

Decision 08-08-013 August 21, 2008

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of NTI of California, LLC (U6102C) and Zayo Group, LLC for approval of the Transfer of Control of NTI of California, LLC to Zayo Group, LLC.

Application 08-04-016
(Filed April 2, 2008)

**DECISION AUTHORIZING TRANSFER OF CONTROL
OF NTI OF CALIFORNIA, LLC**

Summary

This decision grants the joint unopposed application of NTI of California, LLC (NTI) and Zayo Group, LLC (Zayo), (together, Applicants) for approval of a transaction in which Zayo will acquire control of NTI, pursuant to Sections 852 and 854.¹

This proceeding is closed.

Parties to the Transaction

NTI is a California limited liability company with its principal business office located in Wenatchee, Washington. NTI holds a certificate of public convenience and necessity (CPCN) to provide limited facilities-based and resold local exchange and inter- and intra- LATA services in California.² All of NTI's

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

² See Decision (D.) 98-12-083.

membership interests are currently owned by Northwest Telephone, Inc. (Parent), which is also a Washington corporation.

Zayo is a Delaware limited liability company with its principal offices located in Louisville, Colorado. Zayo is indirectly wholly owned by Communications Infrastructure Investments, LLC, which is also a Delaware limited liability company. Zayo was formed for the purpose of acquiring and supporting the long-term development of fiber-based bandwidth solutions-oriented businesses and acquired a number of companies in order to carry out this business plan. Zayo does not hold a CPCN authorizing the provision of services in California and does not currently own any telecommunications carriers providing certificated services in this state.

Proposed Transaction

Under this transaction, pursuant to a merger, the shareholders of Parent will transfer all of the membership interests in NTI to Zayo.³ As a result, Zayo will hold a 100% ownership interest in NTI.

NTI will continue to hold its CPCN to provide telecommunications services in California.

Applicants represent that this change in ownership will benefit NTI and its customers, because NTI will gain access to the additional resources and operational expertise of Zayo. Applicants also state that by joining its network

³ In March 2008, NTI filed Advice Letter No. 4, which sought approval of a transaction in which Parent would contribute all of its membership in NTI to Parent's shareholders. This advice letter has been approved and became effective on April 24, 2008. Therefore, Zayo is acquiring the membership interests in NTI directly from Parent's shareholders, rather than from Parent.

with Zayo's network, NTI will become a stronger competitor in the California telecommunications marketplace.

The Applicants further represent that the transaction will be transparent to customers, because customers will continue to receive service from NTI under the same rates, terms, and conditions after the transaction is approved.

However, according to the application, NTI will change its company name to a name selected by Zayo after the transfer of control is finalized.

Discussion

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

In a situation in which a company that does not possess a CPCN desires to acquire control of a company that does possess a CPCN, we will apply the same requirements as in the case of an applicant seeking a CPCN to exercise the type of authority held by the company being acquired. Therefore, although Zayo does not hold a CPCN authorizing it to provide telecommunications services in California, Zayo must meet the requirements for issuance of a CPCN because it is acquiring control of NTI, a certificated carrier.

The Commission has established two major criteria for determining whether a CPCN should be granted. An applicant who desires to operate as a facilities-based and resale provider of local exchange and interexchange service must demonstrate that it has a minimum of \$100,000 in cash or cash equivalent, reasonably liquid and readily available to meet the firm's start-up costs. In addition, the applicant is required to make a reasonable showing of technical expertise in telecommunications or a related business.

The application includes financial statements and other evidence that demonstrates that Zayo has sufficient resources to meet our financial requirements. Also, since Applicants have indicated that Zayo will retain NTI's current management, we find that Zayo has sufficient experience and expertise in the telecommunications field to capably manage NTI, for the purpose of this transaction only. This transaction will enhance NTI's access to financial resources and, by joining with Zayo's network, NTI will have the opportunity to become a stronger competitor in the telecommunications marketplace in this state. In addition, except for a future change to NTI's company name, this transaction will be transparent to customers. Therefore, the proposed transaction is in the public interest.

Therefore, we will grant the application pursuant to Sections 852 and 854.

Categorization and Need for Hearings

In Resolution ALJ 176-3212, dated April 24, 2008, the Commission preliminarily categorized this application as ratesetting, and preliminarily determined that hearings were not necessary. No protests have been received. There is no apparent reason why the application should not be granted. Given these developments, a public hearing is not necessary, and it is not necessary to disturb the preliminary determinations.

Waiver of Comment Period

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Section 311(g)(2) of the Public Utilities Code and Rule 14.6(c)(2) of the Commission's Rules of Practice and Procedure, the otherwise applicable 30-day period for public review and comment is waived.

Assignment of Proceeding

Timothy Alan Simon is the assigned Commissioner and Myra J. Prestidge is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. NTI is a California limited liability company and a wholly owned subsidiary of Parent, another California limited liability company.
2. In D.98-12-083, NTI was granted a CPCN to provide limited facilities-based and resold local exchange and inter- and intra-LATA services in California.
3. As a result of the transaction, Zayo will acquire 100% of the membership interests in NTI and will therefore gain control of NTI.
4. Zayo does not hold a CPCN that authorizes the company to provide telecommunications services in California.
5. NTI's customers will continue to receive service under the same rates, terms, and conditions after the transaction, except that NTI's company name will change to a name selected by Zayo after this transaction is finalized.
6. Zayo has sufficient financial resources to meet the Commission's requirements to provide facilities-based and resold local exchange and inter- and intra-LATA services.
7. Since this transaction will give NTI access to the financial resources of Zayo, this transaction will improve the financial stability of NTI.

8. Since this transaction will permit NTI to join its network with Zayo's network and to have access to Zayo's management experience, this transaction may make NTI a stronger competitor in the California telecommunications marketplace.

9. Since Zayo will retain NTI's management personnel, Zayo's current management has met the requirements for technical and managerial expertise to provide telecommunications services in this state, for the purposes of this transaction only.

10. Notice of this application appeared on the Commission's Daily Calendar on April 15, 2008. There were no protests to this application.

11. No hearings are necessary.

Conclusions of Law

1. The Commission will apply the same requirements to a request for approval of an agreement to acquire control of a facilities-based and resale provider of local exchange and inter- and intra-LATA telecommunications services within California as it does to an applicant for authority to provide such services.

2. Zayo meets the Commission's requirements for the issuance of a CPCN to provide facilities-based and resold local exchange and inter- and intra-LATA telecommunications services, for the purposes of this transaction only.

3. This transaction is in the public interest.

4. In order to avoid delaying this transaction, the approval of the application should be made effective immediately.

O R D E R

IT IS ORDERED that:

1. Pursuant to Public Utilities Code Sections 852 and 854, the application of NTI of California, LLC (NTI) and Zayo Group, LLC (Zayo) for approval of the transfer of control of NTI to Zayo is approved.

2. Application 08-04-016 is closed.

This order is effective today.

Dated August 21, 2008, at San Francisco, California.

MICHAEL R. PEEVEY

President

DIAN M. GRUENEICH

JOHN A. BOHN

RACHELLE B. CHONG

TIMOTHY ALAN SIMON

Commissioners