Decision **DRAFT DECISION OF ALJ KENNEY** **(Mailed 7/14/2004)**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Comm South Companies, Inc. (U-5943-C) and Arbros Communications, Inc. for Approval of Transfer of Control to Arcomm Holding Co.	Application 02-11-027 (Filed November 15, 2002)

OPINION
AUTHORIZING TRANSFER OF CONTROL AND IMPOSING A FINE

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1. Summary

In Application (A.) 02-11-027, Comm South Companies, Inc. (Comm South) and Arbros Communications, Inc. (Arbros) (collectively, "the Applicants") request authority under Pub. Util. Code Section 854(a)[1] to transfer control of Comm South from Arbros to Arcomm Holding Company (Arcomm). This decision grants A.02-11-027 to the extent it requests prospective authority for the transfer under Section 854(a). The Application is denied to the extent it requests retroactive authority for the transfer. This decision also requires Comm South to pay a fine of $5,000 for violating Section 854(a).

The record of this proceeding indicates that an affiliate of the Applicants known as Arbros Communications Licensing Company of California, LLC (ACLCC) may have discontinued the provision of service in California without Commission authorization. This decision orders Arbros and ACLCC to submit a compliance filing that states whether ACLCC has discontinued service. The assigned Administrative Law Judge (ALJ) shall prepare a draft decision that recommends an appropriate course of action based on the compliance filing. If Arbros and ACLCC do not submit the compliance filing, the assigned ALJ may prepare a draft decision that imposes a fine of $25,000 and revokes ACLCC's authority to operate in California.

2. The Applicants

Comm South is a Texas corporation qualified to transact business in California. It is authorized by the Commission to provide the following intrastate telecommunications services: (1) resold local exchange services

[1] All statutory references are to the Public Utilities Code unless otherwise indicated.

pursuant to Decision (D.) 98-03-025, D.00-09-058, and D.02-10-048; (2) limited facilities-based local exchange services pursuant to D.02-10-048; and (3) resold interexchange services pursuant to D.01-05-082.

In D.99-10-053, the Commission authorized Topp Telecomm, Inc. (Topp), to acquire control of Comm South. Topp subsequently changed its name to TracFone Wireless, Inc. (TracFone). On May 9, 2001, Comm South filed an advice letter in accordance with the procedures established by D.98-07-094 for authority to transfer control of Comm South from TracFone to Arbros.[2] The advice letter became effective after 40 day's notice.

Arbros is a wholly owed subsidiary of Arcomm. Both companies are Delaware corporations. The majority of Arcomm's shares are held by Linsang Partners, LLC. A subsidiary Arbros – ACLCC - is authorized to provide local exchange and interexchange services in California pursuant to D.01-04-033.

3. The Application

On June 14, 2002, a corporate reorganization was implemented whereby all the outstanding shares of Comm South were transferred from Arbros to Arcomm. The transfer did not affect the ultimate ownership of Comm South, since Arbros and Arcomm have identical ownership. A diagram of the pre- and post-transaction corporate structure is contained in Exhibit A of today's decision.

Application 02-11-027 was filed on November 15, 2002. Amendments to the application were filed on April 23 and May 17, 2004. Notice of the application and each amendment appeared in the Commission's Daily Calendar. There were no protests or other responses.

[2] D.98-07-094, 81 CPUC 2d 378.

In A.02-11-027, as amended, the Applicants request retroactive approval of the corporate reorganization pursuant to Section 854(a). The Applicants state that the principal purpose of the reorganization was to insulate Comm South from the serious financial difficulties of Arbros. The Applicants note that a petition for involuntary bankruptcy was filed against Arbros in 2003, but that the petition was eventually dismissed.

The Applicants assert that the reorganization will not adversely affect Comm South's customers or the public at large. This is because Comm South will continue to operate under its current name and management, and there will be no changes to the rates, terms, and conditions of Comm South's services.

The Applicants maintain that their failure to obtain Commission authority for the reorganization before implementing the reorganization as required by Section 854(a) was unintentional and inadvertent. The Applicants argue that they should not be fined for their failure to comply with Section 854(a). If a fine is imposed, the Applicants contend that it should be minimal because (1) they took steps to remedy the violation once it was discovered, (2) no one was harmed by the violation, and (3) the Applicants have modest financial resources.

4. Discussion

A. Section 854(a)

Corporate reorganizations like that described in A.02-11-027 are subject to Section 854(a).[3] Section 854(a) states, in relevant part, as follows:

> No person or corporation…shall merge, acquire, or control…any public utility…doing business in this state without first securing authorization to do so from the

[3] D.02-12-001, *mimeo.*, p. 4.

> commission…Any merger, acquisition, or control without that prior authorization shall be void and of no effect.

The Commission has broad discretion to determine if a transaction should be authorized pursuant to Section 854(a). The primary standard used by the Commission is whether the transaction will adversely affect the public interest. The Commission may also consider if the transaction will serve the public interest. Where necessary and appropriate, the Commission may attach conditions to a transaction in order to protect and promote the public interest.[4]

For the following reasons, we conclude that it is reasonable to grant A.02-11-027 to the extent it requests prospective authority for the reorganization under Section 854(a). First, there is no opposition to the Application. Second, there is no administrative reason to withhold authority for the transaction. Commission staff report that Comm South is current in the remittance of the various regulatory fees and that no informal complaints have been filed against Comm South during the last three years. Third, it does not appear that the public will be harmed by the transaction, as there will be no change to Comm South's name, management,[5] rates, or services. Fourth, the public may benefit from the reorganization to the extent the transaction enhances Comm South's ability to maintain, improve, and expand its services in California. Finally, California derives enormous benefits from the services provided by public utilities. Thus, it is in the public interest to foster a business climate in California that is hospitable to utilities. Accordingly, ordinary business transactions that

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[4] D.04-04-017, *mimeo.*, p. 3.

[5] Exhibit C of A.02-11-027 shows that Comm South's management has the requisite knowledge, skills, and experience to operate the company. The Commission's Consumers Affairs Branch reports that there were no informal complaints against Comm South as of April 16, 2004.

are subject to Section 854(a), like the one before us here, should be approved absent a compelling reason to the contrary. No such reason has been alleged or shown in the instant proceeding.

We deny A.02-11-027 to the extent it requests retroactive authority for the reorganization under Section 854(a). The purpose of Section 854(a) is to enable the Commission to review a proposed transaction, before it takes place, in order to take such action as the public interest may require.[6] Granting A.02-11-027 on a retroactive basis would thwart the purpose of Section 854(a). Since we do not grant retroactive authority, the reorganization is void under Section 854(a) for the period of time prior to the effective date of today's decision. The Applicants are at risk for any adverse consequences that may result from their having consummated the reorganization without Commission authorization.

B. Penalty for Violating Section 854(a)

The Applicants violated Section 854(a) by consummating the reorganization without Commission authorization. Violations of Section 854(a) are subject to monetary penalties under Section 2107, which states as follows:

> Any public utility which violates or fails to comply with any provision of the Constitution of this state or of this part, or which fails or neglects to comply with any part or provision of any order, decision, decree, rule, direction, demand, or requirement of the commission, in a case in which a penalty has not otherwise been provided, is subject to a penalty of not less than five hundred dollars ($500), nor more than twenty thousand dollars ($20,000) for each offense.

[6] D.04-04-017, *mimeo.*, p. 5.

For the following reasons, we conclude that the Applicants should be fined for their failure to comply with Section 854(a). First, any violation of Section 854(a), regardless of the circumstances, is a serious offense that should be subject to fines.[7] Second, the imposition of a fine will help to deter future violations of Section 854(a) by the Applicants and others.

To determine the size of the fine, we will rely on the criteria adopted by the Commission in D.98-12-075. We address these criteria below.

Criterion 1: Severity of the Offense

In D.98-12-075, the Commission held that the size of a fine should be proportionate to the severity of the offense. To determine the severity of the offense, the Commission stated that it would consider the following factors[8]:

> **Physical harm**: The most severe violations are those that cause physical harm to people or property, with violations that threatened such harm closely following.
>
> **Economic harm**: The severity of a violation increases with (i) the level of costs imposed upon the victims of the violation, and (ii) the unlawful benefits gained by the public utility. Generally, the greater of these two amounts will be used in setting the fine. The fact that economic harm may be hard to quantify does not diminish the severity of the offense or the need for sanctions.
>
> **Harm to the Regulatory Process**: A high level of severity will be accorded to violations of statutory or Commission directives, including violations of reporting or compliance requirements.

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[7] It is vital that utilities comply with Section 854(a) so that the Commission may protect the public from harmful transactions.

[8] 1998 Cal. PUC LEXIS 1016, *71 - *73.

> **The number and scope of the violations**: A single violation is less severe than multiple offenses. A widespread violation that affects a many consumers is a more severe offense than one that is limited in scope.

The Applicants' violation of Section 854(a), while serious, was not an especially egregious offense. This is because the violation did not cause, or threaten to cause, any physical or economic harm to others. In addition, there is no evidence that the Applicants significantly benefited from their unlawful conduct. The only factor that indicates the violation should be considered a grave offense is our general policy of according a high level of severity to any violation of the Public Utilities Code.

Criterion 2: Conduct of the Offender

In D.98-12-075, the Commission held that the size of a fine should reflect the conduct of the offender. When assessing conduct, the Commission stated that it would consider the following factors[9]:

> **The Utility's Actions to Prevent a Violation**: Utilities are expected to take reasonable steps to ensure compliance with applicable laws and regulations. The utility's past record of compliance may be considered in assessing any penalty.
>
> **The Utility's Actions to Detect a Violation**: Utilities are expected to diligently monitor their activities. Deliberate, as opposed to inadvertent wrongdoing, will be considered an aggravating factor. The level and extent of management's involvement in, or tolerance of, the offense will be considered in determining the amount of any penalty.
>
> **The Utility's Actions to Disclose and Rectify a Violation**: Utilities are expected to promptly bring a violation to the

[9] 1998 Cal. PUC LEXIS 1016, *73 - *75.

> Commission's attention. What constitutes "prompt" will depend on circumstances. Steps taken by a utility to promptly and cooperatively report and correct violations may be considered in assessing any penalty.

Several aspects of the Applicants' conduct suggest that a larger fine is appropriate. First, the Applicants did not disclose their violation of Section 854(a) until asked by the assigned ALJ. Second, as described *infra*, the Applicants failed to provide certain financial information requested by the assigned ALJ that is relevant to determining the size of the fine. Finally, as described *infra*, it appears that an affiliate of the Applicants may have previously violated the Commission's regulations.

Criterion 3: Financial Resources of the Offender

In D.98-12-075, the Commission held that the size of a fine should reflect the financial resources of the offender. The Commission also stated that it would consider the following factors when assessing financial resources[10]:

> **Need for Deterrence**: Fines should be set at a level that deters future violations. Effective deterrence requires that the Commission recognize the financial resources of the utility in setting a fine.
>
> **Constitutional limitations on excessive fines**: The Commission will adjust the size of fines to achieve the objective of deterrence, without becoming excessive, based on each utility's financial resources.

The Applicants provided the following information regarding Comm South's financial resources during 2001, 2002, and 2003:

[10] 1998 Cal. PUC LEXIS 1016, *75 - *76.

Summary of Comm South's Financial Resources			
	2001 ($000)	**2002 ($000)**	**2003 ($000)**
Total Annual Revenues	67,286	26,818	14,998
Net Loss	(40,851)	(4,500)	(2,668)
California Revenues	0.078	39.2	13.1
Cash on December 31	2,546	1,034	105
Equity on December 31	(39,993)	(44,493)	(47,162)
Source: Amendment to A.02-11-027 filed on May 17, 2004, p. 7 and Exhibit 5.B.ii.			

In light of Comm South's declining revenues, persistent losses, negative equity, declining cash, and minimal operations in California, we conclude that a modest fine would be sufficient to deter Comm South from further violations of the California Public Utilities Code. We note, however, that the Applicants failed to provide financial information pertaining to Arbros and Arcomm, despite being directed to do so by the assigned ALJ.[11] This information is relevant to determining the size of the fine.[12] The Applicants' failure to cooperate fully indicates that a larger fine is warranted.

[11] See ALJ ruling issued on March 10, 2004, Item 5.B.ii, and the Applicants' response contained in the amendment to A.02-11-027 filed on May 17, 2004.

[12] The Commission has previously considered the finances of utility parent companies, affiliates, and other non-regulated entities when setting fines, provided that such information is cognate and germane to the fine. (D.04-04-017, *mimeo.*, p. 9; D.04-04-016, *mimeo.*, p. 9; D.03-08-058, *mimeo.*, p. 12; and D.03-05-033, *mimeo.*, p. 10.)

Criterion 4: Totality of the Circumstances

In D.98-12-075, the Commission held that a fine should be tailored to the unique facts of each case. In order to do so, the Commission indicated that the following factors should be considered[13]:

> **The degree of wrongdoing**: The Commission will review facts that tend to mitigate the degree of wrongdoing as well as facts that exacerbate the wrongdoing.
>
> **The public interest**: In all cases, the harm will be evaluated from the perspective of the public interest.

Some of the facts of this case indicate that the degree of wrongdoing, though serious, was not egregious. In particular, there is no evidence that anyone was harmed by the Applicants' violation of Section 854(a) or that the Applicants materially benefited from their unlawful conduct. These same facts also indicate that the public interest was not seriously harmed by the Applicants' unlawful conduct. On the other hand, the degree of wrongdoing was exacerbated by the Applicants' failure to fully cooperate in this proceeding.

Criterion 5: The Role of Precedent

In D.98-12-075, the Commission held that any decision which imposes a fine should (1) address previous decisions that involve reasonably comparable factual circumstances, and (2) explain any substantial differences in outcome.[14]

With two exceptions, the facts of this case are reasonably comparable to prior Commission decisions that imposed fines of $5,000 for violations of

[13] 1998 Cal. PUC LEXIS 1016, *76.

[14] 1998 Cal. PUC LEXIS 1016, *77.

Section 854(a).[15] First, the prior decisions involved unauthorized transfers of utilities to new owners. In contrast, A.02-11-027 involves a corporate reorganization, with no change in the ultimate ownership of the utility. All else being equal, we view unauthorized transfers of utilities to new owners to be more serious than unauthorized corporate reorganizations. This suggests that it would be appropriate to impose a smaller fine compared to prior decisions.

Second, the conduct of the Applicants in the current proceeding was less cooperative than that of offenders in prior proceedings. This suggests that it would be appropriate to impose a larger fine compared to prior decisions.

We conclude that although the instant proceeding is factually distinguishable from Commission precedent in two respects, these two distinctions roughly offset one another, thereby making the imposition of a $5,000 fine in the current proceeding generally consistent with precedent.

Conclusion: Setting the Fine

We conclude based on the facts of this case that the Applicants should be fined $5,000 for violating Section 854(a). The fine we impose today is meant to deter future violations Section 854(a) by the Applicants and others. We emphasize that the size of the fine we impose today is tailored to the unique facts and circumstances before us in this proceeding. We may impose larger fines in other proceedings if the facts so warrant.

5. California Environmental Quality Act (CEQA)

CEQA applies to discretionary projects carried out or approved by public agencies. A basic purpose of CEQA is to inform governmental decision makers

[15] The Commission imposed a fine of $5,000 for violating Section 854(a) in the following decisions: D.04-04-017, D.04-04-016, D.03-08-058, D.03-05-033, and D.00-12-053.

and the public about potential significant environmental effects of proposed activities so that adverse effects are avoided, alternatives are investigated, and environmental quality is restored or enhanced to the fullest extent possible.

CEQA applies to A.02-11-027 because the approval of the Application is subject to the Commission's discretion. Therefore, when considering whether to grant A.02-11-027, we must determine if the activity proposed in the Application requires environmental review. The Applicants represent that the corporate reorganization described in A.02-11-027 will not result in any new construction or changes in use of existing property or facilities. Based on this representation, we conclude that granting A.02-11-027 will have no adverse effects on the environment. Accordingly, no environmental review is necessary.

6. Possible Unauthorized Withdrawal of Service by an Affiliate

ACLCC is an affiliate of the Applicants and is authorized to provide local exchange and interexchange services in California pursuant to D.01-04-033. During a routine background check on the Applicants, it came to the Commission's attention that ACLCC might have discontinued the provision of service in California during 2001.[16] A utility cannot discontinue service without Commission authorization.[17] In addition, a utility must provide its customers with advance notice of the discontinuance. Any such notice must comply with Commission requirements.[18] Utilities may be fined if they discontinue service

[16] 2004 FCC LEXIS 649, 2003 FCC LEXIS 1148, and 2002 FCC LEXIS 1221.

[17] D.03-04-021, D.03-04-003, D.02-08-060, and General Order 96-A, Section XIV.

[18] D.02-01-038, Appendix, p. A-2.

without Commission authorization and/or fail to provide notice of the discontinuance in conformance with Commission requirements.[19]

The assigned ALJ issued a ruling on May 19, 2004, that directed the Applicants, including ACLCC's parent company Arbros, to disclose if ACLCC has discontinued service and, if so, to provide certain information regarding the discontinuance. The Applicants indicated in an email sent to the assigned ALJ on May 27, 2004, that they would not be able to provide any of the information required by the ALJ's ruling.[20]

Pursuant to our authority under Sections 314(a), 314(b), 581, 582, and 584, we will order Arbros and ACLCC to submit a compliance filing that states whether ACLCC has discontinued the provision of any services in California. If it has, then Arbros and ACLCC shall provide the following information and documents in the compliance filing:

- The date that service was discontinued.
- The reason(s) for the discontinuance.
- The reason(s) why ACLCC did not seek Commission authorization prior to the discontinuance.
- The number of California customers affected by the discontinuance. The term "California customer" is defined as a customer subscribing to intrastate services subject to the Commission's jurisdiction.

[19] D.02-05-045 and D.02-05-044.

[20] The email, which was sent by the attorney representing Comm South, states that (i) the information sought by the assigned ALJ is in the hands of Arbros and Arcomm, (ii) Comm South is estranged from Arbros and Arcomm, and (iii) these companies would not provide to Comm South the information sought by the assigned ALJ. We note that Arbros is one of the Applicants and the parent of ACLCC. Accordingly, Arbros has access to the information sought by the assigned ALJ and should have provided the information.

- Any evidence that shows the requirements of Section XIV of General Order 96-A, as modified by D.02-01-038, were satisfied. This evidence shall include a copy of any written notice(s) provided to the affected California customers.
- Whether any California customers had their service discontinued prior to finding a replacement carrier and, if so, how many.
- ACLCC's annual revenues from California customers for each of the years 2001, 2002, and 2003.
- Income statements and balance sheets for ACLCC, Arbros, and Arcomm prepared in accordance with generally accepted accounting principles. The income statements for each entity should be for 2001, 2002, and 2003. The balance sheets for each entity should be for the years ending on December 31, 2001, 2002, and 2003.
- The amount of the fine the Commission should impose, if any, in accordance with the criteria set forth in D.98-12-075.
- Whether an evidentiary hearing is needed regarding the need for, or the amount of, the fine. If a hearing is requested, the compliance filing shall include a list and description of the factual issues to be addressed at the hearing.

The contents of the compliance filing shall be verified in accordance with Rule 2.4 of the Commission's Rules of Practice and Procedure. Arbros and ACLCC shall submit the compliance filing no later than 30 days from the effective date of today's decision.

The assigned ALJ shall prepare a draft decision that recommends an appropriate course of action based on the compliance filing. If Arbros and ACLCC fail to submit the compliance filing or submit a compliance filing that does not comply with today’s decision, the assigned ALJ may prepare a draft

decision that (1) requires ACLCC to pay a fine of $25,000,[21] (2) revokes ACLCC's authority to operate in California, and/or (3) recommends other remedial actions.

7. Category and Need for Hearing

In Resolution ALJ 176-3101, dated November 21, 2002, the Commission preliminarily categorized this proceeding as ratesetting and preliminarily determined that hearings would not be necessary. Based on the record, we affirm that this is a ratesetting proceeding and that hearings are not necessary.

8. Pub. Util. Code § 311(g)

The Commission mailed the draft decision of the assigned ALJ to the parties in accordance with Section 311(g)(1) and Rule 77.7 of the Commission's Rules of Practice and Procedure. There were no comments on the draft decision.

9. Assignment of Proceeding

Geoffrey Brown is the assigned Commissioner and Timothy Kenney is the assigned ALJ in this proceeding.

Findings of Fact

1. Comm South is authorized to provide the following telecommunications services in California: (i) resold and limited facilities-based local exchange services, and (ii) resold interexchange services.

[21] The fine of $25,000 is comparable to the fine of $24,000 that was imposed by the Commission in D.02-05-045 for an unauthorized withdrawal of service.

2. In A.02-11-027, Comm South and Arbros jointly request authority under Section 854(a) to implement a corporate reorganization whereby the direct ownership of Comm South would be transferred from Arbros to Arcomm.

3. Because Arbros is owned by Arcomm, granting A.02-11-027 would not change the ultimate ownership of Comm South.

4. The transaction for which authority is sought in A.02-11-027 was consummated approximately six months before A.02-11-027 was filed and without prior approval from the Commission.

5. There is no opposition to A.02-11-027.

6. The record of this proceeding indicates that the corporate reorganization described in A.02-11-027 will not adversely affect Comm South's customers or the public at large.

7. The public may benefit from the corporate reorganization described in A.02-11-027 to the extent the transaction enhances Comm South's ability to maintain, improve, and/or expand its services in California.

8. California derives enormous benefits from the services provided by public utilities such as Comm South.

9. It is in the public interest for the Commission to foster a business environment that is hospitable to utilities.

10. For the reasons set forth in the two previous Findings of Fact, it is in the public interest to approve ordinary business transactions that are subject to Section 854(a) absent a compelling reason to the contrary. No such reason has been alleged or shown in the instant proceeding.

11. In D.98-12-075 the Commission adopted the following criteria for determining the amount of a fine: (i) the severity of the offense, (ii) the conduct

of the offender, (iii) the financial resources of the offender, (iv) the totality of the circumstances, and (v) the role of precedent.

12. The Applicants' failure to comply with Section 854(a) did not (i) result in actual or threatened harm to others, or (ii) significantly benefit the Applicants.

13. The Applicants did not disclose their violation of Section 854(a) until prompted by the assigned ALJ.

14. Comm South has declining financial resources and the revenues from its California operations are *de minimus*.

15. The Applicants did not cooperate fully in this proceeding because they failed to provide financial information regarding Arbros and Arcomm. Such information is relevant to determining the size of the fine that should be imposed by today's decision.

16. The Applicants' wrongdoing was exacerbated by their failure to cooperate fully in this proceeding.

17. With the exceptions identified in the following two Findings of Fact, the facts of this proceeding are reasonably comparable to those in previous decisions wherein the Commission imposed fines of $5,000 for violations of Section 854(a).

18. Prior decisions imposing fines of $5,000 for violations of Section 854(a) involved situations were control of a utility was transferred to a new, unaffiliated owner. In contrast, A.02-11-027 involves a corporate reorganization, with no change in the ultimate control of the utility.

19. The Applicants have been less cooperative than utilities previously fined $5,000 for violations of Section 854(a).

20. In determining the degree of the Applicants' wrongdoing and the amount of the fine that should be imposed by today's decision, the circumstances described in the two previous Findings of Fact roughly offset one another.

21. The record of this proceeding indicates that ACLCC, which is affiliated with the Applicants, may have discontinued the provision of service in California without Commission authorization.

22. The assigned ALJ issued a ruling that directed the Applicants to state whether ACLCC has discontinued service, but the Applicants failed to provide the requested information.

23. The Applicants represent that granting A.02-11-027 will not result in any new construction or changes in use of existing property or facilities.

24. It can be seen with certainty that granting A.02-11-027 will not have an adverse impact on the environment.

Conclusions of Law

1. This is a ratesetting proceeding.

2. No hearing is necessary.

3. Section 854(a) requires Commission authorization to transfer control of a public utility. Any transfer of control without Commission authorization is void under the statute.

4. The corporate reorganization described in A.02-11-027 is subject to Section 854(a).

5. A.02-11-027 should be granted pursuant to Section 854(a) for the reasons set forth in the body of this decision and Findings of Fact 5 through 10.

6. The authority granted by today's decision pursuant to Section 854(a) should apply prospectively. Retroactive authority should not be granted.

7. The Applicants violated Section 854(a) by consummating the corporate reorganization described in A.02-11-027 without Commission authorization.

8. Section 2107 provides the Commission with authority to impose a fine of between $500 and $20,000 for violations of the Public Utilities Code.

9. The Applicants should be fined for violating Section 854(a). The amount of the fine should be based on the criteria set forth in D.98-12-075.

10. Applying the criteria in D.98-12-075 to the facts of this case, which are identified in the body of this decision and Findings of Fact 12 through 21, indicates that the Applicants should be fined $5,000 for violating Section 854(a).

11. A utility cannot discontinue service without Commission authorization.

12. A utility must notify its customers prior to discontinuing service. Any such notice must comply with Commission requirements.

13. Utilities may be fined if they discontinue service without Commission authorization and/or fail to provide notice of the discontinuance in conformance with Commission requirements.

14. Arbros and ACLCC should submit a compliance filing within 30 days that contains the information and documents specified in the body of this decision. The contents of the compliance filing should be verified in accordance with Rule 2.4 of the Commission's Rules of Practice and Procedure.

15. The assigned ALJ should prepare a draft decision that recommends an appropriate course of action based on the compliance filing.

16. If Arbros and ACLCC do not submit the compliance filing required by this decision or submit a filing that does not contain all the information required by today's decision, the assigned ALJ should be authorized to prepare a draft decision that (i) fines ACLCC $25,000, (ii) revokes ACLCC's authority to operate in California, and/or (iii) recommends other appropriate remedial actions.

17. It is not necessary to conduct an environmental review of the corporate reorganization described in A.02-11-027.

18. The following order should be effective immediately.

O R D E R

IT IS ORDERED that:

1. Application 02-11-027 is granted to the extent it requests prospective authority under Pub. Util. Code Section 854(a), effective as of the date of this Order, to transfer control of Comm South Companies, Inc. (Comm South) from Arbros Communications, Inc. (Arbros) to Arcomm Holding Company. The Application is denied to the extent it requests retroactive authority for the transfer.

2. Comm South shall notify the Director of the Commission's Telecommunications Division in writing of the transfer of control, as authorized herein, within 10 days of this Order. A true copy of the instrument(s) of transfer shall be attached to the notification.

3. Comm South shall pay a fine of $5,000 for violating Section 854(a). Within 30 days from the effective date of this Order, Comm South shall remit to the Commission's Fiscal Office at 505 Van Ness Avenue, Room 3000, San Francisco, CA 94102, a check for $5,000 made payable to the California Public Utilities Commission. The number of this Decision shall appear on the face of the check.

4. Within 30 days from the effective date of this Order, Arbros and Arbros Communications Licensing Company of California, LLC (ACLCC) shall jointly file at the Commission's Docket Office a compliance filing that contains the information and documents specified in the body of this Order.

5. The assigned Administrative Law Judge (ALJ) shall prepare a draft decision that recommends an appropriate course of action based on the compliance filing required by this Order.

6. If Arbros and ACLCC do not submit the compliance filing required by this Order or submit a compliance filing that fails to provide some or all of the

information required by this Order, the assigned ALJ may prepare a draft decision that (i) fines ACLCC $25,000, (ii) revokes ACLCC's authority to operate in California, and/or (iii) recommends other appropriate remedial actions.

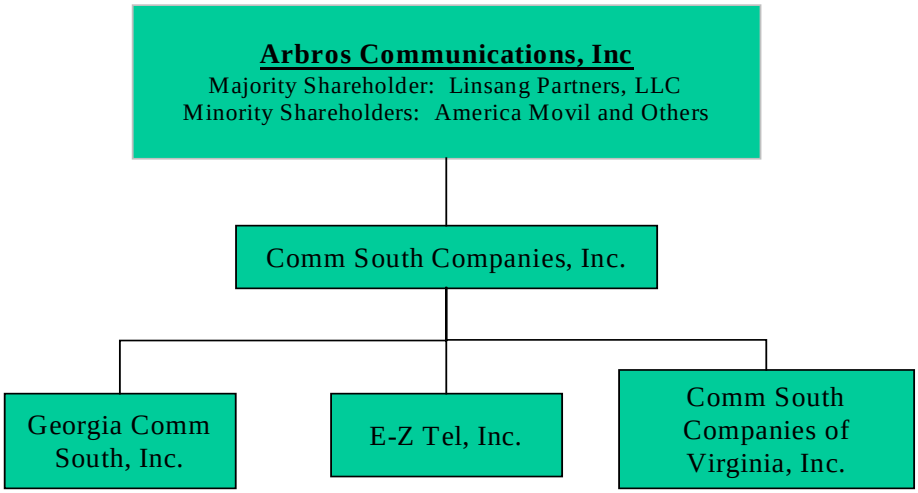
7. This proceeding shall remain open pending the receipt and disposition of the compliance filing described in the three previous Ordering Paragraphs.

This order is effective today.

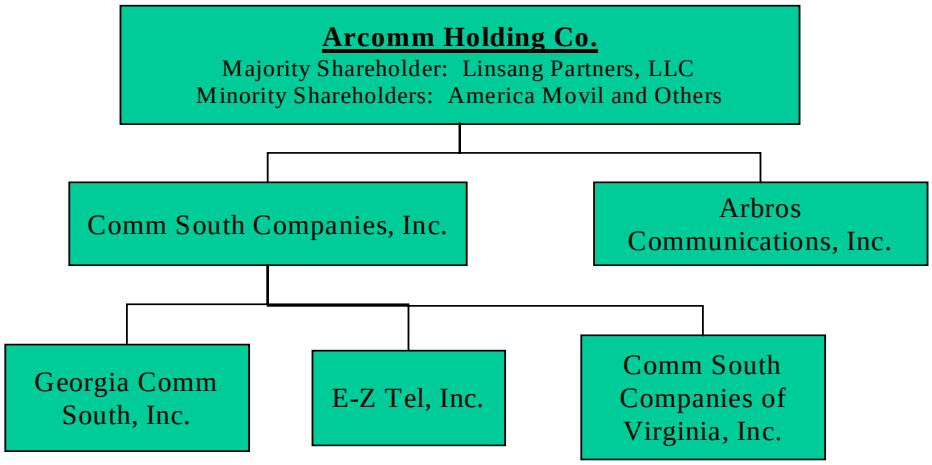
Dated _____, at San Francisco, California.

Appendix A

Pre-Transaction Corporate Structure



Post-Transaction Corporate Structure



Note: Arbros Communications Licensing Company of California, LLC (ACLCC) is not shown on the organization charts provided by the Applicants.