

Filed Session of June 21, 2000
Approved as Recommended
and so Ordered
By the Commission

JANET HAND DEIXLER
Secretary

Issued & Effective July 6, 2000

STATE OF NEW YORK
DEPARTMENT OF PUBLIC SERVICE

June 8, 2000

TO: THE COMMISSION

FROM: OFFICE OF COMMUNICATIONS

SUBJECT: CASE 00-C-0770 - Joint Petition of Telscape International, Inc., Telscape USA, Inc., Pointe Communications Corporation, Overlook Communications International Corp., and PointeCom, Incorporated for Approval of an Agreement and Plan of Merger between Telscape International, Inc. and Pointe Communications Corporation.

RECOMMENDATION:

It is recommended that the Commission grant approval, pursuant to Section 100 of the Public Service Law, for Telscape International, Inc. to merge with Pointe Communications Corporation, thereby allowing PointeCom Corporation shareholders to acquire control of Telscape USA. Telscape International, Inc., the surviving corporate parent, should be required to notify the Secretary to the Commission in writing within 30 days after consummation of the transaction approved herein. If such transaction is not consummated within one year after the issuance of this Order, the Commission may rescind the approval granted herein.

INTRODUCTION

By petition filed May 1, 2000, pursuant to Section 100 of the Public Service Law, Telscape International, Inc. (Telscape), Telscape USA, Inc. (USA), Pointe Communications Corporation (PointeCom), Overlook Communications International Corp. (OCI), and PointeCom, Incorporated (Pointe) requested Commission approval of a stock transaction whereby existing shareholders of PointeCom will acquire majority control of Telscape and its operating subsidiaries. The merger will result

in a transfer of control, at the holding company level, for Telscape's New York-certificated subsidiary, USA.

BACKGROUND

Telscape is a publicly traded Texas corporation with its principal offices located at 2700 Post Oak Boulevard, Suite 1000 Houston, Texas, 77056. While Telscape is engaged in the telecommunications business, it is a holding company and does not hold any Federal or State telecommunications authorizations.

USA is a Texas corporation with its principal offices located at 2700 Post Oak Boulevard, Suite 1000 Houston, Texas, 77056. Pursuant to a Certificate of Public Convenience and Necessity granted by this Commission, dated December 11, 1996, in Case 96-C-0823, USA is authorized to resell all forms of telecommunications services within New York State. USA is authorized to provide resold interexchange services in 34 states.

PointeCom, formerly Charter Communications International, Inc., is a publicly traded Nevada corporation with its principal offices located at 1325 North Meadow Parkway, Suite 110, Roswell, Georgia, 30076. Though not certificated in New York, PointeCom, together with its subsidiaries, provides facilities based interexchange and/or competitive local exchange services in the United States.

Pointe, a wholly owned subsidiary of PointeCom, is a Delaware corporation with its principal offices located at 1325 North Meadow Parkway, Suite 110, Roswell, Georgia, 30076. Pursuant to a Certificate of Public Convenience and Necessity granted by this Commission, dated November 19, 1999, in Case 99-C-1564, Pointe is authorized to provide resold and facilities based telecommunications services within New York State. Pointe provides resold and/ or facilities based interexchange services in 3 states.

OCI, a wholly owned subsidiary of PointeCom, is a North Carolina corporation with its principal offices located at 1325 North Meadow Parkway, Suite 110, Roswell, Georgia, 30076. Pursuant to a Certificate of Public Convenience and Necessity granted by this Commission, dated December 8, 1995, in Case 95-C-

0902, OCI is authorized to resell all forms of telecommunications services within New York State. OCI provides resold interexchange services in 26 states.

DISCUSSION

Telscape and PointeCom propose to consummate a merger pursuant to a Merger Agreement dated December 31, 1999. Pursuant to the Agreement, the merger will be achieved via a stock-for-stock transaction whereby Telscape will issue common shares to PointeCom shareholders at an exchange ratio of 0.223514 shares of Telscape common stock for every share of PointeCom common stock. Also, for each share of PointeCom convertible preferred shares outstanding, Telscape will issue one share of Telscape convertible preferred stock. After the merger, Telscape shares held by pre-merger Telscape shareholders will represent approximately 25% of the outstanding voting power of Telscape, while the stock issued to existing PointeCom shareholders will represent 62% of the outstanding voting power of Telscape.^{1/} Following the merger, therefore, existing PointeCom shareholders will own shares representing a majority of the total voting power of Telscape capital stock.

The merger does not involve any assignment of certifications, or any change in the entities that hold such certifications. Also, the merger will not affect the ownership of Pointe or OCI, PointeCom's New York certificated subsidiaries. The only change in ownership that will occur, at the holding company level, is a transfer of control with respect to Telscape's New York-certificated subsidiary USA.

The petitioners represent that PointeCom has the financial, technical, and managerial qualifications to acquire de jure control of Telscape. The parties further state that the merger of PointeCom and Telscape will create a stronger telecommunications company, whose business plan is to target the United States Hispanic and Latin American markets. The transaction will be transparent to New York customers as there

^{1/} The remaining 13% of the voting power in Telscape represents funds that are in escrow until consummation of the transaction.

will be no interruption of service or change in the management or operation of the companies. The transfer of ownership will have no effect on the companies' name, address, services, rates or terms and conditions of service.

Complaints: No consumer complaints were filed against either Pointe, OCI, or USA during the past year. This memorandum has been reviewed by Nelly Acevedo of the Office of Consumer Services.

CONCLUSION AND RECOMMENDATION

Based on the representations in the petition, the proposed transfer of control is in the public interest, and the Office of Communications recommends that the Commission approve the transaction.

Respectfully submitted,

RUVAİN S. KUDAN
Associate System Planner

Reviewed by,

MAUREEN J. MCCAULEY
Office of General Counsel

APPROVED:

ROBERT LA MARCHE
Chief, Office of Communications