

Decision 92 08 063

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Joint Application of Merrill Lynch Group, Inc., Cox Teleport, Inc., and TCI Teleport Inc. to acquire an interest in, Teleport Communications-Los Angeles, Inc. (U-5171-C) and Teleport Communications-San Francisco, Inc. (U-5167-C) through the Acquisition of stock in Teleport Communications Group, Inc. from Merrill Lynch Group, Inc; and of Cox Teleport, Inc. to acquire control of the foregoing utilities through the acquisition of stock in Teleport Communications Group, Inc. from Merrill Lynch Group, Inc.

ORIGINAL

Application 92-03-037  
(Filed March 18, 1992)  
(Amended May 29, 1992)

O P I N I O N

Applicants Merrill Lynch Group (MLG), Cox Teleport, Inc. (CTI), and TCI Teleport, Inc. (TCI Teleport) seek authorization to transfer controlling shares of common stock of Teleport Communications Group, Inc. (TCGI), a utility holding company, from MLG to CTI and to transfer MLG's remaining minority interest to TCI Teleport. Under Public Utilities (PU) Code § 854, changes in control of any public utility require prior Commission approval.

Notice of this application appeared in the Commission's Daily Calendar of March 20, 1992. Notice of the amendment to the application appeared in the Daily Calendar of June 12, 1992. No protests were received timely under Rule 8.3 of the Commission's Rules of Practice and Procedure; therefore, a public hearing is

not necessary.<sup>1</sup> Both the application and the amendment thereto requested expedited ex parte treatment.

TCGI, a Delaware corporation qualified to do business in California and headquartered in New York, operates telecommunications companies in 25 states. Among its holdings, it operates the non-dominant interexchange carriers (NDIECs) Teleport Communications-Los Angeles, Inc. (TCLA) and Teleport Communications-San Francisco, Inc. (TCSF). Both NDIECs have received certificates of public convenience and necessity allowing them to provide interLATA and intraLATA telecommunications services within the state.<sup>2</sup>

Merrill Lynch Group (MLG), a wholly owned subsidiary of Merrill Lynch & Co., currently owns 87.5 percent of TCGI's stock. MLG proposes to sell 37.6 percent of TCGI's outstanding shares to CTI, and the remaining 49.9 percent to TCI Teleport. This will result in CTI owning 50.1% of TCGI's outstanding stock.

CTI, a Delaware corporation headquartered in Atlanta, Georgia, is a wholly-owned subsidiary of Cox Communications, Inc. (CCI), which is in turn a wholly-owned subsidiary of Cox Enterprises, Inc. (CEI), a privately-owned company. CEI has cable

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1 On May 8, 1992, Communications Workers of America (CWA) filed a Motion for Leave to File a Late Protest. By Administrative Law Judge's (ALJ) Ruling dated May 19, 1992, the motion was denied. However, in that same ruling, the applicants were directed to amend their application and serve a copy of the amendment upon CWA. CWA did not protest the amendment to the application. However, Pacific Bell filed a protest on the last day of the protest period for the amendment. By ALJ ruling dated August 6, 1992, the protest was rejected as late-filed under Rule 8.3 because it addressed matters clear on the face of the original application and did not pertain to the new matter of the amendment. See, In re American Paging, Inc., Decision (D.) 84-01-061 mimeo. at pp. 3-4.

2 TCLA's and TCSF's intraLATA service is limited to high speed digital private line service and high capacity digital private line service. (See D.89-04-044 (TCLA) and D.90-07-022 (TCSF).)

television interests throughout the United States. CTI currently owns 12.5 percent of TCGI's shares. These shares are its sole asset.

TCI Teleport, a Colorado corporation, is a wholly-owned subsidiary of TCI Development Corporation (TCI Development), which is in turn a wholly-owned subsidiary of Tele-Communications, Inc. (TCI). TCI also has cable holdings throughout the U.S. TCI Teleport has no assets; like CTI, its corporate parents created it to hold their interest in TCGI.

Upon consummation of the transfer of shares of stock, TCLA and TCSF will continue to provide telecommunications services. We will handle any changes in their rates or service offerings through the filing of revisions to their tariffs.

By letter to the ALJ, dated August 10, 1992, CTI, TCI Teleport, and TCGI stated they "hereby agree to comply with any future regulations, orders or decisions of the California Public Utilities Commission regarding affiliation or cross-ownership of telephone and cable service providers."

The proposed transfer will have no adverse effect or impact on the environment because the transactions involve only the transfer of outstanding shares of stock.

Pursuant to Ordering Paragraph 1 of Decision (D.) 87-10-035, this application should be approved by the Executive Director on an expedited basis because the application is non-controversial and because TCLA and TCSF are NDIEC's. The Ordering Paragraph provides in part that

"...the Executive Director [may] grant noncontroversial applications by nondominant telecommunications carriers and radiotelephone utilities for authority to transfer assets or control under §§ 851-855 of the PU Code."

Findings of Fact

1. MLG proposes to sell and CTI proposes to acquire 37.6 percent of the outstanding shares of TCGI, a parent company to two nondominant interexchange carriers, TCSF and TCLA. CTI already owns 12.5 percent of TCGI's shares.

2. MLG proposes to sell and TCI Teleport proposes to acquire the remaining 49.9 percent of the outstanding shares of TCGI.

3. CTI will own 50.1 percent of TCGI as a result of these transactions and control of TCGI will change from MLG to CTI.

4. Both TCI Teleport and CTI are affiliated with cable television service providers. By letter to the ALJ, dated August 10, 1992, CTI, TCI Teleport, and TCGI stated they "hereby agree to comply with any future regulations, orders or decisions of the California Public Utilities Commission regarding affiliation or cross-ownership of telephone and cable service providers."

5. No timely protests to the application have been filed.

6. It can be seen with certainty that the proposed transfer will not have an adverse impact on the environment.

7. Public convenience and necessity require the granting of this application, to be effective on the date signed.

8. The Executive Director may grant noncontroversial applications by nondominant telecommunications carriers for authority to transfer control under §§ 851-855 of the PU Code.

Conclusion of Law

1. The application for transfer of control should be granted, but should be conditioned on TCI Teleport, CTI, and TCGI's agreement to abide by our future cross-ownership or affiliation rules as to telephone and cable television interests.

This authority is not a finding of the value of the rights and property to be transferred.

O R D E R

IT IS ORDERED that:

1. On or after the effective date of this order, Merrill Lynch Group, Inc. (MLG) may sell and Cox Teleport, Inc. (CTI) may acquire 37.6 percent of the outstanding shares of Teleport Communications Group, Inc.'s (TCGI) outstanding stock in accordance with the terms described in the application.

2. On or after the effective date of this order, MLG may sell and TCI Teleport, Inc. (TCI Teleport) may acquire 49.9 percent of the outstanding shares of TCGI's outstanding stock in accordance with the terms described in the application, as amended.

3. The authority granted in Ordering Paragraph 1 and 2 shall be conditioned upon the agreement of CTI, TCI Teleport, and TCGI to comply with any future regulations, orders or decisions of the California Public Utilities Commission regarding affiliation or cross-ownership of telephone and cable service providers.

4. Teleport Communications-Los Angeles, Inc. shall use its existing corporate identification No. U-5171-C in the caption of all original pleadings and in the titles of pleading filed in existing cases with the Commission.

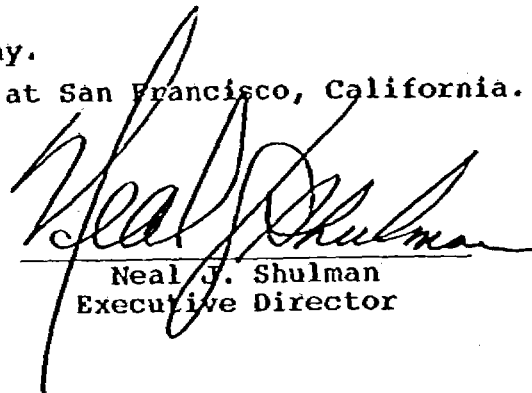
5. Teleport Communications-San Francisco shall use its existing corporate identification No. U-5167-C in the caption of all original pleadings and in the titles of pleading filed in existing cases with the Commission.

6. TCGI shall file with the Commission's Docket Office for inclusion in the formal file of Application 92-03-037 written notice that the authorized change in control has been completed, within 30 days after the change in control has taken place.

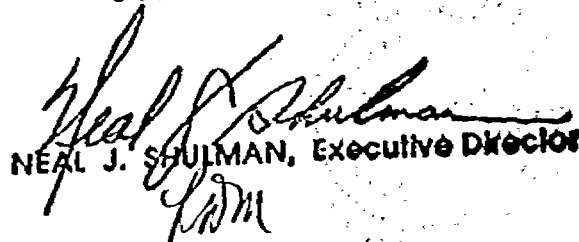
7. The authority granted in Ordering Paragraphs 1 and 2 shall expire if not exercised within 12 months after the effective date of this order.

This order is effective today.

Dated AUG 31 1992, 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  
ADM