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Decision 91 06 061 JUN 24 1991

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of MidAmerican Communications Corporation To Transfer, And Of LDDS Communications, Inc., To Acquire, Certain Shares And Control Of MidAmerican Communications Corporation, And For Permission And Approval For MidAmerican Communications Corporation To Borrow, Guaranty, And Grant A Security Interest In Collateral.	Application 91-04-021 (Filed April 22, 1991)

OPINION

MidAmerican Communications Corporations (MCC) and LDDS Communications, Inc. (LDDS) seek authority under Public Utilities (PU) Code § 854 for LDDS to acquire control of MCC. In addition, MCC and LDDS request authority for MCC to participate in a pre-existing financing agreement of LDDS. Commission approval of the proposed transaction and transfer of control will permit LDDS to purchase a controlling interest in MCC, a non-dominant interexchange carrier (NDIEC) authorized by the Commission to provide intrastate telecommunications services. Applicants request expedited treatment of the application to permit them to consummate the transaction transferring control of MCC to LDDS no later than June 30, 1991.

MCC is a Delaware corporation with principal offices in Omaha, Nebraska. It is a wholly owned subsidiary of MidAmerican Technologies, Inc. (MTI), a Delaware corporation with principal offices in Omaha, Nebraska. Pursuant to Decision (D.) 90-12-007 in Application (A.) 90-09-058, MCC is authorized to provide resold intrastate telecommunications services within the State of California. MCC provides direct dial "1+" long distance message telecommunications services, over facilities leased from various interexchange carriers, on a 24-hour-a-day, 7-day-a-week basis. MCC also provides high quality (digital) service to presubscribed business customers.

In addition to the services it provides to California users, MCC currently originates interstate traffic and provides intrastate service in 12 additional states, either pursuant to certification, registration, or tariff requirements, or on an unregulated basis. MCC is authorized by the Federal Communications Commission (FCC) to provide domestic interstate and international services as a non-dominant carrier in all 50 states and the District of Columbia.

LDDS is a publicly held Tennessee corporation with principal offices in Jackson, Mississippi. LDDS is the parent company of a number of non-dominant carrier subsidiaries that resell domestic and international long distance service from various facilities-based carriers pursuant to the FCC's Competitive Carrier policies. LDDS and its operating subsidiaries are authorized by the FCC to offer domestic interstate and international services in all 50 states and the District of Columbia as non-dominant carriers. LDDS and its operating subsidiaries currently originate interstate traffic and provide intrastate service, pursuant to certification, registration, or tariff requirements, or on an unregulated basis, in 16 states. To date, LDDS has not applied for, and is not currently authorized to provide, intrastate long distance service in California.

As an operating company providing long distance service in 16 states, with annual revenues exceeding $154,000,000, and with net income after taxes of $9,791,666, LDDS is assertedly qualified to purchase a controlling interest in MCC. Upon consummation of the purchase, MCC not only expects to rely on many of its existing management and operational staff to provide service, but will thus also be able to draw upon the substantial expertise of its new parent company, LDDS.

LDDS and MCC have determined that MCC will realize significant economic and marketing efficiencies by establishing MCC as a wholly owned affiliate of LDDS. Accordingly, LDDS, MCC, and MTI (which wholly owns MCC), and MTI's principal shareholders have negotiated an Agreement and Plan of Merger whereby LDDS intends to acquire MTI (thereby also acquiring MCC). (A copy of the agreement is attached to the application.) As outlined in the agreement, the transaction is structured to allow, upon closing, a subsidiary of LDDS (LDDS Acquisition Subsidiary, Inc.) to merge into and with MTI. (See Appendix.) To accomplish this transaction, LDDS will purchase all outstanding shares of stock of MTI from the current owners.

In exchange for the MTI stock, LDDS intends to (1) pay to the selling MTI shareholders cash in the amount of $12,500,000; (2) deliver to the selling MTI shareholders a note in the principal amount of $6,500,000, interest on which shall accrue at the rate of 9% per annum and shall be paid quarterly, with principal and all unpaid interest to be due and payable six years after the execution of the note; and (3) issue to the selling MTI shareholders one million shares of Class A Common Stock of LDDS.

After completion of the transaction, MTI will be a wholly owned subsidiary of LDDS. Since the transaction will accomplish merely a change in the underlying ownership of MCC, neither MCC's name nor the terms and conditions of its services will be affected by the transaction. MCC will continue to provide high quality, affordable long distance service in California pursuant to its tariff currently on file at the Commission. As such, the transaction will not cause any inconvenience or confusion to MCC's customers. Indeed, the transaction will be, according to the applicants, transparent to MCC's customers in terms of the service that they receive.

The parties expect that, after the consummation of the transaction, MCC will continue to be led by a team of well-qualified managers comprised of existing MCC personnel. In addition, MCC will be able to draw upon the substantial technical and managerial expertise of its new parent, LDDS. The parties expect that the ample managerial, technical, and financial expertise of this management team will enable MCC to continue providing high quality service to its existing customers as well as to expand its customer base.

In addition to seeking approval of the contemplated transfer of control under PU Code § 854, by this application MCC and LDDS seek approval for MCC to participate in a pre-existing LDDS financing agreement. Under certain loan documents, including an Amended and Restated Credit Agreement, LDDS has entered into a $175,000,000 revolving loan facility used to service LDDS's long- and short-term debt needs. The terms of the loan facility require that each subsidiary owned by LDDS become party to the financing agreement by pledging its assets as part of the collateral for the loan commitment.

Consummation of the proposed stock purchase transaction will, according to the applicants, serve the public interest in promoting competition among long distance carriers by providing MCC the opportunity to strengthen its competitive position with greater financial resources. The proposed transaction will invigorate competition in California by enabling MCC to pursue its marketing and business plans more effectively. Moreover, upon consummation of the purchase, MCC not only expects to continue to rely on many of its existing management and operations staff to provide service, but will also be able to draw upon the substantial financial, marketing, and technical expertise of its new affiliate company LDDS. The proposed acquisition will therefore benefit the public interest by enhancing MCC's operational flexibility and efficiency as well as its financial viability.

In D.86-08-057, the Commission recognized that applications of NDIECs for transfers of control should be subject to certain streamlined review procedures in light of the competitive nature of the non-dominant interexchange telecommunications service business and the need for expeditious handling of such applications. The Commission therefore authorized the Executive Director to grant, on an ex parte basis, noncontroversial transfer applications submitted by NDIECs. Because MCC is a certificated non-dominant telecommunications carrier, the applicants request that this Commission grant the relief sought on an ex parte basis as expeditiously as possible.

Discussion

In a series of decisions in A.84-03-92 (D.85-01-008, D.85-07-081, D.85-11-044, and D.86-08-057), the Commission ruled that non-dominant telecommunications carriers should be exempt: (1) from Article V (§§ 816-830) in its entirety and (2) from the requirement of obtaining Commission authority to transfer legal title to, or otherwise encumber, properties to which § 851 applies, when such transfer or encumbrance serves to secure debt. (See Ordering Paragraph b of D.85-11-044.) While D.86-08-057 did not completely exempt non-dominant telecommunications carriers from Article VI (§§ 851-855), the order did authorize the Executive Director to grant noncontroversial applications by such carriers for authority to transfer assets or control under §§ 851-855. (See Ordering Paragraph 1 of D.86-08-057.)

According to the decisions issued in A.84-03-92, it is proper for the Executive Director to issue an order approving a transfer of control under § 854.

The application seeks authority: (1) under § 818 to issue debt instruments, and (2) under § 851 for MCC to pledge its assets as part of a financing plan sponsored by LDDS. The Commission's decisions in A.84-03-92 clearly exempt LDDS and MCC from the requirement of § 851 that authority to encumber or pledge system assets must first be obtained from the Commission before such transactions are entered into, when the encumbrance, pledge, or transfer of property is for the purpose of securing debt, as it is in this case. The Commission's decisions in A.84-03-92 also exempt such applicants from the requirements of § 818. The Commission has authority to issue such exemption orders under PU Code §§ 829 and 853. Accordingly, no order approving LDDS's and MCC's financing proposals will be included in this decision.

Findings of Fact

1. Notice of the filing of the application appeared in the Daily Calendar. No protests have been filed. A public hearing is not necessary.

2. LDDS is the parent company of several NDIECs operating in 16 states.

3. LDDS has the financial and technical ability to control MCC.

4. MCC is an NDIEC authorized by this Commission to resell intrastate interLATA telecommunications services in California.

5. The control of MCC by LDDS will not affect MCC's rates or services.

6. The proposed transaction does not involved a transfer of assets or operating authority.

7. The Executive Director is authorized and directed under previous decisions of the Commission to issue orders granting applications to transfer control under § 854.

Conclusions of Law

1. In a series of decisions in A.84-03-92, the Commission exempted NDIECs from Article V (§§ 816-830) in its entirety and from the requirement of obtaining Commission authority to transfer legal title to, or otherwise encumber, properties to which § 851 applies, when such transfer or encumbrance serves to secure debt.

2. As to applicants' request for authority to enter into certain financing transactions, no order is required.

3. Applicants' request for authority for LDDS to acquire control of MCC under § 854 should be granted.

4. Since applicants are facing an imminent deadline for the conclusion of their transactions, the following order should be effective immediately.

ORDER

IT IS ORDERED that LDDS Communications, Inc. is authorized to acquire control of MidAmerican Communications Corporation, pursuant to PU Code § 854, in accordance with the terms and conditions set forth in the application.

This order is effective today.

Dated JUN 24 1991, at San Francisco, California.

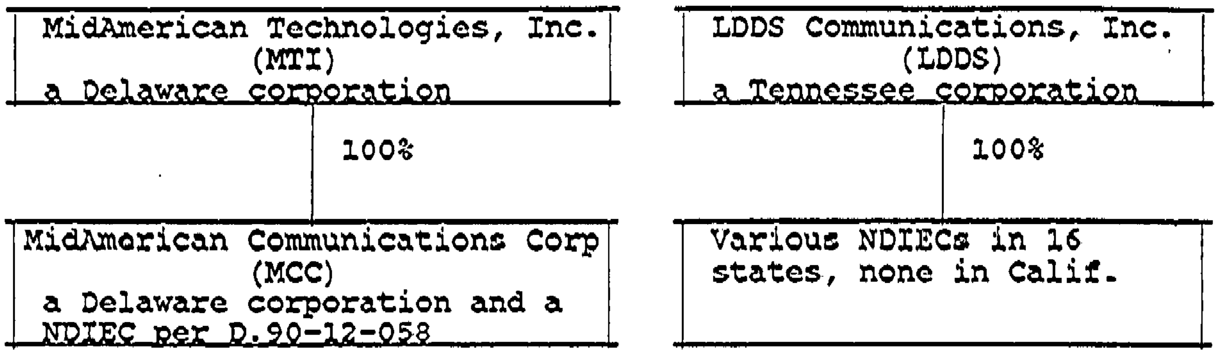
NEAL J. SHULMAN
Executive Director

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

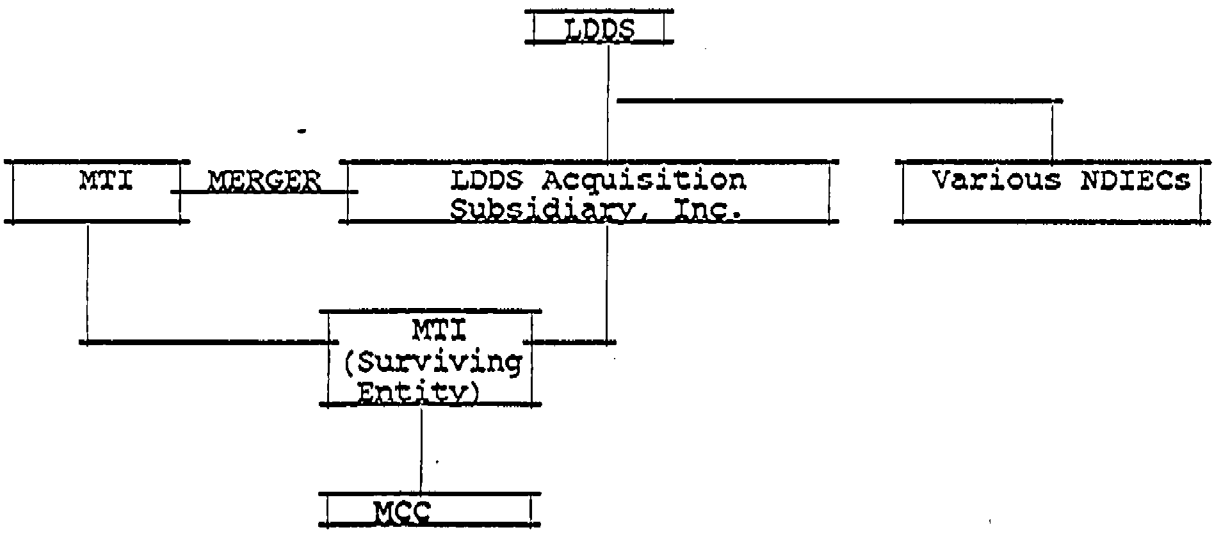
NEAL J. SHULMAN, Executive Director

APPENDIX

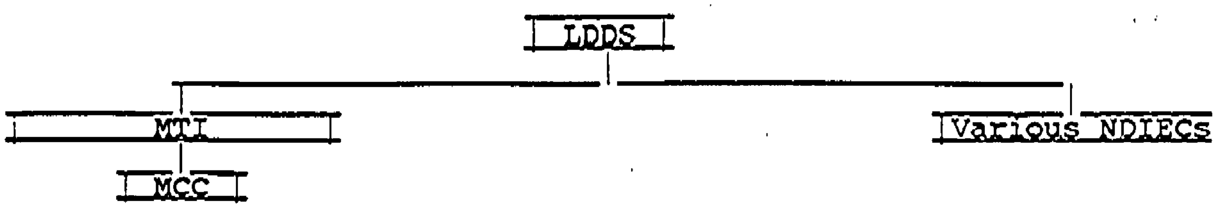
Current Corporate Structures



Merger Transaction



Resulting Corporate Structure



(END OF APPENDIX)