

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE APPLICATION OF THE WESTERN UNION)
TELEGRAPH COMPANY FOR AN ORDER APPROVING)
THE TRANSFER OF CONTROL AND ISSUANCE OF) CASE NO. 10022
SECURITIES PURSUANT TO RESTRUCTURING)
TRANSACTIONS)

O R D E R

On September 9, 1987, the applicant, Western Union Telegraph Company¹ ("WUTC"), filed a request with this Commission for authority to offer intrastate interLATA telephone service within Kentucky.² Simultaneously with the filing of a petition for authority, WUTC sought approval of a major corporate restructuring designed to provide WUTC with the financial stability needed so that it may continue to serve the Kentucky interLATA market. Having granted WUTC authority as a non-dominant interLATA carrier, the Commission now approves the proposed restructuring.

DISCUSSION

As stated in WUTC's application, WUC's financial performance and cash resources have been adversely affected by many factors. Primarily, it appears that a decline in demand for Telex service

¹ WUTC is wholly owned by Western Union Corporation ("WUC").

² WUTC currently offers interstate MTS service to Kentucky residents, such service originating in Louisville, Lexington, and Northern Kentucky.

has severely diminished the parent corporation's revenue. In 1986, WUTC sustained a net loss of \$531 million. WUTC contemplates a major restructuring involving ITT Worldcom and BSL Partners that is designed to infuse sufficient capital so that WUTC may remain viable as a telecommunications provider.

Under the proposed plan of restructuring, WUC is to be merged into WUTC, and ITT Worldcom will be acquired by WUTC. Additionally, L-Tel Acquisition, Inc. ("NEWCO"), a corporation wholly owned by BSL Partners, is to be merged into WUTC. These transactions are to be financed by the issuance of up to \$450 million principal amount of new senior secured debentures of WUTC. Outstanding "old" debentures are then to be acquired in exchange for a new issue of preferred shares. Also, the outstanding debt of WUC and WUTC (the applicant) are to be settled with WUC's lending banks at a substantial discount.

After the proposed restructuring, WUTC will be renamed Western Union Corporation ("Western Union"). Control of the new Western Union will be in BSL Partners, the owner of NEWCO. BSL Partners will have a right to designate five directors (a majority) of the new Western Union. Also, BSL Partners will have the right to acquire 53 percent of the applicant's common shares. Ultimately, BSL Partners intends to assign all of its interest in Western Union to Brooke Partners, a limited partnership.³

³ Both BSL Partners and Brooke Partners are indirectly controlled by Bennett S. Lebow ("Lebow"), a private investor who often invests in and advises troubled companies.

The applicant contends that unless the proposed restructuring is completed by November 13, 1987, Western Union will likely be forced to seek protection under Chapter 11 of the Federal Bankruptcy code. WUTC and WUC presently have no unused bank commitments and are unable to incur any more long term debt. The applicant avers that the proposed restructuring will be in the public interest, and that the issuance of securities involved will be consistent with the requirements of KRS 278.300(3). It seems obvious that if the proposed reorganization does not occur, Kentucky ratepayers may lose a major provider of telecommunications service.

FINDINGS

The Commission takes notice of the fact that the Federal Communications Commission has approved the contemplated restructuring transactions.⁴ Pursuant to KRS 278.020(4), this Commission is to grant a transfer of control of a utility "if the person acquiring the utility has the financial, technical and managerial abilities to provide reasonable service."

All of the applicant's properties and assets will remain properties and assets of the surviving corporation. No change in Western Union's Kentucky operation should occur as a result of the transfer.⁵ The Commission is also persuaded that Brooke Partners,

⁴ DA 87-1407, Memorandum Opinion and Order released October 8, 1987.

⁵ Western Union's operations are, of course, primarily interstate in nature. Kentucky customers provide less than 1/60 of 1 percent of WUTC's total revenue.

controlled by Mr. Lebow, has prepared a strategic plan, and has the requisite managerial ability to provide reasonable service. Reasonable service must be construed in light of our Commission policy to allow free competition among non-dominant carriers in the interexchange market.⁶ Given a policy of relatively free entry into the interexchange market, this Commission should not raise unreasonable burdens for those providers seeking Kentucky authority. Although we feel that the future success of the new Western Union is not necessarily assured by the proposed plan, our refusal to assent to the restructuring could only contribute to the demise of the applicant, WUTC. For these reasons, the transfer should be approved.

As previously described, an integral part of the plan of reorganization is the issuance, by WUTC, of nearly a half billion dollars in new debt and preferred stock. The Commission finds that such issuance is consistent with KRS 278.300(3), and the issuance should be approved.

IT IS THEREFORE ORDERED that:

1. The transfer of control of WUTC that will occur as part of the proposed restructuring of Western Union be and it hereby is approved.
2. The surviving entity, Western Union, shall have the same authority as granted to Western Union Telegraph Company in Case No. 10021.

⁶ See Order in Administrative Case No. 273, dated May 25, 1984.

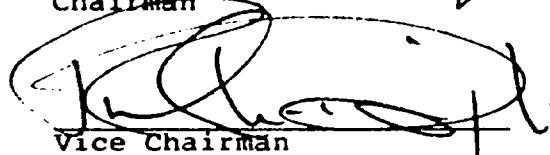
3. The proposed issuance of securities by WUTC, being consistent with KRS 278.300, be and it hereby is approved.

4. Nothing herein shall be deemed a finding of value for any purpose whatsoever, nor construed as a warranty by the Commonwealth of Kentucky or any agency thereof as to the securities authorized herein.

Done at Frankfort, Kentucky, this 30th day of October, 1987.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:

Executive Director