

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of the Application of Pac-)	<u>DOCKET NO. 06-2305-01</u>
West Telecomm, Inc., and Pac-West)	
Acquisition Corporation for Approval of a)	
Transfer of Control of Pac-West)	<u>ORDER APPROVING TRANSFER OF</u>
Telecomm, Inc.)	<u>CONTROL</u>
)	

SYNOPSIS

The Commission finds the proposed transfer of control of Pac-West Telecomm, Inc., to be in the public interest and approves the same.

ISSUED: January 29, 2007

By The Commission:

PROCEDURAL HISTORY

On November 27, 2006, Pac-West Telecomm, Inc. ("Pac-West") and Pac-West Acquisition Corporation ("PWAC") (hereinafter jointly referred to as the "Applicants") filed an Application for Approval of a Transfer of Control of Pac-West Telecomm, Inc. ("Application") pursuant to *Utah Code Ann.* §§ 54-4-28 and -29 seeking Commission approval of the proposed transfer of control of Pac-West to PWAC.

On January 18, 2007, the Division of Public Utilities ("Division") filed a memorandum of its investigation of the proposed transfer recommending approval of the same.

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DISCUSSION, FINDINGS, AND CONCLUSIONS

Pac-West received its Certificate of Public Convenience and Necessity authorizing it to provide telecommunications services in Utah on May 8, 2000, in Docket No. 99-2305-01. Currently, Pac-West is a provider of integrated communication solutions that enable communication providers to use its network and services as an alternative to building and maintaining their own networks. Pac-West's customers currently include Internet service providers, voice over Internet protocol providers, other enhanced communication service providers, and other wholesale customers who provide communication services to their end users. Pac-West also provides interstate long distance services (primarily 800 service) to business customers.

PWAC is a wholly-owned subsidiary of Columbia Ventures Corporation ("CVC") and was formed for the sole purpose of making the proposed investment in Pac-West. PWAC will be a holding company for Pac-West following completion of the transaction.

CVC is an investment company that owns and operates a portfolio of telecommunications companies and a small number of manufacturing businesses around the world. It is authorized to provide domestic interstate and international telecommunications services pursuant to Section 214 authorizations from the Federal Communications Commission but does not directly provide telecommunications services. CVC owns 50% of One Communications Corporation ("One Comm"), a holding company that owns many competitive local exchange carriers. One Comm provides telecommunications services to small, medium, and large businesses predominantly in the Northeast, Mid-Atlantic, and upper Midwest regions.

Service offerings include local, long distance, and toll-free telephony services, postpaid calling card services, conference calling, frame relay, private DSL, VPN, ATM, Internet access, Web mail, and converged services.

On November 15, 2006, Pac-West and PWAC entered into a Preferred Stock Purchase Agreement. Concurrently with the execution of the Stock Purchase Agreement, and in order to permit Pac-West to continue its operations, another newly-created subsidiary of CVC, Pac-West Funding Company (“PWFC”), purchased all of Comerica Bank’s rights, title and interest in its existing Loan and Security Agreement with Pac-West and such Loan and Security Agreement was amended and restated as the Amended and Restated Loan and Security Agreement (“Agreement”). Control of Pac-West was not transferred to PWAC or PWFC as a result of the issuance of the non-voting Preferred Stock to PWAC or the purchase by PWFC of Comerica’s interest in the Loan and Security Agreement. Upon Commission approval, control of Pac-West will transfer to PWAC and, ultimately, to CVC.

Applicants assert that the transaction will serve the public interest because “[t]he transaction is necessary to provide critical financial resources to Pac-West that will allow Pac-West to continue to provide high quality services to its customers. Without the transaction, Pac-West faced the undesirable likelihood of liquidation, with negative consequences for its employees, customers and investors.” Instead, the Agreement means that the Company will continue to have access to financing and thereby to continue in operation, providing stability for its employees and customers.

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According to Applicants, the transaction will not result in a change in the day-to-day management of Pac-West. In addition, the manner in which Pac-West currently offers service in Utah will not change; Pac-West will continue to offer the services it currently offers with no change in the rates, terms or conditions of service. The transaction, therefore, will be seamless and transparent to consumers in Utah.

The Division concludes the transfer of control is in the public interest and that as a result of the transaction Pac-West should be in a better position to continue as a viable provider of telecommunications services because of improved financial stability and access to the technical and managerial abilities of the acquiring company.

Utah Administrative Code Rule 746-110-1, authorizes the Commission to adjudicate a matter informally under *Utah Code Ann.* § 63-46b-5 when the Commission “determines that the matter can reasonably be expected to be unopposed and uncontested.” We note that two months have passed since Applicants filed their Application yet no party has sought intervention in this matter. We therefore view this matter as unopposed and uncontested and conclude it is in the public interest to proceed informally without hearing. Pursuant to Rule 746-110-2, we conclude good cause exists to waive the 20-day tentative period for an order issued in an informally adjudicated proceeding. Accordingly, this order will become effective on the date of issuance.

Based upon the evidence submitted by Applicants, as well as the Division’s recommendation, and pursuant to *Utah Code Ann.* §§ 54-4-28 and -29, we find and conclude that

the proposed transfer of control will not harm and can provide benefits to the State of Utah, its citizens, or to Applicants' Utah customers and is in the public interest.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED, that:

1. This matter be, and it is, converted to an informal proceeding pursuant to §63-46b-4(3), UCA 1953, as amended.
2. The proposed transfer of control of Pac-West Telecomm, Inc., is approved.
3. The approval granted herein is effective as of the date of this Order.

Pursuant to Utah Code §§63-46b-12 and 54-7-15, agency review or rehearing of this order may be obtained by filing a request for review or rehearing with the Commission within 30 days after the effective date 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 §§63-46b-14, 63-46b-16 and the Utah Rules of Appellate Procedure.

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DATED at Salt Lake City, Utah, this 29th day of January, 2007.

/s/ Ric Campbell, Chairman

/s/ Ted Boyer, Commissioner

/s/ Ron Allen, Commissioner

Attest:

/s/ Julie Orchard
Commission Secretary

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