

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

May 24, 2007

IN RE:)
)
PETITION OF PAC-WEST TELECOMM, INC.,) DOCKET NO.
PAC-WEST ACQUISITION COMPANY LLC AND) 06-00292
PAC-WEST FUNDING COMPANY LLC FOR)
APPROVAL OF A TRANSFER OF CONTROL)
OF PAC-WEST TELECOMM, INC.)

ORDER APPROVING TRANSFER OF AUTHORITY
AND FINANCING TRANSACTION

This matter came before Director Eddie Roberson, Director Pat Miller and Director Ron Jones of the Tennessee Regulatory Authority (the “Authority” or “TRA”), the voting panel assigned to this docket, at a regularly scheduled Authority Conference held on January 23, 2007, for consideration of the *Petition* of Pac-West Telecomm Inc. (“Pac-West”), Pac-West Acquisition Company, LLC (“PWAC”)¹ and Pac-West Funding Company, LLC (“PWFC”) (collectively, “Petitioners”) for approval of a transfer of authority of Pac-West to PWAC, a wholly-owned subsidiary of Columbia Ventures Corporation (“CVC”), and approval of a related financing transaction.

The Petition

Pac-West is a California corporation with headquarters in Stockton, California. Pac-West provides integrated communication solutions to Internet Service Providers (“ISPs”), Voice over

¹ The original November 27, 2006 Petition listed “Pac-West Acquisition Corporation” as a Petitioner, but on November 29, 2006 the Petitioners submitted an amended Petition substituting “Pac-West Acquisition Company LLC” for “Pac-West Acquisition Corporation.”

Internet Protocol (“VoIP”) providers, Enhanced Communication Service (“ESP”) providers, and other wholesale customers who provide communication services to their end-users. Pac-West also provides interstate long distance services. Pac-West is authorized to provide local exchange, facilities-based and resold interexchange telecommunications services in Tennessee, pursuant to Authority Order in Docket No. 05-00314, but currently has no assets or customers.

PWAC is a Washington limited liability company with principal offices in Vancouver, Washington. PWAC is a wholly-owned subsidiary of 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. PWAC holds no authorizations for provision of telecommunications services.

PWFC is a Washington limited liability with principal offices in Vancouver, Washington. PWFC is also a wholly-owned subsidiary of CVC and was formed for the purpose of refinancing some of Pac-West’s existing debt obligations. PWFC also holds no authorizations for provision of telecommunications services.

CVC is an investment company that owns and operates a portfolio of telecommunications companies and a small number of manufacturing businesses around the world. CVC is authorized to provide interstate and international telecommunications services by the Federal Communications Commission (“FCC”), but does not provide telecommunications services directly. CVC owns fifty percent of One Communications Corp., a holding company that owns several licensed Competing Local Exchange Carriers (“CLECs”).

The *Petition* requests Authority approval to consummate a transaction whereby PWAC which currently does not own any common or other voting stock of Pac-West will acquire direct control of Pac-West through the conversion of non-voting, preferred Pac-West stock into

common stock. Upon completion of the conversion, PWAC will own approximately 95% of the common stock of Pac-West on a fully diluted basis. Pac-West, therefore, will be a direct subsidiary of PWAC and an indirect subsidiary of CVC.

Pursuant to a Preferred Stock Purchase Agreement (the “Stock Purchase Agreement”) between Pac-West and PWAC dated November 15, 2006, PWAC purchased an aggregate of 48,158 shares of newly designated non-voting and convertible Series B-1 Preferred Stock of Pac-West, par value \$0.001 per share, and newly designated non-voting and convertible Series B-2 Preferred Stock, (together, the “Preferred Stock”).²

The *Petition* states that 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, 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.³ The Petitioners seek Authority approval for this financing transaction, *nunc pro tunc*, and state that immediate effectuation of the initial aspects of the transaction was critical to avoid a bankruptcy liquidation proceeding which would have had extremely adverse effects on the Company’s employees, customers, and investors. The Petition also states that no authority was transferred as a result of

² Upon receipt of the requisite approval from the shareholders of Pac-West, the Series B-2 Preferred Stock will be issued to increase the number of authorized shares of Common Stock, par value \$0.001 per share, to permit the conversion of all outstanding Series B-2 Preferred Stock and provide for such additional shares of authorized Common Stock as the Board of Directors of Pac-West determines is necessary or appropriate.

³ In order to give greater financial stability to Pac-West, the Amended and Restated Loan and Security Agreement increased Pac-West’s revolving line from \$5 million to \$8 million and increased the aggregate amount of the term loans from \$8.8 million to \$16 million. In addition, the maturity date of the Revolving Line of Credit was extended to December 1, 2008, from November 9, 2007, and the maturity date of the Term Loans was shortened to December 1, 2008 from December 31, 2008. Pac-West, which pledged its assets under the original Loan and Security Agreement, will maintain the pledge of assets, although securing an increased amount of indebtedness, under the Amended and Restated Loan and Security Agreement.

preferred shares and the resulting transfer of authority is specifically conditioned upon Authority approval.

The Petitioners assert that that the proposed transaction is critical to the financial viability and ability of Pac-West to provide uninterrupted service to its customers. The transaction will not result in a change in the day-to-day management of Pac-West, and Pac-West will continue to offer the services it currently offers with no change in the rates and conditions of service.

January 23, 2007 Authority Conference

Tenn. Code Ann. § 65-4-113 (2004) requires a public utility to obtain TRA approval to transfer its authority to provide utility services. Tenn. Code Ann. § 65-4-113(a) (2004) provides:

No public utility, as defined in § 65-4-101, shall transfer all or any part of its authority to provide utility services, derived from its certificate of public convenience and necessity issued by the authority, to any individual, partnership, corporation or other entity without first obtaining the approval of the authority.

Tenn. Code Ann. § 65-4-113(b) (2004) provides the standards by which the TRA shall consider an application for transfer of authority, which in pertinent part, states as follows:

Upon application for approval of the transfer of authority to provide utility services, the authority shall take into consideration all relevant factors, including, but not limited to, the suitability, the financial responsibility, and capability of the proposed transferee to perform efficiently the utility services to be transferred and the benefit to the consuming public to be gained from the transfer. The authority shall approve the transfer after consideration of all relevant factors and upon finding that such transfer furthers the public interest.

Tenn. Code Ann. § 65-4-109 (2004) provides:

No public utility shall issue any stocks, stock certificates, bonds, debentures, or other evidences of indebtedness payable in more than one (1) year from the date thereof, until it shall have first obtained authority from the authority for such proposed issue. It shall be the duty of the authority after hearing to approve any such proposed issue maturing more than one (1) year from the date thereof upon being satisfied that the proposed issue, sale and delivery is to be made in accordance with law and the purpose of such be approved by the authority.

At the regularly scheduled Authority Conference held on January 23, 2007, the voting panel assigned to this docket found that the proposed transfer of authority is in the public interest, will be transparent to Pac-West customers, and no customer notice is required; however, the transfer should be considered pursuant to Tenn. Code Ann. § 65-4-113 (2004), rather than Tenn. Code Ann. § 65-4-112 (2004) under which the *Petition* was filed, because Section 112 applies to transactions between two public utilities, which is not true of the parties in this docket. The Panel also considered the related financing transaction pursuant to § 65-4-109 (2004)⁴ and voted unanimously to approve the transfer of authority pursuant to Tenn. Code Ann. § 65-4-113 (2004), and the related financing transaction pursuant to § 65-4-109 (2004), contingent upon FCC approval.


IT IS THEREFORE ORDERED THAT:

1. The transfer of authority of Pac-West Telecomm Inc. to Pac-West Acquisition Company, LLC as described in the *Petition* and discussed herein is approved, contingent upon approval by the Federal Communications Commission.
2. Pac-West Telecomm Inc., Pac-West Acquisition Company, LLC, and Pac-West Funding Company, LLC are authorized to enter into the financing transaction, as described in the *Petition* and discussed herein, *nunc pro tunc*.
3. The Applicants shall file with the Authority any documentation from the Federal Communications Commission regarding subsequent action on the transfer.

⁴ With regard to the related financing transaction, pursuant to Tenn. Code Ann. § 65-4-109 (2004), Director Jones made the following additional findings:

1. The Petitioners have filed similar petitions or notices in other states;
2. Tennessee has a legitimate interest in monitoring the integrity of the competitive marketplace which includes obtaining information on the financial transactions and fitness of certificated telecommunications carriers; and
3. The burden of compliance with Tenn. Code Ann. § 65-4-109 (2004) is minimal and such compliance should be perfunctory given the telecommunications industry's movement to a competitive environment.

4. The authorization and approval hereby given shall not be used by any party for the purpose of inferring an analysis or assessment of the risks involved. This decision is not intended to create any liability on the part of the Tennessee Regulatory Authority, the State of Tennessee or any political subdivision thereof.



Eddie Roberson, Director

Pat Miller, Director

Ron Jones, Director