

**PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA
1325 G STREET, NW, SUITE 800
WASHINGTON, DC 20005**

ORDER

November 1, 2019

**FORMAL CASE NO. TA 08-11, IN THE MATTER OF THE APPLICATION OF
DSCI, LLC, U.S. TELEPACIFIC HOLDINGS CORP., AND TANGO PRIVATE
HOLDINGS II, LLC FOR APPROVAL TO TRANSFER INDIRECT CONTROL
OF DSCI, LLC TO TANGO PRIVATE HOLDINGS II, LLC, Order No. 20241**

I. INTRODUCTION

1. By this Order, the Public Service Commission of the District of Columbia (“Commission”) approves the Application of DSCI, LLC (“DSCI”), U.S. TelePacific Holdings Corp. (“TPx Holdings”), and Tango Private Holdings II, LLC (“Tango”) (collectively, “Applicants”) for Tango to acquire indirect control of DSCI (the “Transaction”). The Commission also approves the related transfer of an indirect minority ownership interest in DSCI upon completion of the Transaction. Commission approval of this transaction shall become effective upon the issue date of this Order.

II. BACKGROUND

2. On September 12, 2019, the Applicants filed their Application.¹ No comments on the Application were received. In the Application, the Applicants seek the Commission’s approval for the transfer of indirect control of DSCI to Tango Private Holdings II, LLC, an affiliate of the investment firm Siris Capital Group, LLC. The Applicants state that the Transaction is a step in the evolution of TPx as a premier provider of voice and managed services to businesses in the District of Columbia (“District”) and across the country. The Applicants assert that the sale is expected to strengthen TPx’s financial condition and prospects, increase its liquidity and accelerate the introduction of new communications technologies, products and services to TPx’s customers. The Applicants expect that the strengthened TPx will lead to a more competitive telecommunications marketplace.²

¹ *Formal Case No. TA 08-11, In the Matter of the Application of DSCI, LLC, U.S. TelePacific Holdings Corp., and Tango Private Holdings II, LLC for Approval to Transfer Indirect Control of DSCI, LLC to Tango Private Holdings II, LLC (“Formal Case No. TA 08-11”),* filed September 12, 2019 (“Application”).

² Application at 1-2.

3. The Applicants assert that approval of the Transaction is in the public interest and should be granted expeditiously. According to the Applicants, expedited action is warranted because of the anticipated benefits of the Transaction to TPx, including DSCI, and because the only change will be in the holding company structure of TPx Holdings by the merger of a newly formed subsidiary of Transferee (which was created for this Transaction) with and into TPx Holdings (with TPx Holdings surviving the merger as a wholly owned subsidiary of Transferee). The Applicants contend that TPx management will maintain and seek to enhance DSCI's managerial, technical and operational standards. The Applicants pledge that there will be no immediate change in the rates, terms and conditions of the services DSCI provides to customers. Lastly, the Applicants request that the Commission consider this Application no later than the Commission Open Meeting scheduled for December 11, 2019.³

4. The Applicants explain that the Transaction requires expeditious treatment because delay in the regulatory approval process risks creating business and marketplace uncertainty.⁴ The Applicants allege that competitors of TPx Holdings can capitalize on such uncertainty to generate doubt in the marketplace affecting decisions by current and potential customers. On the other hand, the Applicants believe that expeditious approval of the Transaction will enable the parties to undertake the necessary business preparations to complete the Transaction and to proceed with efforts to enhance the financial condition, prospects, network and services of TPx, including DSCI. The Applicants add that delay will cause the Applicants to incur significant additional expenses and prevent the parties from promptly realizing the economic and other benefits expected from the Transaction.⁵

A. Description of the Applicants

(1) DSCI, LLC and U.S. TelePacific Holdings Corp.

5. The Applicants describe DSCI as a privately held Delaware limited liability company and a wholly-owned, indirect subsidiary of TPx Holdings. TPx is headquartered in Los Angeles, California. The Applicants state that TPx provides facilities-based business communications services, including local, long distance, data and Internet services to small-to-medium sized businesses. In the District, the Applicants state that DSCI is authorized to provide resold local exchange telecommunications services pursuant to authority granted in *Formal Case No. TA 08-11*, Order No. 15086, granted on October 9, 2008.⁶ On April 1, 2019, DSCI filed a Survey Response with the Commission reporting

³ Application at 2.

⁴ The Applicants state that, in addition to the District, they will seek approval for the Transaction from state regulatory bodies in California, Georgia, Maryland, New Jersey, New York, Pennsylvania, and Texas, as well as the Federal Communications Commission. Application at 2.

⁵ Application at 2-3.

⁶ *Formal Case No. TA 08-11, In the Matter of the Application Of DSCI Corporation to Provide Local Telecommunications Services in the District of Columbia*, Order No. 15086, rel. October 9, 2008.

lines it supplies in the District of Columbia.⁷ Accordingly, the Applicants admit that DSCI meets the definition of a public utility set forth in DC Code §§ 34-214, 34-220, and 34-221.⁸

(2) Tango Private Holdings II, LLC

6. The Applicants state that Tango is a Delaware limited liability company with its principal offices in New York, New York and is an affiliate of Siris Capital Group, LLC, an investment firm focused on value creation in technology and telecommunications companies. The Applicants assert that Tango was formed for the purpose of acquiring TPx Holdings. The Applicants explain that for the purpose of accomplishing the Transaction, Tango has created a merger subsidiary, Tango Private Merger Sub, Inc. (“Merger Sub”), a Delaware corporation and direct wholly owned subsidiary of Tango. The Applicants aver that Tango is a direct, wholly owned subsidiary of Tango Private Holdings I, LLC, which is a direct, wholly owned subsidiary of Tango Private Investments, LLC. Upon closing, the Applicants explain that Siris Partners III, L.P.; Siris Partners IV, L.P.; Siris Partners III Parallel, L.P.; and Siris Partners IV Parallel, L.P. are expected to own a 10% or greater indirect interest in Tango. The Applicants maintain that Tango is ultimately controlled—through intermediary entities—on a day-to-day basis by Frank Baker, Peter Berger, and Jeffrey Hendren, all of whom are U.S. citizens. They also maintain that the investment vehicles indirectly invested in Tango are structured with numerous limited partners holding most of the equity, none of whom ultimately own more than 10% of the indirect equity of Tango.⁹

B. Description of the Transaction

7. As described in the Application, TPx Holdings, Tango, Merger Sub, and Investcorp International, Inc. (as Stockholder Representative) entered into an Agreement and Plan of Merger (“Agreement”) on August 17, 2019. Pursuant to and subject to the terms and conditions in the Agreement, the Applicants explain that Merger Sub will be merged with and into TPx Holdings, at which time Merger Sub will cease to exist with TPx Holdings surviving the merger. Further, the Applicants state that upon consummation of the Transaction, TPx Holdings will be a direct, wholly owned subsidiary of Tango and DSCI will be an indirect, wholly owned subsidiary of Tango. The Applicants thus request authority for the transfer of indirect control of DSCI to Tango.¹⁰

8. The Applicants also request approval on the related transfer of an indirect minority ownership interest in DSCI, in which Tango Private Holdings I, LLC and Tango

⁷ *ASMT2019-41-T-2*, Mandatory Annual Assessment Survey of Competitive Local Exchange Carriers of DSCI, LLC, filed April 1, 2019 (“Survey Response”).

⁸ Application at 3.

⁹ Application at 3- 4.

¹⁰ Application at 4.

Private Investments, LLC, will eventually hold 100% interest in Tango, and indirectly in DSCI. Furthermore, Siris Partners III, L.P. is expected to obtain a minority interest of approximately 37.99% indirectly in DSCI; Siris Partners IV, L.P. is expected to obtain a minority interest of approximately 30.89% indirectly in DSCI; Siris Partners III Parallel, L.P. is expected to obtain a minority interest of approximately 8.25% indirectly in DSCI; and Siris Partners IV Parallel, L.P. is expected to obtain a minority interest of approximately 14.77% indirectly in DSCI.¹¹ No other individual or entity is expected to hold 10% or more of Tango. The Applicants attach structure charts to the Application as Exhibit A.¹²

9. The Applicants maintain that the Transaction will be seamless to DSCI's customers. They state that all existing customers will continue to be served by DSCI pursuant to its existing authorizations as well as its existing tariffs and contracts following the Transaction. The Applicants also assert that TPx intends to maintain and seeks to enhance DSCI's managerial, technical and operational standards. The Applicants further claim that the Transaction will not result in any assignment of licenses or assets, nor trigger any federal or state anti-slamming or bulk customer transfer rules (because, they contend that the certificated, customer-facing service provider will be unchanged), or adversely affect the market for telecommunications services in the District. Lastly, the Applicants contend that the Transaction will not adversely affect competition for the provision of telecommunications in the District because all customers served by DSCI have access to multiple competitive alternatives.¹³

C. Public Interest Considerations

10. The Applicants submit that the proposed Transaction is in the public interest because it promotes competition among telecommunications providers. The Transaction, according to the Applicants, is expected to enhance the financial condition and prospects of DSCI, increase its liquidity and accelerate the introduction of new communications technologies, products and services to its customers. They add that the enhancements, together with the operational and financial expertise of Tango's affiliates, are expected to allow DSCI to strengthen its competitive positions to the benefit of its customers and the telecommunications marketplace. The Applicants claim that additional benefits from the Transaction would allow TPx to pursue growth strategies and to expand its operations both in terms of service area coverage and through the ability of each TPx entity to offer customers an expanded line of products and services. As a result of the Transaction, Applicants believe DSCI will be able to compete more effectively against incumbent carriers and larger competitive carriers.¹⁴

¹¹ The Applicants state that ownership percentages held by the individual investors in Tango Private Investments, LLC may change slightly prior to closing but will not result in any additional 10% or greater direct or indirect owner other than those identified in this Application. Application at 5.

¹² Application at 5.

¹³ Application at 5-6.

¹⁴ Application at 6.

11. The Applicants claim that the Transaction will have no adverse impact on the customers of DSCI. They assert that immediately following the Transaction, DSCI will continue to provide service at the same rates, terms, and conditions and without any interruption of service. They add that the transfer of indirect control of DSCI to Transferee will not have an adverse effect on competition in the markets for intrastate and interstate telecommunications services. The Applicants state that the Transferee does not offer or provide telecommunications services in the District.¹⁵ Finally, the Applicants address the five standards in 15 DCMR § 2511.2(d) and conclude that the Transaction satisfies those requirements for Commission approval of proposed transfers.¹⁶ The Commission addresses those five standards below.

III. COMMISSION DECISION

A. **Transfer of Control**

12. D.C. Code § 34-1001 sets forth the Commission's authority to review the transaction filed for Commission consideration and approval. In addition, 15 DCMR § 2511.2 provides the application requirements for entities seeking Commission approval for a corporate restructuring.¹⁷ The first step in this process, however, is for the Commission to determine whether it has authority to review and approve an application for transfer of control or a corporate restructuring, in accordance with D.C. Code § 34-1001. If the Commission determines that it has authority to review the transaction in accordance with D.C. Code § 34-1001, then the Commission will conduct an analysis of the application based on the requirements provided in 15 DCMR § 2511.2.¹⁸ The relevant portion of D.C. Code § 34-1001 reads:

No franchise nor any right to or under any franchise to own
or operate any public utility as defined in this subtitle . . .
shall be assigned [or] transferred . . . nor shall any contract

¹⁵ Application at 6.

¹⁶ Application at 7-8.

¹⁷ See 15 DCMR § 2511.2 (2015). Specifically, 15 DCMR § 2511.2 states: For any change of ownership or control involving a certificated local exchange carrier that must be approved by the Commission pursuant to D.C. Code § 34-1001 (2001), all of the entities involved in the transaction must file an application with the Commission at least sixty (60) days before the proposed closing date of the transaction.

¹⁸ See 15 DCMR § 2511.2(d) (2015) stating the five standards an application for transfer of control or other type of corporate reorganization must meet in order to receive Commission approval. The five standards are: (1) how the proposed transaction will affect competition in the District of Columbia; (2) how the proposed transaction will affect universal service; (3) how the proposed transaction will affect public safety and welfare; (4) whether the proposed transaction will affect the quality of local telecommunications services; and (5) how the proposed transaction will affect consumer rights.

or agreement with reference to or affecting any such franchise or right be valid or of any force or effect whatsoever unless the assignment, transfer . . . or agreement shall have been approved by the Commission in writing.¹⁹

13. A “public utility” is defined under D.C. Code § 34-214 as, *inter alia*, a “telephone corporation” or a “telephone line.”²⁰ D.C. Code § 34-220 provides that a “telephone corporation” includes:

every corporation, company, association, joint-stock company or association, partnership, and persons, their lessees, trustees, or receivers . . . owning, operating, controlling, or managing any plant, wires, poles for the reception, transmission, or communication of messages by telephone, telephonic apparatus or instruments, or any telephone line or part of telephone line, used in the conduct of the business of affording telephonic communications for hire, or which licenses, lets, or permits telephonic communication for hire.²¹

14. D.C. Code § 34-221 states that a “telephone line” includes:

conduits, ducts, poles, wires, cables, crossarms, receivers, transmitters, instruments, machines, and appliances, and all devices, real estate, franchises, easements, apparatus, fixtures, property, appurtenances, and routes used, operated, controlled, or owned by any telephone corporation to facilitate the business of affording telephonic communication for hire, or which licenses, lets, or permits telephonic communication.²²

15. The Commission has interpreted these provisions to mean that if a Competitive Local Exchange Carrier has facilities in the District, then it can be classified as a public utility under the D.C. Code and therefore certain transactions, such as assignments or transfers, require prior Commission approval.²³ In this instance, the

¹⁹ D.C. Code § 34-1001 (2001).

²⁰ D.C. Code § 34-214 (2001).

²¹ D.C. Code § 34-220 (2001).

²² D.C. Code § 34-221 (2001).

²³ See Formal Case No. 990, *In the Matter of Development of Local Exchange Carrier Quality of Service Standards for the District*, Order No. 13139, ¶ 22, rel. March 25, 2004; See also Formal Case No.

Commission must determine whether DSCI qualifies as a public utility for this transaction and thus, whether the transaction is subject to Commission review and approval. In the instant matter, the Applicants readily admit that DSCI has telephone lines in the District to be considered a public utility.²⁴ Accordingly, the transfer of control transaction is subject to Commission review under 15 DCMR § 2511.2.

16. Under the requirements of 15 DCMR § 2511.2, an application must contain a description of how the transaction satisfies the following five standards set out in 15 DCMR § 2511.2(d): (1) how the proposed transaction will affect competition in the District; (2) how the proposed transaction will affect universal service; (3) how the proposed transaction will affect public safety and welfare; (4) whether the proposed transaction will affect the quality of local telecommunications services; and (5) how the proposed transaction will affect consumer rights. The Commission reviews the Application to determine whether each of the five standards has been met.

17. In response to the first standard, the Applicants state that the Transaction will promote competition among telecommunications providers. They state that the Transaction will enable DSCI to obtain access to additional resources, which will allow DSCI to strengthen its competitive position to the benefit of their customers and the telecommunications marketplace. Moreover, the Applicants assert that the Transaction will allow TPx to pursue growth strategies and to expand its operations both in terms of service area coverage and through the ability of each TPx entity to offer customers an expanded line of products and services. As a result, the Applicants believe DSCI will be able to compete more effectively against incumbent carriers and larger competitive carriers.²⁵ Inasmuch as the Applicants will be able to maintain the same quality of services while enhancing its access to additional resources, the Commission finds that the Applicants have provided an adequate response to the competition standard.

18. Regarding the second standard, the Applicants assert that the Transaction described in this Application will not affect universal service. DSCI will continue to contribute to the Universal Service Trust Fund as may be required. Further, Applicants do not receive universal service funds for services provided in the District of Columbia.²⁶ We are satisfied that the Applicants have sufficiently responded to the universal service issue.

892, *In the Matter of Joint Application of CTC Communications Corp., Conversant Communications Resale, L.L.C., and Choice One Communications Resale, L.L.C. for Approval of Pro Forma Intra-Company Changes*, Order No. 16933, rel. October 12, 2012, citing *Formal Case No. 968, Joint Application of AT&T Corporation and Teleport Communications Group, Inc., for Approval of a Transfer of a Franchise*, Order No. 11532 at 5, rel. November 5, 1999, which provided the context for the Commission's authority to review certain transactions.

²⁴ See ASMT2019-41-T-2, *Survey Response*, filed April 1, 2019.

²⁵ Application at 7.

²⁶ Application at 7.

19. Turning to the third standard, the Applicants state that the Transaction will not adversely affect public safety and welfare. The Transaction will provide DSCI with access to increased access to capital which the Applicants expect will enhance public safety and welfare in the District.²⁷ The Applicants have provided a response that adequately addresses the public safety and welfare standard.

20. With regard to the fourth standard, the Applicants state that the Transaction will increase the quality of local telecommunications service by enhancing competition among providers in the District.²⁸ The Applicants have provided a response that adequately addresses the quality of local telecommunications services standard.

21. Concerning the fifth standard, the Applicants state that the Transaction will not affect consumer rights. The Applicants assert that the Transaction will be transparent to customers and will not result in any immediate change in their services. In particular, according to the Applicants, the rates, terms and conditions of their services will not change as a result of the change in indirect ownership of DSCI.²⁹ The Commission finds that the Applicants' response has satisfied the consumer rights standard.

IV. CONCLUSION

22. The Commission finds that the Application satisfies the five requirements of 15 DCMR § 2511.2(d). Therefore, for the reasons set forth in this Order, the corporate reorganization plan outlined in the Application is approved.

THEREFORE, IT IS ORDERED THAT:

23. The Application of DSCI, LLC, U.S. TelePacific Holdings Corp., and Tango Private Holdings II, LLC for Tango to acquire indirect control of DSCI and the related transfer of an indirect minority ownership interest in DSCI, is **APPROVED**, effective upon the issue date of this Order.

A TRUE COPY:

BY DIRECTION OF THE COMMISSION:



CHIEF CLERK:

**BRINDA WESTBROOK-SEDGWICK
COMMISSION SECRETARY**

²⁷ Application at 7.

²⁸ Application at 7.

²⁹ Application at 7-8.