

Decision 00-10-016 October 5, 2000

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Application of Steven R. Bryan and Bryan Family, Inc., pursuant to Public Utilities Code Section 854 for authority to acquire control of Pinnacles Telephone Co. (U 1013 C)

Application 00-04-048  
(Filed April 28, 2000)

**O P I N I O N**

**1. Summary**

Applicant Steven R. Bryan seeks authority (i) to assume control of Pinnacles Telephone Co. (Pinnacles) following the death of his father, Rex Bryan, who had operated the utility since its incorporation in 1975, and (ii) thereafter, to transfer control of the utility to Bryan Family, Inc., a newly formed California corporation and holding company. The application is granted.

**2. Background**

Pinnacles is a local exchange carrier serving portions of San Benito County. It has telecommunications plant in service valued at \$2.4 million, and its operating revenues for the year ended December 31, 1999, totaled \$882,000. Rex Bryan was president of the company and held voting control until his death in December of last year.

Steven R. Bryan, eldest son of Rex Bryan, succeeded to voting control of the company under his father's trust, established pursuant to the Probate Code, and has been elected president and general manager of the company. Steven R. Bryan had been responsible for maintaining and upgrading the company's

network under his father's direction since 1992. He is an engineering graduate of San Jose State College and served three years in the U.S. Army Signal Corps.

The application states that the involuntary change of control of the company will not adversely affect any member of the public or have any adverse effect upon the operations of the company or upon its subscribers.

In addition to seeking approval of the involuntary transfer of control to Steven R. Bryan, the application also seeks prospective approval of the transfer of control from Steven R. Bryan to a newly organized holding company, Bryan Family, Inc., a California corporation. Upon approval of this application, the shareholders of Pinnacles will exchange their stock for stock in the newly formed holding company.

According to the application, the purpose of forming a holding company is to streamline ownership of the utility. The officers and directors of Bryan Family, Inc. are the same as the officers and directors of Pinnacles.

### **3. Section 854 Authority**

The application seeks approval of the transfer of control to Steven R. Bryan pursuant to Pub. Util. Code § 854. Section 854 provides in pertinent part:

No person or corporation, whether or not organized under the laws of this state, shall merge, acquire, or control either directly or indirectly any public utility organized and doing business in this state without first securing authorization to do so from the commission. The commission may establish by order or rule the definitions of what constitute merger, acquisition, or control activities which are subject to the section. Any merger, acquisition, or control without that prior authorization shall be void and of no effect. No public utility organized and doing business under the laws of this state, and no subsidiary or affiliate of, or corporation holding a controlling interest in a public utility, shall aid or abet any violation of this section.

The meaning of Section 854 is clear. It was added to ensure that no acquisition or transfer can be effected without this Commission first having opportunity to consider whether the acquisition or transfer is consistent with and promotes the public interest. But equally clear is the fact that its provisions cannot be applied literally to acquisitions through inheritance.

The Legislature has recognized this conflict. After the Commission on similar reasoning approved a testamentary transfer of a small water company in 1982 (*Application of Bianca Gambi* (1981) 7 CPUC2d 52), the Legislature amended Section 853 of the Code to provide that the provisions of Section 854 would not apply to a transfer of ownership of a small water company from a decedent to a member of the decedent's family under the Probate Code or by will, trust, or other instrument. (*See* Pub. Util. Code § 853(c).)

A certificate of public convenience and necessity to operate a public utility is a right that has value. It has sufficient independent existence to be made the subject of a bequest in case of death. But the estate of an heir vests in the heir at the time of the testator's death. (Probate Code § 240.) It would be impossible for the Commission to consider in advance the bequest clauses in each certificate holder's will or trust setting up a potential bequest of an interest in a public utility, or to predict the circumstances that might exist at the time of the testator's death.

Nonetheless, the rights of inheritance and testamentary disposition are statutory and subject to legislative control, and the Legislature, in exercising its plenary power, had adopted provisions governing the descent of property in this state as set forth in the Probate Code. Here, voting control of the utility was passed to Steven R. Bryan upon the death of his father pursuant to a valid testamentary instrument. As we see it, absent evidence that any given

devolution results in or creates a situation inconsistent with or adverse to the public interest, our role should be a ministerial one in passing to and affording the beneficiary substantially the same rights and privileges as were held by the predecessor. (*See, Application of Bianca Gambi* (1981) 7 CPUC2d 52.) Should the successor's interest appear to the Commission inconsistent with or prove adverse to the public interest, this Commission always can, after notice and hearing, cancel, revoke, or suspend the inherited interest. Of course, it is always necessary that a beneficiary make application to this Commission to obtain authorization.

Based on exhibits filed with the application, it is apparent that Steven R. Bryan is qualified to assume control of Pinnacles. He has been responsible for maintaining and upgrading the company's network since 1992. Rates, terms, and conditions of service will be unaffected. There is no indication that the transfer in any way would be inconsistent with or adverse to the public interest.

Accordingly, that part of the application pertaining to the transfer of Rex Bryan's interest in the authority to operate to Steven R. Bryan should be granted.

We also grant approval, prospectively, of the transfer of control from Steven R. Bryan to Bryan Family, Inc., a newly organized holding company with the same officers and directors that now serve Pinnacles. The transfer is not adverse to the public interest, and no rates, terms and conditions of service will be affected. Steven R. Bryan will continue to serve as president of the utility.

In Resolution ALJ 176-3039, dated May 18, 2000, the Commission preliminarily categorized this proceeding as ratesetting and preliminarily determined that hearings were not necessary. Based on the record, we conclude that a public hearing is not necessary, nor is it necessary to alter the preliminary determinations in Resolution ALJ 176-3039.

The application seeking transfer to Steven R. Bryan was filed on April 28, 2000. An amended application seeking both that transfer and the transfer to Bryan Family, Inc., was filed on August 4, 2000. No protests have been filed. Because the application is unopposed, and because our decision today grants the relief requested, the requirement for 30-day public review and comments is waived pursuant to Pub. Util. Code § 311(g)(2).

### **Findings of Fact**

1. Pinnacles is a local exchange telephone company providing service to portions of San Benito County.
2. Rex Bryan held voting control and was president of Pinnacles until his death in December 1999.
3. Rex Bryan's eldest son, Steven R. Bryan, has succeeded to the presidency of the utility and will assume voting control.
4. Upon approval of the transfer of control to Steven R. Bryan, the application seeks approval, prospectively, of a transfer of control from Steven R. Bryan to Bryan Family, Inc., a California corporation and holding company.
5. The officers and directors of Bryan Family, Inc., are the same as the officers and directors of Pinnacles.
6. The proposed changes in control will have no adverse effect on any member of the public.
7. There will be no change in rates, terms or conditions of service as a result of the proposed changes in control.

### **Conclusions of Law**

1. No public hearing is necessary.
2. Steven R. Bryan is qualified to assume control of Pinnacles Telephone Co.

3. The transfer of control to Steven R. Bryan and the subsequent transfer of control from him to Bryan Family, Inc., are not adverse to the public interest.

4. It is reasonable to grant an exemption to the pre-approval requirement of a transfer or encumbrance of utility property for the transfer of control to Steven R. Bryan.

5. The application should be granted.

## **O R D E R**

**IT IS ORDERED** that;

1. The application of Steven R. Bryan to assume control of Pinnacles Telephone Co. (Pinnacles) is approved.

2. Following transfer of control to Steven R. Bryan, Steven R. Bryan is authorized to transfer control of Pinnacles to Bryan Family, Inc., on the terms and conditions set forth in the application and its exhibits.

3. Within 30 days of the date of this order, Steven R. Bryan shall file an Advice Letter in accordance with General Order 96-A to modify the Pinnacles tariff book to reflect the change in control.

4. Application 00-04-048 is closed.

This order is effective today.

Dated October 5, 2000, at San Francisco, California.

LORETTA M. LYNCH

President

HENRY M. DUQUE

JOSIAH L. NEEPER

RICHARD A. BILAS

CARL W. WOOD

Commissioners