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Decision 90-08-028 August 8, 1990

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application )  
of MCI Communications Corporation )  
and Teleconnect Long Distance )  
Services and Systems Company )  
(U 5152 C) to Authorize the )  
Acquisition of Teleconnect Long )  
Distance Services and Systems )  
Company (U 5152 C) by MCI )  
Communications Corporation. )

Application 90-05-001  
(Filed May 1, 1990)

O P I N I O N

By this decision we approve this application, jointly filed by MCI Communications Corporation (MCICC) and Teleconnect Long Distance Services and Systems Company (Teleconnect) seeking authorization for MCICC to acquire control of Teleconnect, which would result from MCICC's intended acquisition of Teleconnect's parent company, Telecom\*USA, Inc. (Telecom).

Background and Summary of Application

Notice of this application appeared on the Commission's daily calendar on May 7, 1990. Applicants request ex parte treatment. One protest was filed on May 16, by Clarence Hunt representing Women and Minority Business Enterprise Advocate Incorporated (Protestant).<sup>1</sup> Applicants filed a response on May 31, 1990.

1 The filed document was titled "Opposition to Acquisition; Request for Intervention; Request for Inclusion on Service List; Request for Public Hearings; Declaration of Clarence Hunt." We deem it a protest because in substance it most closely followed the definition of protest set forth in our Rule 8.1.

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The application as filed was incomplete because it lacked a certification of qualification to transact business certified by the California Secretary of State for MCICC, as required by Rule 16(a) and a pro forma balance sheet giving effect to the merger, as required by Rule 36(c). The Administrative Law Judge's (ALJ's) Ruling issued June 18, 1990, ordered applicants to file the missing information. Applicants complied with the ALJ's Ruling and completed the application in a July 6, 1990, compliance filing.

Teleconnect is a public utility which has been certificated as a non-dominant interexchange carrier and authorized to furnish intrastate long distance services by this Commission. MCICC is the parent company of MCI Telecommunications Corporation, which is certificated as a public utility in California. MCICC and Telecom are not public utilities.

MCICC proposes to acquire for cash all the issued and outstanding shares of Telecom and to make Telecom a wholly owned subsidiary of MCICC. The estimated total amount to be paid to Telecom shareholders is approximately \$1.25 billion.

By acquiring Telecom, MCICC will also have acquired its subsidiary, Teleconnect. Applicants state that no change in operation or management of Teleconnect is proposed as part of this transaction. Applicants state that, at a future time, "Teleconnect and MCI Telecommunications Corporation will act to bring their tariffs into parity and join their operations after they make suitable notifications to their customers."

The stated purpose for the transaction is to "strengthen the abilities of the Applicants to provide high quality telecommunications services to the public." The acquisition is intended to achieve economies of scale through the combination of Teleconnect's fiber-optic network and MCICC's broader service offerings. Applicants also believe the merger will benefit the public by increasing competition in the interexchange market and state that prior acquisitions by MCICC and Telecom have increased

competition, bringing increased services and decreased prices to the public. See order, (a-c) and (d) at 115-119 and 120-121 (re public interest).

Discussion

Applicants have submitted this transaction to us for our approval, pursuant to Division 1, Part 1, Chapter 4, Article 6 (sections 851-856) of the Public Utilities (PU) Code. PU Code Board § 851 prohibits a public utility, without prior Commission approval, from directly or indirectly selling or otherwise encumbering any part of its system used in performance of its duties to the public or a franchise or permit or from any merger or consolidation of its system or franchises or permit with any other public utility without Commission authorization. PU Code § 852 prohibits a public utility or a corporation holding a controlling interest in a public utility from, without prior Commission approval, purchasing or acquiring, taking or holding, any part of the capital stock of any other public utility organized or existing under or by virtue of the laws of California. PU Code § 854(a) requires advance Commission approval for any direct or indirect acquisition or control of any public utility organized and doing business in this state.

Based on the record before us, we find no impediment to approving the application. MCICC has the ability, including the financial ability, to acquire Teleconnect through its parent company Telecom, and continue its operations. The proposed acquisition and merger is not adverse to the public interest. PU Code Sections 854(b) and 854(c) refer to specific findings needed to approve an acquisition involving a utility with "gross annual California revenues exceeding five hundred million dollars (\$500,000,000)". We interpret "California revenues" to be those under the Commission's jurisdiction. MCI is the larger of the two utilities involved in this proceeding, and its revenues under our jurisdiction in 1989 were clearly less than \$500 million. MCI's certified monthly "Universal Lifeline Telephone Service Surcharge

Transmittal reports confirm that MCI's toll revenues, the overwhelming majority of its California business, were \$245 million in 1989. Therefore, we are not required to make the PU Code Sections 854(b) and 854(c) findings in this proceeding.

We now come to the protest of protestant. The protest is based on allegations that MCI is currently violating the Commission's General Order (GO) 156, and that ratepayers would be best served if MCI complied with Assembly Bill 3678 and GO 156. Protestant requests evidentiary hearings on these issues. In response to the protest, MCICC argues that all of Protestant's grievance with MCICC's women and minority business enterprises practices raises no issue relevant to the pending application and should be raised in a complaint. MCICC also argues that Protestant's pleading is procedurally and substantively defective.

We find that the protest raises no material issues relevant to this application and thus presents no valid basis for setting hearings nor any bar to granting the relief sought in the application. We make this finding without reaching the substantive issues raised in the protest or MCICC's response, because this application is not an appropriate forum for consideration of those issues. Part 5 of GO 156 specifies that a women and minority business enterprise (WMBE) aggrieved by any utility act or omission in violation of law or Commission order is permitted to file a complaint, pursuant to PU Code § 1702 and Article 3 of the Commission's Rules of Practice and Procedure. While we are committed to our WMBE program and take very seriously allegations of violations of the program rules by a utility subject to those rules, we must also ensure that WMBEs raise their concerns in the appropriate forum.

The Commission makes the following findings and conclusions.

**Findings of Fact**

1. MCICC is a Delaware Corporation which is authorized to do business in California. MCICC is the parent company of MCI Telecommunications Corporation (U 5011 C), which is certificated as a public utility in California.

2. Telecom is the parent company of Teleconnect. Teleconnect (U 5152 C) is an Iowa Corporation which is authorized to do business in California. Teleconnect is a nondominant interexchange carrier and holds a certificate of public convenience and necessity authorizing it to provide intrastate long distance telecommunications service, which was originally granted to Teleconnect Company by D.87-09-012 and transferred to Teleconnect pursuant to D.88-05-040.

3. MCICC and Telecom have entered into an agreement whereby MCICC will, through a subsidiary, acquire all issued and outstanding shares of Telecom for \$42 per share at an estimated cost of \$1.25 billion and will make Telecom a wholly owned subsidiary of MCICC.

4. No change in operation or management of Teleconnect is proposed as part of this transaction. Teleconnect and MCICC intend to bring their tariffs into parity and join their operation in the future, after notifications to customers.

5. Telecom provides domestic and international telecommunications service over digital fiber-optic and microwave transmission facilities to customers located principally in the southeast, midwest, and west. Teleconnect is the only subsidiary of Telecom which operates in California. Teleconnect operates a fiber-optic network that would, after this merger, permit MCICC to provide high quality, facilities-based telecommunications service.

6. MCICC provides telecommunications services including voice, data, messaging, facsimile, and other services through its subsidiaries. MCICC's broader service offerings are expected to enable Teleconnect to increase its market penetration from its

existing customers and reduce its costs for leased facilities and access.

7. MCICC had total assets of \$6,338 billion as of December 31, 1989. It had operating revenues of \$6,471 billion for the year ending December 31, 1989.

8. Telecom had total assets of \$486,53 million as of December 31, 1989. It had net communication services revenue of \$712.9 million for the year ending December 31, 1989.

9. MCICC has the ability, including financial ability, to acquire the assets of Telecom and through it to continue the operations of Teleconnect.

10. The proposed acquisition of Teleconnect, through its parent Telecom, is not adverse to the public interest.

11. Teleconnect is a public utility reseller of telecommunications services within the meaning of Paragraph 1 of D.85-01-008, which provides that "public utility resellers are exempted from the requirements of PU Code Sections 816-830." (17 CPUC 2d 1, at p. 5.)

12. The protest of Women and Minority Business Enterprises Incorporated raises no material issues relevant to this application.

13. MCI's 1989 revenues under Commission jurisdiction were clearly less than \$500 million.

Conclusions of Law

1. A public hearing on this application is not necessary.
2. The application should be granted. This authorization is not a finding of the value of the rights and properties to be transferred.
3. The findings enumerated in PU Code Sections 854(b) and 854(c) are not required in this proceeding.

O R D E R

IT IS ORDERED that:

1. On or after the effective date of this order, MCI Communications Corporation (MCICC) may acquire control of Teleconnect Long Distance Services and Systems Company (Teleconnect) through acquisition of Telecom, as described in this decision.

2. Within 10 days after acquisition of control, MCICC shall inform the Commission in writing of the date of transfer of control. A copy of the documents effectuating the transfer of control shall be attached.

3. The corporate identification number assigned to Teleconnect (U 5152 C) shall be retained by MCICC for all operations conducted under Teleconnect's certificate and shall be included in the caption of all original filings with this Commission and in the titles of other pleadings filed in existing cases.

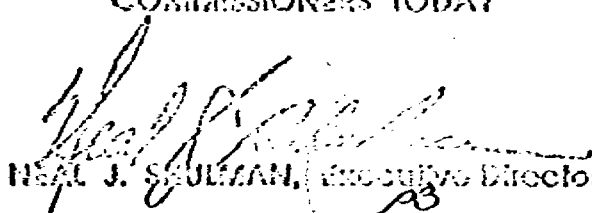
4. No consolidation of operations of Teleconnect with MCI Telecommunications Corporation or changes in their rates or tariffs to bring them into parity shall occur without prior written notification to the Commission and compliance with all applicable laws and orders.

5. The authority granted in Ordering Paragraph 1 shall expire unless it is exercised before August 31, 1991.

This order is effective today.

Dated August 8, 1990, at San Francisco, California.

I CERTIFY THAT THIS DECISION  
WAS APPROVED BY THE ABOVE  
COMMISSIONERS TODAY

  
NEAL J. SULLIVAN, Executive Director

G. MITCHELL WILK  
President  
FREDERICK R. DUDA  
STANLEY W. HULETT  
JOHN B. OHANIAN  
PATRICIA M. ECKERT  
Commissioners