

Decision 08-12-047 December 18, 2008

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Joint Application of First Communications, LLC,
(U-6837-C) Xtension Services, Inc., (U-6508-C);
and Globalcom, Inc. (U-6093-C) and Renaissance
Acquisition Corp. For Approval of a Transfer of
Control.

Application 08-09-012
(Filed September 16, 2008)

DECISION GRANTING MERGER

1. Summary

This decision grants the request of First Communications, LLC (FCL), Xtension Services, Inc. (Xtension), and Globalcom, Inc.¹ (Globalcom) and Renaissance Acquisition Corp. (RAC), jointly referred to as Applicants, pursuant to Pub. Util. Code § 854, for approval of a proposed transaction that will result in the transfer of control of FCL, Xtension, and Globalcom to RAC.

No transfer of certificates, assets or customers will occur as a consequence of the proposed transaction. FCL, Xtension, and Globalcom will continue to provide services to their existing customers in California pursuant to those authorizations under the same rates, terms and conditions. This application is unopposed. This proceeding is closed.

¹ Globalcom and First Communications, Inc. (FCI) filed an Advice Letter with the Commission for the indirect transfer of control of Globalcom to FCI. See Advice Letter 32 filed on July 26, 2008. On October 2, 2008, that transfer of control transaction was consummated, and Globalcom became a wholly-owned subsidiary of FCI.

2. The Parties

2.1. FCL

FCL is an Ohio Limited Liability Company located at 3340 West Market Street, Akron, OH 44333. FCL is a wholly-owned subsidiary of FCI, a Delaware corporation listed on the Alternative Investment Market of the London Stock Exchange (AIM). FCI, through its operating subsidiaries, FCL and Xtension, provides local, private line, and/or long distance services to both business and residential customers in 49 states. Its services include traditional local and long distance services, toll-free services, conference calling packages, calling cards, prepaid calling cards, Internet access and dedicated and private line services. FCL is authorized to provide local, private line, and/or long distance services to both business and residential customers in 49 states and holds domestic and international Section 214 authorizations from the Federal Communications Commission (FCC). In California, FCL is authorized to provide resold interexchange and resold and facilities-based local exchange services.² Applicants request that the Commission take notice of Commission's record of proceedings Application (A.) 06-06-026 and A.06-11-013 which further details the services provided by FCL.

2.2. Xtension

Xtension, a wholly-owned subsidiary of FCI, is a corporation founded in 2000 under the laws of the state of Delaware. Its offices are currently located at 30 South Treasure Drive, Tampa, FL 33609. Xtension holds domestic and

² Decision (D.) 03-10-066 and 07-03-030, respectively, dated October 22, 2003 and March 15, 2007.

international Section 214 authorizations from the FCC and is authorized to provide long distance telecommunications services in 13 state and local exchange services in New Jersey. Xtension is authorized to provide resold interexchange telecommunications services, in California.³

2.3. Globalcom

Globalcom is an Illinois corporation with its principal offices located at 200 E. Randolph Street, Floor 23, Chicago, IL 60601. Globalcom is a wholly-owned subsidiary of FCI and provides a voice and data service provider primarily to small and medium sized business customers in Chicago area. It offers complete voice and data solutions including local and long distance, T-1, PRI, Internet T-1, IP Telephony, toll-free, international long distance, access & private networking, conference calling, managed solutions, consulting services, collocation, hosted services, VPN & security and monitoring services. In California, Globalcom is authorized to provide intrastate telecommunications services pursuant to resold and facilities-based local exchange and interexchange telecommunications services.⁴

2.4. RAC

RAC, a Delaware corporation with principal offices at 50 East Sample Road, Suite 400, Pompano Beach, FL 33064, is a publicly traded corporation on the American Stock Exchange (AMEX) under the symbol "RAK." RAC was organized for the purpose of effecting a merger, capital stock exchange, asset

³ D.01-03-006 dated March 5, 2001.

⁴ D.01-07-015, D.99-02-019 and D.98-12-002, respectively, dated July 12, 2001, February 4, 1999, and December 1, 1998.

acquisition, or other similar business combination with an operating business for the purpose of accomplishing this transaction. RAC has created a new merger subsidiary, FCI Merger Sub I, Inc. (Merger Sub I), a Delaware corporation and direct wholly-owned subsidiary of RAC, and has created FCI Merger Sub II, LLC (Merger Sub II) a Delaware limited liability company and direct wholly-owned subsidiary of RAC. Attachment A to the application is a current organizational chart reflecting the relationship of the Applicants prior to the transactions described herein as well as a post-transaction organizational chart.

3. Description of the Transaction

RAC and FCI entered into an Agreement and Plan of Merger (Agreement) on September 13, 2008 whereby (1) FCI will merge into and with Merger Sub I with FCI surviving and (2) FCI will merge into and with Merger II with Merger Sub II surviving. As a result, FCL, Globalcom, and Xtension will be wholly-owned subsidiaries to RAC, which then intends to change its name to "First Communications, Inc." Applicants therefore request authority for the transfer of control of FCL, Globalcom, and Xtension to RAC.

Upon consummation of the proposed transaction, FCL, Globalcom, and Xtension will continue to offer service with no change in the name of the companies, or their rates or terms and conditions of service following the consummation of the proposed transaction. Therefore, the transfer of control of FCL, Globalcom, and Xtension will be seamless and virtually transparent to consumers in the State. If in the future any changes are proposed to the existing rates of FCL, Globalcom, or Xtension, the Applicants will seek approval in accordance with the Commission's requirements applicable to such changes.

4. Public Interest

Applicants state that granting of the proposed transaction will serve the public interest. The proposed transaction will enable FCL, Globalcom, and Xtension to access additional financial and operational resources from its new publicly traded parent company. These additional resources will allow FCL, Globalcom, and Xtension to strengthen its competitive position in California to the benefit of Californian consumers and the State's telecommunications marketplace. Specifically, the transaction will allow the combined company to pursue growth strategies as well as increase brand awareness, expand into additional geographic markets, and expand their service offerings. The combined company will also hold the managerial, operational and technical qualifications of existing FCI management.

In addition, the transaction will be conducted in a manner that will be virtually transparent to the customers of FCL, Xtension, and Globalcom. The transfer of control of FCL, Xtension, and Globalcom will not result in a change of carrier for customers or any transfer or assignment of authorizations. Following consummation of the proposed transaction, FCL, Xtension, and Globalcom will continue to provide high quality communications services to its customers without interruption and without change in rates, terms or conditions. Applicants emphasize that the proposed transfer of control will be seamless and virtually transparent to the customers of FCL, Xtension, and Globalcom, and in no event will it result in the discontinuation, reduction, loss, or impairment of service to customers.

Approval of the transaction will also help the Applicants realize significant economic and marketing efficiencies which in turn will enhance their ability to continue providing high quality, low cost telecommunications services and to

compete more effectively in the telecommunications market. Applicants' operations will more readily increase in size and profitability, due to enhanced economies of scale. Accordingly, Applicants contend that the proposed transaction will benefit consumers through improved services and lower rates, thereby promoting competition in the telecommunications market.

Applicants request that the Commission process this application on an expedited basis to ensure that the transaction can be completed before January 29, 2009. The merger agreement (Attachment C to the Application) contains a termination clause, if the proposed merger is not consummated by January 29, 2009 and such merger cannot be consummated without the Commission's approval of this Application. Applicants also request expedited approval here due to the unstable and deteriorating conditions of the credit market that may put the merger transaction in jeopardy. Applicants further contend they face increasing risk with each passing day that creditors may materially alter lending terms which could in turn severely compromise the viability of this merger transaction.

For all of the foregoing reasons, Applicants submit that an expedited approval of the proposed transaction is in the public interest.

5. Financial Showing

Applicants have filed their financial information, including balance sheet (Exhibit B to the Application) and other supplemental financial data to demonstrate their financial fitness. Commission's record also show the financial information of Applicants FCL, Xtension and Globalcom who each previously filed for their respective applications before the Commission.

6. Discussion

Applicants seek approval of the proposed transfer of control pursuant to Pub. Util. Code § 854. 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 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).⁵ 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.⁶ The Commission may also consider if the transaction will serve the public interest.⁷ Where necessary and appropriate, the Commission may attach conditions to a transaction in order to protect and promote the public interest.⁸

For the following reasons, we conclude that it is reasonable to grant this § 854(a) application. First, the proposed merger of RAC and FCI, along with FCL, Globalcom, and Xtension becoming wholly-owned subsidiaries to RAC, is a means of creating efficiencies. Subscribers will receive advance notice and will see no change in rates, terms or conditions of service from those currently in effect. Second, the public may benefit from the transfer of control to the extent the transaction enhances the ability of the Applicants to maintain and expand

⁵ D.95-10-045, 1995 Cal. PUC LEXIS 901, *18-19.

⁶ D.00-06-079, p. 13.

⁷ D.00-06-005, 2000 Cal. PUC LEXIS 281, *4.

⁸ D.95-10-045, 62 CPUC2d 160, 167-68.

their services and operations in California. Third, 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.

7. Categorization and Need for Hearing

In Resolution ALJ 176-3222, dated October 2, 2008, the Commission preliminarily categorized this proceeding as ratesetting, and preliminarily determined that hearings were not necessary. No protests have been received. Given this status, public hearing is not necessary and it is not necessary to alter the preliminary determinations made in Resolution ALJ 176-3222.

8. 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.

9. Assignment of Proceeding

Rachelle B. Chong is the Assigned Commissioner and Kimberly H. Kim is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. FCL is a wholly-owned subsidiary of FCI and authorized to provide resold interexchange and resold and facilities-based local exchange in California.
2. Xtension is a wholly-owned subsidiary of FCI and authorized to provide resold interexchange telecommunications services in California.
3. Globalcom is a wholly-owned subsidiary of FCI and a voice and data service provider primarily to small and medium sized business customers based out of Chicago, Illinois. In California, Globalcom is authorized to provide

intrastate telecommunications services pursuant to resold and facilities-based local exchange and interexchange telecommunications services.⁹

4. FCI is a Delaware corporation listed on the AIM. FCI, through its operating subsidiaries, FCL and Xtension, provides local, private line, and/or long distance services to both business and residential customers in 49 states.

5. RAC is a publicly traded corporation of the AMEX under the symbol "RAK" and has been organized for the purpose of effecting a merger, capital stock exchange, asset acquisition, or other similar business combination with an operating business for the purpose of accomplishing the merger transaction proposed in the Application.

6. FCL, Xtension, and Globalcom will be subsidiaries upon closing of FCI Merger Sub II, LLC, which is a subsidiary of RAK. The merger will occur in two steps. FCI, which is the current parent of FCL, Xtension, and Globalcom, will merge into Merger Sub I and then FCI will merge into Merger Sub II and Merger Sub II, LLC will survive. FCL, Xtension, and Globalcom will merge into RAC then FCI.

7. 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.

8. Applicants have sufficient cash and cash equivalence to provide the necessary funding for daily operations.

9. Applicants will continue offering their current services and use the same name and authority after the transfer of control.

⁹ D.01-07-015, D.99-02-019 and D.98-12-002, respectively dated July 12, 2001, February 4, 1999, and December 1, 1998.

10. FCL, Globalcom and Xtension are all current on reporting and transmitting the user fees applicable to its California operations.

11. Upon completion of the transaction, Applicants will continue to be operated by the same existing management team.

12. There is no opposition to this application.

Conclusions of Law

1. This is a ratesetting proceeding and no hearing is necessary.

2. This application should be approved and become effective immediately because it is not adverse to the public interest and the public may benefit from ability of the Applicants to maintain and expand its services and operations in California.

3. Approval of this application is not a finding of value of the rights and property being transferred.

O R D E R

IT IS ORDERED that:

1. First Communications, LLC (FCL), Xtension Services, Inc. (Xtension), and Globalcom, Inc. (Globalcom) and Renaissance Acquisition Corp. (RAC), jointly referred to as Applicants, pursuant to Pub. Util. Code § 854, are authorized to transfer control currently held by FCL, Globalcom and Xtension, ultimately to RAC to consummate the proposed merger.

2. RAC shall notify the Director of the Commission's Telecommunications Division in writing of the transfer of control, as authorized herein, within 30 days of this order. A true copy of the instrument(s) of transfer shall be attached to the notification.

3. Application 08-09-012 is closed.

This order is effective today.

Dated December 18, 2008, at San Francisco, California.

MICHAEL R. PEEVEY

President

DIAN M. GRUENEICH

JOHN A. BOHN

RACHELLE B. CHONG

TIMOTHY ALAN SIMON

Commissioners