

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of the Joint Application of)
TNCI Operating Company LLC and Pac-)
West Telecomm, Inc. (Debtor-in-Possession))
for Approval of the Transfer of Customer)
Base and Certain Assets)

DOCKET NO. 13-2305-01

DOCKET NO. 13-2431-02

ORDER APPROVING TRANSFER OF
CONTROL

ISSUED: October 1, 2013

By The Commission:

This matter is before the Commission on the joint application of TNCI Operating Company LLC (“TNCI”) and Pac-West Telecomm, Inc. (“Pac-West”) (collectively, “Applicants”) for approval pursuant to which TNCI will acquire the customers and certain assets of Pac-West. Applicants filed for Commission approval on August 1, 2013. The application contains all the information required by Utah Admin. Code R746-349-7(A)(1).¹

Pursuant to Utah Code Ann. § 54-4-30, the Commission issued a notice of application and notice of hearing on August 7, 2013, allowing for the submission of comments by any interested party regarding the application. No comments or objections were received.

On August 26, 2013, in response to a Commission action request, the Division of Public Utilities (“Division”) submitted a recommendation to approve the application. The Division’s memo states: “The Division has reviewed the joint application between . . . TNCI . . . and Pac-West . . . and believes that the transfer of control is in the public interest. . . . As a result

¹ At hearing, Applicants supplemented their joint application with testimony and exhibits which, taken together, satisfy Utah Admin. Code R746-349-7(A)(1).

of the acquisition, . . . TNCI will be able to provide the telecom services that were being provided by Pac-West without interruption to the current customers.”²

On September 12, 2013, the Administrative Law Judge (“ALJ”) for the Commission held a hearing, pursuant to Utah Code Ann. § 54-4-30. William J. Evans appeared on behalf of the Applicants and was joined, telephonically, by Jeff Compton, CEO and president of TNCI, and Sam Shiffman, executive vice president of Pac-West. Justin Jetter, Utah Assistant Attorney General, appeared for the Division, and was accompanied by Ron Slusher, Utility Technical Consultant for the Division.

The ALJ took administrative notice of the application and memorandum filed by the Division recommending approval, and accepted into evidence several supplemental exhibits submitted by Applicants. Mr. Compton testified on behalf of TNCI and offered the following summary of why the transaction is in the public interest:

We believe that this application is in the public interest because the acquisition of [Pac-West] assets and customers is a result of [Pac-West’s] voluntary Chapter 11 bankruptcy filing. The bankruptcy court has already approved the asset purchase agreement and the transaction will achieve an orderly transfer of the customers, keeping their services in place and dial tone on so they can continue to conduct business on [Pac-West] to a financially stable company that will continue to provide the same level of services that they are already getting, without any interruptions.

As stated in the application, TNCI has the experience and is well qualified to provide these services, and we believe that the public interest will be served by approval of [the joint] application.

² Division Memo at 1, filed August 26, 2013.

Transcript of Hearing at 9, lines 22-25; 10, lines 1-12. Mr. Shiffman concurred with Mr. Compton's testimony on why the transaction is in the public interest.

See id. at 12, lines 19-25.

Mr. Slusher testified on behalf of the Division in support of the application. Mr. Slusher further testified that a transfer of control in this docket is just, reasonable, and in the public interest. See id. at 15, lines 7-10. No one appeared at the hearing objecting to the application.

Under Utah Admin. Code R746-349-7, "[i]f no objection to the proposed transaction is submitted in any filed comments or reply comments, the Commission will presume that approval of the transaction is in the public interest and use the information contained in the application and accompanying documents as evidence to support a Commission order." Utah Admin. Code R746-349-7(A)(3). Because there is no objection to the granting of the application, the Commission thus presumes the application for approval of indirect transfer of control is in the public interest. Moreover, the Division's memoranda and testimony provide additional support for approval of the application.

ORDER

For the foregoing reasons, the Commission approves the transfer of control of Pac-West Telecomm, Inc. to TNCI Operating Company LLC ("TNCI").

DATED at Salt Lake City, Utah, this 1st day of October 2013.

/s/ Melanie A. Reif
Administrative Law Judge

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Approved and confirmed this 1st day of October, 2013, as the Order Approving Transfer of Control issued by the Public Service Commission of Utah.

/s/ Ron Allen, Chairman

/s/ David R. Clark, Commissioner

/s/ Thad LeVar, Commissioner

Attest:

/s/ Gary L. Widerburg
Commission Secretary
DW#247591

Notice of Opportunity for Agency Review or Rehearing

Pursuant to Utah Code Ann. §§ 63G-4-301 and 54-7-15, a party may seek agency review or rehearing of this order by filing a request for review or rehearing with the Commission within 30 days after the issuance of the order. Responses to a request for agency review or rehearing must be filed within 15 days of the filing of the request for review or rehearing. If the Commission fails to grant a request for review or rehearing within 20 days after the filing of a request for review or rehearing, it is deemed denied. Judicial review of the Commission's final agency action may be obtained by filing a Petition for Review with the Utah Supreme Court within 30 days after final agency action. Any Petition for Review must comply with the requirements of Utah Code Ann. §§ 63G-4-401, 63G-4-403, and the Utah Rules of Appellate Procedure.

CERTIFICATE OF SERVICE

I CERTIFY that on the 1st day of October, 2013, a true and correct copy of the foregoing ORDER APPROVING TRANSFER OF CONTROL was delivered upon the following as indicated below:

By Electronic-Mail:

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