

Filed Session of April 25, 2001

Approved as Recommended
and so Ordered
By the Commission

JANET HAND DEIXLER
Secretary

Issued and Effective May 4, 2001

STATE OF NEW YORK
DEPARTMENT OF PUBLIC SERVICE

April 3, 2001

TO: THE COMMISSION

FROM: OFFICE OF COMMUNICATIONS

SUBJECT: CASE 01-C-0351 - Joint Petition of Comm South
Companies, Inc., ARBROS Communications, Inc. and ARBROS
Communications Licensing Company, N.E. to Transfer
Majority Ownership and Control of Comm South from
TracFone Wireless, Inc. to AM Comm Solutions, LLC.

RECOMMENDATION: It is recommended that the Commission grant approval, pursuant to Sections 100 and 101 of the Public Service Law, for Comm South Companies, Inc., and its parent entities, together with ARBROS Communications, Inc. and ARBROS Communications Licensing Company, N.E., to transfer majority ownership and control of Comm South from TracFone Wireless, Inc. to TracFone's affiliate, AM Comm Solutions, LLC.; to transfer AM Comm's stock in Comm South and control of Comm South to an unaffiliated company, ARBROS; for Comm South and ARBROS Licensing to engage in a related financing transaction; and for the issuance of more than 10% of ARBROS's shares to AM Comm and its parent Sercotel, S.A. de C.V. Immediately after the consummation of the transaction approved herein, the petitioners should be required to file the necessary adoption supplements with the Secretary to the Commission. Also, within 60 days after the consummation of the transaction approved herein, the petitioners should be required to inform the Secretary of the Commission in writing that the transaction was consummated. 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 joint petition filed on March 12, 2001, pursuant to Sections 100 and 101 of the Public Service Law (PSL), Comm South Companies, Inc. (Comm South), and its parent entities, together with ARBROS Communications, Inc. (ARBROS) and ARBROS Communications Licensing Company, N.E. (ARBROS Licensing), requested authority (1) to transfer majority ownership and control of Comm South from TracFone Wireless, Inc. (TracFone) to TracFone's affiliate, AM Comm Solutions, LLC (AM Comm), which will hold approximately 90.1% of the stock of Comm South only for an instant, (2) to transfer AM Comm's stock in Comm South and control of Comm South to an unaffiliated company, ARBROS, (3) for Comm South and ARBROS Licensing to engage in a related financing transaction, and (4) for the issuance of more than 10% of ARBROS's shares to AM Comm and its parent Sercotel, S.A. de C.V. (Sercotel), or Sercotel's affiliated designee. The applicants do not seek to transfer any operating authority. Both Comm South and ARBROS Licensing will continue to provide intrastate communications service in New York under their existing authorizations and tariffs. The contemplated transaction will therefore be transparent to customers in New York.

Background

Comm South is authorized to provide telecommunications service in many states, including New York. Prior to the instant petition, Comm South, a Texas corporation, was 90.1% owned by TracFone, a Florida corporation and provider of resold prepaid wireless services, and 9.9% owned by AM Comm, a Delaware limited liability company. TracFone is 97.3% owned by Sercotel, a Mexican corporation, and AM Comm is a wholly owned subsidiary of Sercotel. Sercotel is a wholly owned subsidiary of America Movil, S.A. de C.V. (AM), a Mexican corporation.

Comm South is headquartered at 2909 N. Buckner Boulevard, Suite 800, Dallas, Texas 75228. Comm South is a reseller of prepaid local telephone service. In New York, Comm

South received its authority to operate as a reseller of all forms of telephone services on May 20, 1998 in Case 98-C-0452.

ARBROS Licensing, a Delaware corporation, is a wholly owned subsidiary of ARBROS Communications N.E., LLC, a Delaware limited liability company that, in turn, is a wholly owned subsidiary of ARBROS, a privately held Delaware corporation. Prior to the instant transaction, ARBROS was 99.9% owned by Linsang Partners, LLC (Linsang), a Delaware limited liability company. ARBROS is headquartered at 1100 Wayne Avenue, 8th Floor, Silver Spring, Maryland 20910. ARBROS owns several regional LLCs which, in turn, own multiple licensing entities that are authorized to provide telecommunications services in the various states. In New York, ARBROS Licensing received its authority to provide resold and facilities-based local exchange service on July 7, 1999 in case 99-C-0849.

Discussion

According to the petition, the essence of this transaction is ARBROS's acquisition of all of the stock of Comm South, with the end result that Comm South and its subsidiaries will join the existing subsidiaries of ARBROS in providing telecommunications service to the public. Because the services provided by Comm South are very different from those currently provided by ARBROS's subsidiaries, ARBROS presently intends to maintain Comm South as a separate entity. Therefore, this transaction will be transparent to customers.

As provided in the Agreement, the acquisition of Comm South will be completed in a multi-step process whereby all of Comm South's outstanding stock will be exchanged for stock and warrants in ARBROS. Ultimately, Comm South will be a wholly owned subsidiary of ARBROS. As a preliminary step, the agreement provides that within five days of its execution, ARBROS is to acquire the 9.9% of Comm South's stock previously owned by AM Comm in exchange for 2,654,155 shares of ARBROS. According to the petition, this step does require regulatory approval.

The second step will occur at the closing of the overall transaction when, for business reasons, the current owners of Comm South will further restructure the ownership of Comm South by having AM Comm acquire from TracFone the 90.1% of the Comm South shares TracFone owns. The parent companies, Sercotel and AM, will remain the same. Upon acquiring the shares from TracFone, AM Comm will immediately transfer them to ARBROS.

In the third step, ARBROS will acquire the remaining 90.1% of Comm South's stock held by AM Comm in exchange for issuing to AM Comm 5,718,952 shares of ARBROS stock and ten year warrants to purchase another 31,963,232 shares at \$0.001 per share.

As the final step, this transaction also involves additional financing for ARBROS. Sercotel has made an unsecured loan to ARBROS, which will be converted at the closing of the acquisition of Comm South into 13,404,826 shares of ARBROS common stock. Linsang has also made an unsecured interest-free loan to ARBROS and that loan, and an earlier loan, will be converted into 13,404,826 shares of ARBROS common stock at the closing of the acquisition of Comm South.

By virtue of this share exchange and the additional ARBROS shares issued in connection with the financing transaction, the AM Comm parties will initially own approximately 24.9% of the ARBROS common stock outstanding after completion of the overall transaction. In the event that AM Comm exercises its warrants, the AM Comm parties may hold up to approximately a 45% interest in ARBROS. This change in ownership does not involve a change in the actual control of ARBROS and is supported by the same public interest considerations underlying ARBROS's acquisition of Comm South.

In addition to the foregoing loans, as a condition to ARBROS's obligation to close the Comm South acquisition, ARBROS must have obtained at closing additional financing, which shall have been arranged by AM on terms acceptable to ARBROS. Alternatively, ARBROS may issue Notes for all or part of the

required amounts. Portions or all of any loans to ARBROS from third parties may be secured by the assets and/or guarantees of ARBROS's subsidiaries, including Comm South and ARBROS licensing.

After the consummation of this transaction, Comm South and ARBROS Licensing will continue to operate under their same names, tariffs and operating authorities. Thus, the transfer of control will be transparent to customers and will not have any adverse impact on them.

Public Interest Considerations

The petitioners claim that approval of this request is in the public interest because the addition of Comm South to the ARBROS family of companies will enhance both Comm South's and ARBROS Licensing's ability to compete for telecommunications services in New York and elsewhere. Through the financing arrangements discussed herein, Comm South and ARBROS Licensing both will have access to the greater financial resources needed to introduce new products and services and to respond to the competitive telecommunications environment in New York and across the nation.

Complaints

There are currently no outstanding complaints against either Comm South or ARBROS Licensing. This memo has been reviewed by the Office of Consumer Services (Barry Bedrosian).

Conclusion

Based on the representations in the petition, the proposed transaction is in the public interest. Staff has no objection to the transaction and recommends approval.

Respectively submitted,

DONALD E. BURKE
Associate Valuation Engineer

Reviewed by,

SAUL ABRAMS
Assistant Counsel

APPROVED:

ROBERT LA MARCHE
Chief, Office of Communications