

²³ For example, see D.90363 (*WUI, Inc. v. Continental Tel. Corp* (1979)), D.94-01-025 (*San Jose Water Company and SJW Corp.*).

²⁴ See D.07-05-061, fn. 28.

...we have sometimes suggested that we lack jurisdiction under the statute to consider particular situations in which formal ownership changed while the underlying operations and day-to-day management remain intact, and in such situations we would sometimes dismiss the application as unnecessary. Because of the variety of arrangements which are possible, however, we now think it preferable to continue development of this area of our responsibility on a case-by-case basis...Thus, we will subject this application and future applications to a public interest inquiry to determine if changes in control arrangements have any necessary impact on the public interest. We do this to assure that changes which have the potential to involve public policy implications are brought to our attention. Adopting a rule that preserving intact existing management be considered no change in control might mask transactions in which the real substance has changed.

The Commission has consistently noted that “application of [Section] 854, and the degree to which issues of ownership and control have registered concern, all turn on the specific facts at issue.”²⁵ In D.03-06-069, we determined that a merger at the holding company level resulted in the indirect transfer of control of Wild Goose and required our advance approval under Section 854. The Commission reached this decision from the facts that the merger had resulted in the parent company’s “ability to control its subsidiaries,” and a large market share of the gas storage market. The specific facts of *Wild Goose* thus led us to require approval under Section 854.

The specific circumstances of that case, which led us to conclude that a significant transfer of control had occurred as a result of the merger,

²⁵ See D.03-06-069 at p. 8.

are not present in this case. For example, the WP X transaction has not resulted in WP X's ability to control the Board or its subsidiaries. The transaction has not consolidated market power or share for the telecommunications companies at issue. The transaction has also not affected the day-to-day management of the companies, nor will it affect the services that Integra and its subsidiaries currently offer. Moreover, the transaction will result in recapitalization of stock of the parent company of ELI, Eschelon, and Advanced Telecom, which are competitive carriers offering local and long distance services in California. The continued operation of these companies is in the public interest for our telecommunications market.

The Commission has not previously addressed a common transaction of this type before, nor do prior Commission decisions provide guidance on whether to consider transactions on a "fully diluted" basis for purposes of Section 854. Having reviewed the factors considered in past decisions of the Commission regarding Section 854, however, we find that a transfer of control has not occurred. We find that WP X has not acquired control of Integra, notwithstanding majority ownership of shares, because it has not gained the power to appoint a majority of the board, or establish control over the day-to-day business of Integra.²⁶

While we find based upon this specific set of facts that the requirements of Section 854 need not be met, we hereby provide notice that we may not grant such exemptions to similar transactions in the

²⁶ We are not finding in this decision that the Commission should review transactions on a fully diluted or nondiluted basis. Instead, given that the stock acquisition was close to 50%, we are reviewing the other factors of this transaction to determine that no transfer of control has occurred.

future. The Commission maintains the authority to apply the requirements of Section 854 on a case-by-case basis, in light of the facts of each specific case. Moreover, should circumstances change resulting in a transfer of control of Integra, we have the right to examine any transfer of control pursuant to Section 854.

4. Conclusion

Based on the foregoing, we grant Applicants' motion for dismissal of the application on the grounds that the acquisition is exempt from the requirements of Section 854. Nonetheless, Applicants are advised to seek prior Commission approval of any future transfers of control as required by Section 854 in order to avoid possible fines or other regulatory sanctions.

5. Category and Need for Hearing

Based on the record, we find no need to alter the preliminary determinations made as to categorization and the need for a hearing made in Resolution ALJ 176-3200, dated October 4, 2007.

6. Comments on Proposed Decision

Although Applicant initially waived the right to file written comments on the proposed decision, Applicant subsequently requested authorization to do so from the assigned ALJ. The assigned ALJ granted Applicant permission to file comments by no later than August 13, 2008. Applicant filed timely comments on August 13, 2008.

We have reviewed and considered Applicant's comments and have made changes to the proposed decision as appropriate.

7. Comments on Alternate Proposed Decision

The alternate proposed decision of Commissioner Michael R. Peevey 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. The parties filed comments on October 20, 2008 in support of the Alternate Proposed Decision. No changes have been made to the Alternate Proposed Decision.

8. Assignment of Proceeding

Michael R. Peevey is the assigned Commissioner and Myra J. Prestidge is the assigned ALJ in this proceeding.

Findings of Fact

1. ELI is a Delaware limited liability company and is owned by Integra Holdings, which in turn is owned by Integra.

2. ELI holds a CPCN authorizing the provision of resold and facilities-based local exchange services, and resold and limited-facilities based intraLATA and interLATA telecommunications services (high speed private lines services), low speed private line services and switched toll services in California.

3. Eschelon is a Delaware corporation and is a direct subsidiary of Integra Holdings, which is in turn owned by Integra.

4. Eschelon holds a CPCN authorizing the provision of limited facilities-based and resold local exchange and resold interexchange services in California.

5. Advanced Telecom, Inc. is a Delaware corporation and is a direct subsidiary of Eschelon and an indirect subsidiary of Integra Holdings, which is in turn owned by Integra.

6. Advanced Telecom, Inc. holds a CPCN authorizing the provision of facilities-based interexchange services in California.

7. ELI, Eschelon, and Advanced Telecom are all subsidiaries of Integra Holdings.

8. Integra Holdings is owned by Integra, which is the ultimate parent company of ELI, Eschelon, and Advanced Telecom.

9. WP IX and WP X are limited partnerships with their principal offices located in New York, New York, and are affiliates of, and are controlled by WP, a global private equity firm.

10. WP IX and WP X do not transact business in California other than holding ownership interests in other businesses.

11. On September 18, 2007, Applicants filed this application seeking Commission authorization to transfer the indirect control of ELI, Eschelon, and Advanced Telecom Inc., to WP IX or WP X, through WP IX's or WP X's acquisition of between 35 and 70% of the issued and outstanding shares of the capital stock of Integra.

12. In a subsequent filing, Applicants advised the Commission that WP X, rather than WP IX, would be participating in this transaction.

13. On January 4, 2008, Applicants notified the Commission that WP X and Integra had consummated this transaction on December 5, 2007, without prior Commission approval.

14. According to Applicants, as a result of this merger, WP X acquired a 45.5% equity interest in Integra, when this interest is calculated on a fully diluted basis.

15. Applicants state that if the options and warrants for common stock held by third parties were to be excluded from consideration in

determining WP X's ownership interest, WP X's ownership interest in Integra immediately after the merger would have been 49.5%.

16. Immediately after the closing of the transaction, WP X separately purchased warrants from certain other equity holders, which had wanted to participate in the transaction but had missed the deadline, and WP immediately exercised these options.

17. According to Applicants, after giving effect to the shares purchased in the transaction and the subsequent purchase of warrants, WP's equity ownership interest in Integra increased to 48.6% when calculated on a fully diluted basis.

18. According to Applicants, if the options and warrants for common stock held by third parties were to be excluded from consideration in calculating WP X's ownership interest in Integra following the merger and purchase of warrants, WP X would then hold a 51.2% ownership interest in Integra.

19. Absent other circumstances, majority ownership of Integra shares by Applicants would be presumed to be a transfer of control since only outstanding shares should be considered as affecting control.

20. By the terms of the Shareholder's Agreement, Applicants cannot amend the Shareholder's Agreement or take certain key actions (such as the sale, lease, or transfer of assets; mergers, consolidations or reorganizations; recapitalizing its equity securities; payment of dividends; or replacement of senior executives such as the chief executive officer or chief operations officer) without a 66 2/3 % vote. Therefore, no showing is made that Applicants have the means to control Integra.

21. On January 4, 2008, Applicants filed a motion to dismiss, on the grounds that this transaction does not result in a transfer of control which requires Commission approval under Section 854.

22. Our previous decisions do not clearly state whether in determining whether a particular transaction requires our prior approval under Section 854, the ownership interest of the acquiring entity should be calculated on a fully diluted basis or otherwise.

23. Applicants state that there will be no change in the name, day-to-day management or operations of ELI, Eschelon, and Advanced Telecom, Inc. as a result of the indirect transfer of control to WP X.

24. The customers of ELI, Eschelon, and Advanced Telecom, Inc. will continue to receive service under the same rates, terms, and conditions after the transaction.

25. WP X has access to sufficient financial resources to meet the Commission's requirements to provide facilities-based, limited facilities-based, and resold local exchange and interexchange services.

26. This transaction will give Integra, the ultimate parent company of ELI, Eschelon, and Advanced Telecom, Inc. access to increased capital from WP X, in order to enhance the operations of ELI, Eschelon, and Advanced Telecom, Inc.

27. WP X does not hold a CPCN authorizing the provision of telecommunications services in this state.

28. Since the day-to-day management of ELI, Eschelon, and Advanced Telecom, Inc. will remain the same, WP X has met the requirements for technical and managerial expertise to provide telecommunications services, for the purposes of this transaction only.

29. WP X has the financial qualifications necessary to exercise control of ELI, Eschelon, and Advanced Telecom, Inc.

30. This transaction represents a very close call as to whether a transfer of control for which Section 854 requires our advance authorization has occurred.

31. This transaction does not result in a change in the ownership of Integra and its subsidiaries ELI, Eschelon, and Advanced Telecom, Inc.

32. There is no evidence that Applicants have previously failed to comply with applicable statutes and regulations.

33. Applicants took steps to report their consummation of the transaction without prior Commission approval approximately one month after the transaction was finalized.

34. Notice of this application appeared on the Commission's Daily Calendar on September 26, 2007. There were no protests to this application.

35. No hearings are necessary.

Conclusions of Law

1. This is a ratesetting proceeding.

2. Section 854(a) requires Commission authorization to transfer control of a public utility.

3. The Commission will apply the same requirements to a request for approval of an agreement to acquire control of a telecommunications carrier as it does to an applicant for authority to provide such services.

4. Any transfer of control of a public utility without prior Commission authorization is void under Section 854(a).

5. Section 854(a) does not authorize the Commission to retroactively approve transfers of control of public utilities.

6. This application should be dismissed because the WP X acquisition of stock did not result in a transfer of control of ELI, Eschelon, and Advanced Telecommunications, Inc.

7. Applicants' consummation of the transaction did not require prior Commission approval under Section 854(a).

O R D E R

IT IS ORDERED that:

1. The Motion to Dismiss Application (A.) 07-09-012 requesting approval under Pub. Util. Code § 854(a) to transfer the indirect control of Electric Lightwave, LLC (ELI), Eschelon Telecom, Inc. (Eschelon, and Advanced Telecom, Inc. (Advanced Telecom) to Warburg Pincus Private Equity X, LP (WP X) is granted.

2. Applicants shall comply with Section 854 in the future to the extent that it applies, and are subject to fines and other regulatory sanctions if violations occur.

3. Application 07-09-012 is closed.

This order is effective today.

Dated December 4, 2008, at San Francisco, California.

MICHAEL R. PEEVEY
President
DIAN M. GRUENEICH
JOHN A. BOHN
RACHELLE B. CHONG
TIMOTHY ALAN SIMON

Commissioners

