

Decision 92 09 097 SEP 29 1992

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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Joint Application for Authority for
LDDS Communications, Inc. to Acquire
Control of Advanced Telecommunications
Corporation.

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)
) Application 92-06-043
(Filed June 25, 1992)

O P I N I O N

Statement of Facts

LDDS Communications, Inc. (LDDS) is a publicly held Tennessee corporation with principal offices in Jackson, Mississippi. Formed August 11, 1989 by a reorganization and merger of LDDS Communications, Inc., a Delaware corporation, into Advantage Companies, Inc., a Tennessee corporation, with the latter being the surviving corporation, albeit under the name LDDS Communications, Inc., LDDS is one of the largest regional long distance companies in the United States and predominantly provides long distance telecommunications services to commercial customers in 27 contiguous states in the Southeast, Southwest, and Midwest. Itself owning no transmission facilities, it leases them from facilities based carriers.

LDDS is the parent company of a number of nondominant carrier subsidiaries that resell domestic and international long distance service pursuant to the Federal Communications Commission's (FCC) Competitive Carrier policies. 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 nondominant carriers. As a holding company which does not itself provide telecommunications services, LDDS has not applied for and is not itself authorized to provide intrastate services in California. However, its wholly owned subsidiary, MidAmerican Technologies, Inc., in turn wholly owns MidAmerican

Communications Corporation (MCC) which provides intrastate telecommunications services in California. By Decision (D.) 92-08-052 dated August 18, 1992, LDDS acquired control of TFN Marketing Company, Inc. (TMCI)¹ which is authorized to resell intrastate long distance telephone service in California. Historically, LDDS has followed a strategy of growth through acquisition as well as internal expansion. It plans to continue acquiring other long distance carriers.

Advanced Telecommunications Corporation, dba ATC Long Distance (ATC), a publicly held Delaware corporation with principal offices in Atlanta, Georgia, by D.91-10-014 issued October 11, 1991, was authorized to provide interLATA telecommunication services over facilities leased from various interexchange carriers to presubscribed business and residential customers in California.² ATC or its operating subsidiaries is also permitted intrastate service in 36 additional states, with applications pending service in 5 others. And it is authorized by the FCC to provide domestic interstate and international services as a nondominant carrier in all 50 states and the District of Columbia.

Alleging that ATC will realize significant economic and marketing efficiencies by establishing itself as a wholly owned subsidiary of LDDS, LDDS and ATC seek authority pursuant to Public

1 TMCI, a Virginia corporation, is a wholly owned subsidiary of TFN Group Communications, Inc. (TFN Group), also a Virginia corporation. Under the terms of a merger agreement dated May 14, 1992 between TFN Group, Ecufin, Inc. (TFN Group's principal stockholder), and LDDS, LDDS Acquisition Corporation (a Virginia corporation and newly formed subsidiary of LDDS) was authorized by D.92-08-052 issued August 18, 1992 to merge into TFN Group, thereby effecting an indirect transfer of control of TMCI to LDDS.

2 On June 5, 1992, ATC filed Petition No. 99 to the Commission for intrastate intraLATA authority in I.92-04-088 In the Matter of Petition by Interexchange Telephone Cos. to provide IntraLATA Services.

Utilities (PU) Code § 854 to proceed under an Agreement and Plan of Merger made June 3, 1992 whereby LDDS Acquisition Subsidiary, Inc., a new wholly owned Delaware-incorporated subsidiary of LDDS, will merge into and with ATC, leaving ATC a wholly owned LDDS subsidiary. Given that this transaction will accomplish a change only in the underlying ownership of ATC, neither ATC's name nor the terms and conditions of its services will be affected by the transaction.

Under the transaction LDDS will acquire all outstanding shares of ATC common stock (\$.02 par value per share), giving ATC shareholders in exchange 0.83 shares of LDDS Class A common stock (\$.01 par value per share) for each share of ATC stock. Following consummation of the merger, slightly more than 50 percent of the outstanding shares of LDDS stock will be held by former holders of ATC stock. However, no single individual or entity previously holding ATC stock will initially own more than approximately 14.4 percent of LDDS shares outstanding after the transaction. The initial LDDS Board of Directors, as of the effective date after consummation of the merger, will consist of 11 members, with LDDS having the right to designate 6, and ATC to designate 5 (Agreement & Plan of Merger § 4.13).

LDDS asserts that as a holding company providing, through subsidiaries, long distance service in 27 states, and with annual revenues exceeding 263 million dollars, it is qualified to acquire a controlling interest in ATC. To support these assertions, it has provided detailed financial information in exhibits including a Quarterly Report to the Securities and Exchange Commission for the quarter ending March 31, 1992.

After consummation of the transaction, ATC anticipates it will continue to operate led by a team of well qualified managers consisting primarily of existing ATC personnel, able to draw upon the substantial technical and managerial expertise of the new

parent LDDS. It is expected that the transaction will cause no inconvenience or confusion to ATC's customers.

The public interest should be promoted by providing ATC the opportunity to strengthen its competitive position with greater financial resources. While there are no present plans to merge or otherwise combine the intrastate operations of ATC and MCC, that option remains, should future operations or marketing efficiencies dictate.

Included as Exhibit D of the application is LDDS's Form 10-K, its annual report to the Securities and Exchange Commission for the fiscal year ended December 31, 1991. Page 27 of that report discusses LDDS's liquidity and capital resources. Regarding the capital needs of its acquisition program, the report discusses LDDS's January 1990 Loan Agreement with a group of banks. The agreement provides credit facilities commitments. These commitments increased on April 30, 1991 and November 1991, to an aggregate of \$175 million. As of March 31, 1992, the principal amount of indebtedness under the agreement was \$157 million. The exhibit further states:

"The obligations of the Company with respect to the Loan Agreement are secured by all of the outstanding shares of stock and substantially all of the assets of the Company's subsidiaries."

By their present application, the parties request expedited treatment of the application on an ex parte basis with approval by the Commission's Executive Director in order that the parties can complete consummation of the Merger and Agreement by

September 15, 1992.³ The filing of the application was noticed in the Commission's Daily Calendar of July 3, 1992. No protests have been received.

Discussion

The proposed merger is expected to result in significant economic and marketing efficiencies for the participants, and to enhance ATC's operational efficiency and financial viability.

³ On August 26, 1992, a letter from the Washington D.C. law firm of Swidler & Berlin addressed to the Commission's Docket Office was received. Without reference to any specific application, it referenced "Proposed Incurring of Debt by LDDS Communications, Inc." On September 1, 1992, the letter was referred to Administrative Law Judge John B. Weiss, assigned to the present LDDS application.

The letter advises that LDDS and each of its operating subsidiaries intend to participate in two separate financing arrangements not later than October 15, 1992: (1) private placement of \$123 million in senior notes for the benefit of LDDS, and (2) a \$427 million maximum credit facility with banks subdivided into two facilities: (a) a \$269 million reducing revolving credit facility, and (b) a revolving credit facility of \$85 million minimum and \$158 million maximum which a year hence converts to a term loan.

The credit facility will be used to acquire telecommunication resale operations, working capital, other capital expenditures, and in part to underwrite costs associated with LDDS's acquisition of ATC, to aid financing of LDDS's acquisition of the assets of TMI and of control of TMCI, and to retire the principal outstanding on LDDS's presently existing \$175 million credit facility.

While the letter states that both the notes and the credit facility are to be uncollateralized financing arrangements, with neither LDDS nor any of its operating facilities pledging or assigning stock, property, accounts, or other assets as collateral, it further states that in each instance the operating subsidiaries of LDDS, as specified in each agreement, will execute a guaranty of the respective financing arrangement in a form specified. (The letter provides no copy of the agreements or sample of the form to be specified.) These debt obligation transactions, as termed in the letter, are to close no later than October 15, 1992.

There would be no interruption of high quality service to existing customers, and ATC will be better able to expand its customer base. ATC will continue to offer affordable, high quality long distance service pursuant to its tariffs currently on file, so the transaction will cause no inconvenience or confusion to ATC's customers. ATC will not only continue to rely upon many of its existing management and operations staff but will also be able to draw upon the substantial financial, marketing and technical expertise available from LDDS. Under the merger, and as part of LDDS's existing amended credit agreement, ATC assets will be added to those of LDDS and its subsidiaries as part of the collateral for the LDDS loan commitment.

The public interest will be served by the further promotion of competition among long distance carriers. Examination of the 1991 LDDS Annual Report (Exh. D to the application) and the ATC Consolidated Balance Sheet (Exh. B to the application) indicates that LDDS possesses or has access to sufficient financial resources to meet the merger obligations. From the foregoing, the Commission concludes that LDDS has sufficient technical, financial, and management expertise to successfully undertake the merger and obtain a controlling interest in ATC.

Because no construction is contemplated by the Merger Agreement, it may be seen with certainty that no environmental assessment under Rule 17.1 of the Commission's Rules of Practice and Procedure is necessary.

While the readjustments of LDDS's collateral involving ATC's assets attending the merger ordinarily might serve to invoke requirements under PU Code § 817(d) and (f), and § 851, by our decision in Re California Assoc. of Long Distance Telephone Companies (1985) 19 CPUC2d 206 (adding a new Ordering Paragraph 1 to Re California Assoc. of Long Distance Telephone Companies (1985) 18 CPUC2d 381), we provided an exemption from the requirements of PU Code §§ 816-831 for the securities transactions of nondominant

interexchange telecommunications carriers, and exempted their transfers and encumbrances of property from the requirements of PU Code § 851 whenever these served as here, to secure debt. Accordingly, no order with respect to LDDS's financing arrangements using ATC's assets will be included in this decision approving the Merger Agreement transaction whereby LDDS will acquire control of ATC.

Because neither LDDS's wholly owned subsidiaries doing business in California nor ATC have gross annual California revenues exceeding five hundred million dollars, the provisions of PU Code § 854(b) and (c) do not apply.

In Re California Assoc. of Long Distance Telephone Companies (1986) 21 CPUC2d 549, the Commission recognized that applications of nondominant interexchange carriers because of the competitive nature of the business and need for expeditious handling should be subject to streamlined review, and accordingly authorized the Executive Director to grant, on an ex parte basis, noncontroversial applications. According to that decision, it is proper for the Executive Director to issue the following order approving the transfer of control under PU Code § 854.

Findings of Fact

1. Notice of the filing of this application appeared in the Commission's Daily Calendar on July 3, 1992.
2. LDDS is a holding company with wholly owned subsidiary nondominant interexchange carrier telephone companies providing long distance telecommunication services in 27 states.
3. ATC is a nondominant interexchange carrier telephone company authorized to provide interLATA telecommunication services in California, and providing service in 36 additional states.
4. Under provisions of a Merger Agreement dated June 3, 1992, LDDS Acquisition Subsidiary, Inc., a wholly owned subsidiary of LDDS, will merge into ATC, thereby effecting an indirect transfer of control of ATC to LDDS in that LDDS will have the right

to designate a majority of the Board of Directors of the resulting entity.

5. Upon completion of the merger, ATC's assets will be pledged to secure the obligations of LDDS pursuant to an existing LDDS Loan Agreement, amended as of November 1991.

6. After the merger, ATC will continue to operate in California with no change in its tariffed rates or services, although controlled by LDDS.

7. The information and documentation provided in the exhibits to the application indicate that LDDS possesses sufficient technical, financial, and managerial expertise to meet the obligations it will incur should the application be granted.

8. Granting the application is not adverse to the public interest.

9. The Executive Director is authorized and directed under previous decisions of the Commission to issue orders granting noncontested applications of nondominant interexchange carriers to transfer control under PU Code § 854.

10. There is no known opposition to the proposed transfer of control.

Conclusions of Law

1. By our decision in Re California Assoc. of Long Distance Telephone Companies (1985) 19 CPUC2d 206, the Commission exempted nondominant interexchange carriers from Article V (PU Code §§ 816-830) in its entirety and from the requirement of obtaining Commission authority to transfer legal title to, or otherwise encumber, properties to which PU Code § 851 applies, when such transfers or encumbrances serve to secure debt.

2. Applicants' request for authority for LDDS to acquire control of ATC under PU Code § 854 should be granted.

3. A public hearing is not necessary.

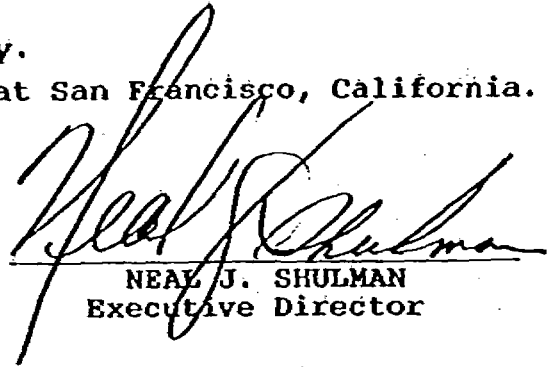
4. Since applicants are facing an imminent deadline for the consummation of their transactions, and there has been no opposition filed, the following order should be effective immediately.

ORDER

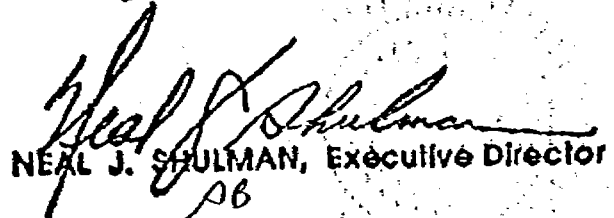
IT IS ORDERED that LDDS Communications, Inc. is authorized to acquire control of Advanced Telecommunications Corporation under provisions of Public Utilities Code § 854, in accordance with the terms and conditions set forth in the application.

This order is effective today.

Dated SEP 29 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
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