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Decision 95-07-051 July 19, 1995

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of Donyda, Inc.
d/b/a/ Call America of Palm Desert
and Call America of San Diego,

Transferor,

and

California Acquisition Corp.
d/b/a Valley Acquisition Corp.,

Transferee,

Application for Consent to Transfer
Control of A Resale Common Carrier.

Application 94-07-020
(Filed July 14, 1994;
amended May 15, 1995)

ORIGINAL

In the Matter of the Application of
Inland Call America, Inc.,

Transferor,

and

Telecom Acquisition Corp.,

Transferee,

Application for Consent to Transfer
Control of a Resale Common Carrier.

Application 94-07-018
(Filed July 14, 1994;
amended September 21, 1994
and May 15, 1995)

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PART I: Statement of Facts, Donyda Application 94-07-020

In 1984, Donald and David Clem, father and son, formed a partnership to do business as Call America-Palm Desert (CAPD) to provide interexchange telecommunication services in the California Palm Desert area. By Decision (D.) 84-11-111 issued November 21, 1984 in Application (A.) 84-10-025 (the) partnership was issued identification number U-5062-C and authorized to operate.

Effective January 17, 1990, it was asserted in the belief that prior authorization was unnecessary, for estate reasons the Clems transferred all the partnership assets and liabilities to Donyda Inc. (Donyda), a California corporation they had organized, also to do business as CAPD. The relative shares of the Clems remained the same (Donald 70% and David 30%) in the new corporation. Subsequently the Clems made inquiry to the Commission's Executive Director and learned that pursuant to provisions of Article 6, Chapter 4, Part 1 of the Public Utilities (PU) Act, authorization was a prerequisite for such a transfer. Accordingly by A.92-08-047 Donyda belatedly sought Commission authorization for acquisition of control of CAPD, and by D.92-10-063 issued October 26, 1992, the transfer was prospectively authorized. Donyda was issued identification number U-5295-C.

California Acquisition Corp. (CAC), a Texas corporation, is qualified to do business in California under the name Valley. Citing vigorously competitive telecommunication market, they argue that to transfer control of resale carrier Donyda.

When queried by Administrative Law Judge (ALJ) Weiss regarding existence of an entity "Call America of San Diego," the attorney for the applicant stated that the inclusion of "Call America of San Diego" in the caption of the present application was an error. "Call America of San Diego" is merely their designation for one of their sales offices; it is not a separate certificated entity. Accordingly, CAPD as used herein refers to "Donyda, Inc., dba Call America of Palm Desert."

Acquisition Corp. CAC is a wholly owned subsidiary of US Long Distance Corp. (USLD), a Delaware corporation. USLD provides intrastate, interstate, and international telecommunication services throughout the United States through operating subsidiaries. In 1993 USLD's revenue exceeded \$100 million. The interstate and international telecommunication services are provided pursuant to a grant of authority from the Federal Communications Commission (FCC) 88-10-027 (A) in application 88-10-027.

On March 14, 1994, under an Agreement and Plan of Merger (agreement) effective as of March 15, 1994, Donyda was merged with and into CAC, with CAC to be the surviving entity. The issued and outstanding shares of Donyda's common stock were each exchanged for \$30 (in cash and 22.50 shares of USLD common stock with any excess shares of Call America common stock resulting in a reduction of the pre-share exchange ratio in the merger from 1.00 to 0.75). Through a misunderstanding herein reported by the parties to the agreement, the parties state they inadvertently failed to seek the prior approval of the Commission to the merger. By their present application they bring this oversight to the Commission's attention and seek approval of their merger nunc pro tunc. A copy of their agreement is attached as an exhibit to the application.

In support of their application, the parties filed a copy of Donyda's financial statements as requested by staff, but on July 14, 1994, filed a motion for a protective order for income statements and balance sheets submitted in support of applications to transfer control of resale common carrier Donyda. Citing a vigorously competitive telecommunication market, they argue that disclosure of sensitive financial information such as revenues could adversely impact their ability to compete. The applicants further state that the merger is in the public interest in that it promotes competition. It will provide access to the greater financial, managerial, and technical services of Call America of Palm Beach.

of CAC and USLD, improving their competitive position as well as providing economies of scale.

On May 19, 1995, the parties filed an amendment to their application to reflect that after CAC assumed ownership of Donyda, CAC was itself merged into USLD. The parties request approval in pro tunc for this series of transactions (and for the assumption of control of CAC by USLD).

Notice of the filing of this application appeared in the Commission's Daily Calendar of July 18, 1994, and no protests have been filed. Notice of the filing of the amendment to the application appeared in the Commission's Daily Calendar of May 19, 1995, and no protests have been filed.

Part I: Discussion: Donyda A. 94-07-020
Inter alia, Article 6 of the PU Code addresses transfers of public utility property and control of utilities, including mergers. Essentially, as relevant here, the sections in this article of the Code provide that no merger or transfer of control shall be made without prior authorization of the Commission and that any such merger or transfer of control made without prior Commission authorization is void. Thus, in the ordinary situation the purported merger or control transfer without prior authorization is void. However, the Commission has jurisdiction under PU Code § 853(b): where the public interest so requires, to exempt a transaction which would otherwise be void under PU Code §§ 851 or 854.

The primary function of public utility regulation is to fairly control public utilities and the service they provide for the protection and welfare of the general public. The transfer of operating authority is an exercise of the state's power to determine whether the rights and interests of the general public will be advanced by a transfer. The Commission represents the public interest and is charged with the protection of that interest (Hanlon v. Eshelman (1915) 169 Cal. 200, 203; Sale v. Railroad

Commission (1940) 215 Cr (2d) 612, 617, 618) The concern is to prevent the impairment of the public service by the transfer of utility property and operating rights into the hands of parties incapable of rendering adequate service at reasonable rates or upon terms which would bring about the same undesirable result (So. Cal. Mountain Water Co. (1912) 10 C.R.C. 520) /

In the present matter the contracts of the filed application taken alone would appear to provide justification for a conclusion that the merger of Donyda into CAC and subsequently into USLD, and the transfer of Donyda's certificate of public need, convenience and necessity (CPCN) to USLD would provide greater financial, managerial, and technical resources, establish economies of scale, and provide the surviving entity (USLD) with opportunity to improve its competitive position, matters that normally should result in enhanced customer services and therefore be in the public interest. However, literally on the eve of the March 16, 1995 Commission meeting which, inter alia, was to consider issuance of an order authorizing nunc pro tunc the otherwise null and void March 15, 1994 merger of Donyda into CAC (null and void pursuant to provisions of PU Code §§ 851-856 for lack of prior Commission authorization) ALJ Weiss learned of matters which indicated the probability of certain misrepresentations in the application and possible violations of Commission orders on the part of the Clems and Donyda, with possible fraud. Accordingly, ALJ Weiss caused withdrawal of the proposed order from the Commission agenda.

The facts are these: On March 10, 1995, ALJ Weiss learned that for the period between July 1987 and January 1990, the Clems apparently had failed to fully perform their statutorily derived and Commission ordered obligations with regard to the remittance of surcharge monies collected from end users for Universal Lifeline Telephone Service (ULTS) as initiated by the 1983 Moore Universal Telephone Service Act (Hanlon v. Eselman)

By Assembly Bill (AB) 84-05-053, earlier, had established an ULTS Fund to implement universal lifeline service; the fund to be subsidized by a tax on interLATA intrastate telecommunications services and intrastate telecommunication services not defined by LATA boundaries, and to be jointly administered by the State Board of Equalization, the State Controller, and the Commission. In 1987, by AB 386 the Legislature rescinded the tax previously used to subsidize ULTS, and authorized the Commission to fund telephone lifeline service through use of a surcharge on telephone services provided by telephone companies operating between service areas. By D.87-07-090 the Commission instituted an interim surcharge. This was followed by D.87-10-088 which was relevant here, provided for surcharge rate setting by the Commission at least annually; established an ULTS administrative (but not policy) committee to implement and administer the ULTS Trust and be responsible for receipt and investment of ULTS surcharge monies; and provided that to avoid double charging end users, the telephone utilities would be allowed to deduct from their gross intrastate telephone revenues subject to the surcharge, the amounts paid to other telephone utilities to which the surcharge had already been applied. Payments to the Fund from interexchange carriers (resellers) of ULTS surcharges collected after deductions for uncollectibles (and payments to other telephone companies to which the surcharge has already been applied, are to be remitted by the 10th of the subsequent month. Copies of their ULTS Fund cover reports are to be sent to the Commission Evaluation and Compliance Division (today the Commission Advisory and Compliance Division (CACD)). The ALJ's inspection of tariff sheets filed by the Clems with the Commission reflected that an ULTS surcharge component of their authorized tariff rates had been in effect since 1987. Copies of the ULTS Fund reports filed with CACD reveal that for the July 1987 through December 1989 period the Clems

reported total intrastate revenues subject to the ULTS surcharge of \$3,525,647, but remitted only \$17,037 to the Trust. Late in 1989, a Commission Financial Examiner checking Fund reports noted what appeared to be uncommonly low ULTS payments as the result of what appeared to be unusually high offsets. The Examiner asked about these, some assertedly having been made to Pacific Bell (PacBell) and GTE. Proffered copies of the professed underlying PacBell and GTE billings were denied by the latter, consequently an audit was performed in February of 1990. The Examiner was not provided with substantiation of either uncollectibles or amounts assertedly paid to other telephone utilities to which the surcharge had already been applied. It being the obligation of the Clems to provide such substantiations and it not being proffered, the Examiner reportedly advised David Clem that unless and until such substantiation could be produced for asserted offset payments or uncollectibles, the total intrastate revenues as reported to the Fund were considered as subject to the applicable ULTS surcharge percentages. In applying these percentages to these total revenues, a potential ULTS surcharge liability of \$128,291 was computed. After allowance for the actual \$17,037 remitted, a balance of \$111,254 was open. The Financial Examiner and his supervisor discussed this with David Clem. Clem gave the supervisor a check for \$30,000 which was taken on account, the balance remaining open until the Clems could substantiate deductions taken or until the balance was paid to the Fund. (No substantiation of offsets taken, assertedly to Sprint, ATT, PacBell, or GTE providing transport services were thereafter offered nor were any further payments made to the Fund applicable to the 1987-1989 periods. However, the Fund advised that since the 1990 audit, the Clems and subsequently Donyda have regularly remitted 100% of the ULTS surcharge monies they collected less claimed deductions for asserted payments to other telephone companies for transport services. It is interesting to note that

while monthly revenues subject to ULTS surcharges were not substantially higher after the audit, payments to the ULTS Fund proportionately were an approximate twelve fold larger!

Donyda, corporate successor to the Clems partnership reflects no significant changes in management or control from the partnership forms. Albeit now clothed in corporate form, Donyda is the Clems, and the change in form should not be permitted to excuse possible fraud or to evade payment of past Clems obligations to the ULTS Fund.

Appended as a supporting document to the present application is Exhibit D, the "Agreement and Plan of Merger" between USLD, CAC, Donyda, and the Clems (Donald D., Nancy G., and David M.). Article 2 of that Exhibit sets forth the representations and warranties of Donyda and the Clems. In Section 2.2, Compliance with Law; Conduct, it is represented and warranted that "Call America has not violated or failed to comply with any statute, law, ordinance, regulation, rule, or order of any foreign, federal, state or local government or agency or any other Governmental Body," and that "Call America's business is in conformity with all federal, state, and local energy, public utility, health and OSHA requirements and all other federal, state, and local governmental and regulatory requirements." (Emphasis added.) Donald Clem signed this Agreement and Plan of Merger both as a corporate officer and individually.

The Commission does not consider it credible that at the time of entering the March 14, 1994 agreement, David Clem could not have been unaware of his still unsatisfied and open ULTS accounts. Clem collected these surcharges from his partnership end users. These collections were essentially trust funds; they were never the property of Clems, and until substantiation could be provided for alleged offset payments to Sprint or other telephone companies for asserted transport services they remain funds held in trust for the

(Footnote continues on next page)

ULTS Fund. It was, and remains, Clem's responsibility to produce the substantiation; this has not been done.

In addition, the present application seeks a nunc pro tunc authorization of the null and void March 15, 1994 merger of Donyda into CAC. David Clem subscribed to the statement in that application that the failure to have sought the statutorily required prior authorization for such a merger (pursuant to the provisions of PU Code § 851 et seq.) was "inadvertent" and an "oversight." But a scant 16 months earlier David Clem had sought and obtained what was in essence also a nunc pro tunc after the fact authorization for his 1990 unauthorized change in control of his partnership to corporate form. It is difficult to now again credit as "inadvertent" and an "oversight," this repetition when he attempts to transfer control of his operating entity and CPCN in a merger deal.

In view of the entire past history and circumstances attending the Clem's operations and their stewardship of their CPCN, laced throughout with apparent lack of compliance with Federal Commission orders, rules, regulations, and the PU Code, the Commission is of the opinion that David Clem and/or Donyda may have violated §§ 2107, 2108, 2110, and 2114 of the PU Code, as well as Rule 1 of the Commission's Rules of Practice and Procedure.

2107. 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.

(Footnote continues on next page)

By D.04 11-023 issued November 7, 1984, the Commission

granted operating authority to a partnership under Call America

Partnership-Riviera to receive telephone services (Footnote continued from previous page)

2108. Every violation of the provisions of this part or of any part of any order, decision, decree, rule, direction, demand, or requirement of the commission, by any corporation or person is a separate and distinct offense, and in case of a continuing violation each day's continuance thereof shall be a separate and distinct offense.

2110. Every public utility and every officer, agent, or employee of any public utility, who violates or fails to comply with, or who procures, aids, or abets any violation by any public utility of any provision of the Constitution of this state or of this part, or who fails to comply with any part of any order, decision, rule, direction, demand, or requirement of the commission, or who procures, aids, or abets any public utility in such violation or noncompliance in a case in which a penalty has not otherwise been provided, is guilty of a misdemeanor and is punishable by a fine not exceeding one thousand dollars (\$1,000), or by imprisonment in a county jail not exceeding one year, or by both such fine and imprisonment.

2114. Any public utility on whose behalf any agent or officer thereof who, having taken an oath that he will testify, declare, depose, or certify truly before the commission, willfully and contrary to such oath states or submits as true any material matter which he knows to be false, or who testifies, declares, deposes, or certifies under penalty of perjury and willfully states as true any material matter which he knows to be false, is guilty of felony and shall be punished by a fine not to exceed five hundred thousand dollars (\$500,000).

Title 20.

Subchapter 1. Rules of Practice and Procedure

Article I. Code of Ethics

1. (Rule 1) Code of Ethics.

Any person who signs a pleading or brief, enters an appearance at a hearing, or transacts business with the Commission, by such act represents that he is authorized to do so and agrees to comply with the laws of this State; to maintain the respect due to the Commission and its staff by an officer or false statement of fact or law.

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Part II: Statement of Facts, Inland A.94-07-018

By D.84-11-023 issued November 7, 1984, the Commission granted operating authority to a partnership named Call America Partnership-Riverside to resell telephone services offered by communications common carriers providing telecommunications services in California. In 1986 the partnership reorganized and as a California corporation later changed its name to Inland Call America, Inc. (Inland).

Telecom Acquisition Corp. (Telecom), a Texas corporation, is qualified to do business in California. Telecom is also a wholly owned subsidiary of USLD pursuant to an Agreement and Plan of Merger (Agreement) that was effective as of March 1, 1994, Inland merged with and into Telecom, with Telecom being the surviving entity, but continuing to do business as "Inland Call America." The issued and outstanding shares of Inland's common stock were exchanged for 175,000 shares of USLD common stock. Each Inland share was exchanged for 145,833 shares of USLD, with any excess shares of Inland resulting in a reduction of the per-share exchange ratio.

Through a misunderstanding herein reported by the parties to the Agreement, the parties state they inadvertently failed to seek the prior authorization of the Commission before entering the merger. By their present application they bring this oversight to the attention of the Commission and seek approval of the merger.

Subchapter I. Rules of Practice and Procedure

Article I. Code of Ethics

I. (Rule 1) Code of Ethics.

Any person who signs a pleading or brief, enters an appearance at a hearing, or transacts business with the Commission, by such act represents that he is authentic and never to mislead the Commission or its staff by an artifice or false statement of fact or law.

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nunc pro tunc, a copy of their Agreement is attached as an exhibit to the application.

In support of this application, the parties filed a copy of Inland's financial statements as requested by staff but on July 14, 1994, filed a motion for a protective order for income statements and balance sheets submitted in support of the application to transfer control of resale common carrier (Inland). Citing a vigorously competitive telecommunications market, they argue that disclosure of sensitive financial information such as revenues could adversely impact their ability to compete. The applicants further state that the merger is in the public interest in that it promotes competition. It will also serve to provide Telecom with the greater financial, managerial, and technical services of USLD, improving the former's competitive position as well as providing economies of scale.

On September 21, 1994, Inland and Telecom amended their application to include a request that the Commission waive certain specified user fees and surcharges, including those associated with the Universal Lifeline Telephone Service (ULTS) and the California Relay Service and Communications Devices Fund (CRS) programs for which Inland became liable prior to concluding the Agreement with Telecom and USLD. They argue that requiring USLD to bear the burden of such fees and surcharges as Inland failed to remit, could have a material adverse impact on USLD finances.

On May 15, 1995, the parties filed a further amendment to their application to reflect that after Telecom assumed ownership of Inland, Telecom was itself merged into USLD. The parties request approval nunc pro tunc for this series of transactions and for the assumption of control of Telecom by USLD.

Notice of the filing of this application and of the September 21, 1994, and May 19, 1995, amendments to the application appeared, respectively, in the Commission's Daily Calendar of Notices of Filings. Section 2.22 of that Article states that Inland warrants that it is

July 18, 1994, September 29, 1994, and May 19, 1995. No protests have been filed.

Part II: Discussion of Inland A.94-07-018

In the present matter the application provides evidence that the merger of Inland into Telecom and subsequently into USLD, and the transfer of Inland's GPCN to USLD would provide greater financial, managerial and technical resources and establish economies of scale, enhancing USLD's competitive position. All of this should produce enhanced opportunity for services to Inland's present customers. It also promotes long distance competition in California. Accordingly, we find that a merger of Inland into USLD would be in the public interest.

However, before we can apply this finding to exempt the otherwise void mergers and control transfers by application of the provisions of PU Code § 3853(b), there are other considerations that must be resolved. It is acknowledged by the amendment to the application filed September 21, 1994, that for the period before the March 1, 1994 unauthorized implementation of the merger, Inland apparently failed to properly remit various of the user fees and surcharges (including the ULTS and CRS) to the Commission. By the filed Amendment USLD pleads unawareness of the situation when it agreed to acquire Inland, and states its belief it should not be held liable for the fees Inland failed to remit. It further states that requiring USLD to bear the burden of these charges could materially adversely impact USLD's finances. Accordingly, Telecom and USLD asked that the Commission waive any such unpaid fees incurred prior to March 1, 1994. The Commission does not agree to a waiver.

There is no equitable or legal basis for a waiver. The situation arises because of the failure of Telecom and USLD to exercise due diligence in checking out the Representations and Warranties of Inland as set forth in Article 2 of their Agreement. Section 2.22 of that Article states that Inland warrants that it is

in conformity to all (federal, state and local energy, public utility, health and OSHA requirements and all other federal, state and local governmental and regulatory requirements. Telecom and USLD were not without recourse. Included in their Agreement was an indemnification provision (Section 5.14) whereby USLD can be reimbursed from Inland's Owners for loss or damage arising from any breach of representations or warranties contained in Article 2 (provided USLD provides notice to the owners within one year after March 1, 1994). The reimbursement is for amounts above \$10,000.

It is regrettable that Telecom and USLD did not see fit to include a holdback provision against such contingency, but USLD cannot equitably expect the Commission (and the respective funds) involved to suffer a loss where the loss would be attributable to Inland's dereliction and/or Telecom-USLD's failure to use due diligence. The Commission has a legal responsibility to collect these fees and surcharges and it will use all means within its power to do so. Accordingly, it would be a condition precedent to any Commission authorization for a merger and transfer of control, that these fees and surcharges be paid.

On the eve of the March 16, 1995 Commission meeting, which was to consider issuance of an order authorizing nunc pro tunc (the otherwise null and void March 1, 1994 merger of Inland into Telecom (a merger and transfer null and void pursuant to provisions of P.U. Code §§ 851-856 for lack of prior Commission authorization)), but subject to submission of a detailed accounting and remittance of all user fees and surcharges, including but not limited to ULTS and CRS, ALJ Weiss caused withdrawal of the proposed order from the Commission agenda. Late received preliminary and incomplete staff summaries of both very substantial unremitting fees past due as well as late reporting omissions following the Telecom takeover in March of 1994, raised questions that the ALJ considered required resolution before any transfer should be considered.

Part III: Statement of Facts: Donyda and Inland

Following withdrawal of the two proposed decisions from the Commission's March 16, 1995 agenda, CACD provided USLD with worksheets pertaining to Donyda and Inland. These indicated unpaid past-due accounts of approximately \$88,000 for Donyda and \$181,000 for Inland. USLD responded by claiming discrepancies, stating that staff had not allowed for offsets paid to the applicants' carriers, and told CACD that USLD was of the further view that the 3-year statute of limitations (Cal. Code Civil Proc. § 338 (a)) applied to Donyda and some of Inland's accounts. However, USLD's outside counsel, Brad E. Mutschelknaus, told CACD that he wished to resolve the dispute. In turn, CACD referred USLD to ALJ Weiss. On April 13, 1995, applicant's attorney Mutschelknaus telephoned the ALJ and was told that the ALJ was preparing draft decisions denying the transfers with show cause orders to Donyda and Inland pertaining to possible revocation of their CPCNs. Mutschelknaus asked that applicants be afforded an opportunity to meet and discuss the situation before action was taken. Accordingly, the ALJ set an off-the-record in chambers conference for April 27, 1995. That conference was attended by Mutschelknaus, Audie Long, and Kenneth Prinz (USLD's Vice President and General Counsel and Director of Corporate Taxes, respectively). James McVicar, Dean Evans, and James Wuehler (Assistant Directors and Supervising Auditor, respectively of CACD) and Alberto Guerrero (Legal Division Staff Counsel) present at the ALJ's request to assist CACD.

The ALJ opened the conference by showing the participants his prepared draft for Commission consideration of show cause orders to Donyda and Inland to appear and show why their respective CPCNs should not be revoked for past failures to have complied with Commission directives, orders, rules, and regulations regarding required reporting and timely remittance of ULTS surcharges, for making known misrepresentations in their applications materials in

violation of Rule 1 of the Commission's Rules of Practice and Procedure; and for the 1994 transfers attempted in violation of PU Code § 851, 854, provisions. The ALJ's proposed draft also raised the issue of possible fines, and would have required both utilities to deliver to the ALJ complete and current listings of each customer, and their addresses. The clear implication was made that unless some satisfactory resolution of the open accounts was reached, there would be no transfers, and that Commission decisions to that effect would be expeditiously issued. Such decisions would effectively have denied USLD immediate access to the California telecommunications reseller market with Donyda and Inland substantial customer bases. The ALJ then left the conference, leaving the CACD staff and USLD's representatives to reconcile their respective records and to propose a resolution of the past due accounts issues for consideration in both dockets. Several hours later, the parties reported to the ALJ that they reached an agreement on both accounts. Under their agreement proposal USLD, in order to obtain transfers of both the Donyda and Inland CPNs to USLD, nunc pro tunc as requested in their respective applications as amended, agrees to remit to the Commission on behalf of Donyda and Inland, respectively, \$74,884 and \$226,884 as full settlement, including interest through May 5, 1995, of the outstanding ULTS accounts. The detail behind each calculation is set forth in Appendixes A and B to this decision. Previously familiar with the detail behind these schedules, the ALJ accepted the USLD proposal as being an equitable resolution of the issues in both respective applications, subject to the final approval of the Commission. On June 7, 1995 and June 16, 1995, respectively, attorney Mutschelknaus sent McVicar checks for \$226,884 and \$74,884 to cover the outstanding fee liabilities of Inland and Donyda, this with the understanding that the payments resolve all objections to approval of the respective applications. To validate the interest so required, otherwise be void under provisions of PU Code § 851 and/or 854.

Part III: Discussion

Borrowing a procedure from the provisions of Article 13.9 of the Commission's Rules of Practice and Procedure and analogizing it as a guide to the present unusual situation, the ALJ accepted a proposal from USLD (representing Donyda and Inland) subject to Commission ratification herein based on the schedules set forth in Appendixes A and B attached to this decision for the purpose of resolving obstacles to transfers nunc pro tunc as of March 15, 1994 of Donyda and Inland CPCNs to USLD as requested by the captioned applications and their respective amendments. Under this agreement, USLD agreed to remit to the Commission all outstanding ULTS fees and interest due to May 5, 1995.

Despite notices in the Commission's Daily Calendar of July 18, 1994 and May 19, 1995 with respect to Donyda and July 18, 1994, September 29, 1994, and May 19, 1995 with respect to Inland, there are no parties of record other than USLD for itself and Donyda and Inland. The parties met on April 27, 1995 with the ALJ and CACD in an off-the-record in chambers conference and proposed an agreement on disputed past-due ULTS accounts.

The schedules contained in Appendixes A and B to this decision set forth facts adequate to advise the Commission of the agreement's scope. The agreement serves to avoid potential statute of limitation issues while securing for the ULTS Trust Fund the full measure of all past-due fees and interest outstanding. The transfers nunc pro tunc as of March 15 and March 17, 1994, listed respectively, of the Donyda and Inland CPCNs to USLD are in the public interest, preserving as they do continuity of service for Donyda and Inland customers while removing certification from two entities whose past compliance with Commission directives, orders, rules, and regulations has been entirely unacceptable. The Commission has jurisdiction under PU Code § 853 (b) where the public interest so requires, to validate transfer transactions which would otherwise be void under provisions of PU Code §§ 851 and/or 854.

The merger transfers will provide access to greater financial and managerial, and technical resources possessed by USLD, establish economies of scale, and result in enhanced opportunity for customer service. They will also promote long distance competition in California. All this is in the public interest. Further removal of Donyda and Inland from the public utility sector, coupled with remittance of their past unpaid ULTS fees, makes further efforts and investment of scarce Commission resources to take punitive measures for past transgressions unnecessary. We find the proposal to be reasonable in light of the whole record, consistent with law, and in the public interest.

Having found that these mergers with their associated transfers of control would be in the public interest, it follows that the application of the general rule in Article 6, avoiding the March 1, and 15, 1994 mergers and control transfers is unnecessary, and that the applications may be approved nunc pro tunc as set forth in the following order. In this instance, because none of the principals has gross annual California revenues exceeding \$500 million, the provisions of PUC Code § 854 (b) and (c) do not apply. We further find that the motions for Protective Orders should be granted with respect to the Donyda and Inland financial statements and balance sheets. While there normally is a strong public policy in favor of disclosure of the supporting information in applications, no protests have been received. Both are privately held and heretofore have not been required to disclose their financial data. Disclosure in the very competitive reseller marketplace could be detrimental to USLD's ability, as the surviving entity, to compete.

Because of the intertwined issues and the single surviving entity involved, these two applications have been consolidated for decisional purposes. And because of the urgent need to finally resolve the merger transfer and past due accounts

issues, the decision that follows should be made effective immediately, and the Commission should be authorized to take such action as may be necessary to carry out the purposes of this order.

Findings of Fact

1. Donyda and Inland are nondominant carriers certified by the Commission to provide interLATA (interexchange) and intrastate telecommunications services within California and the United States through operating subsidiaries pursuant to grants of authority from the FCC. USLD, a Delaware corporation, provides intrastate, interstate, and international telecommunication services throughout the United States through operating subsidiaries pursuant to grants of authority from the FCC.

3. CAC and Telecom, Texas corporations wholly owned by USLD, are qualified to do business in California.

4. Pursuant to agreements made effective March 15, 1994 and March 1, 1994, Donyda and Inland, respectively, were to be merged with and into CAC and Telecom, with the issued and outstanding shares of each's stock to be exchanged for shares of USLD's common stock. Assertedly, inadvertently, the prior authorization required of the Commission by Article 6 of the PU Code was not obtained so that the March 1994 attempted mergers and transfers of control are void under provisions of said Article 6.

6. By the present applications Donyda and Inland seek the requisite authorization of the Commission for the mergers and transfers of control nunc pro tunc as of March 15, 1994 and March 1, 1994, respectively. By an amendment to the Inland-Telecom application, Telecom and USLD asked the Commission to waive any prior 1994 Inland unpaid fees or surcharges.

8. The information and documentation provided by the respective applications and their exhibits indicated that as wholly owned USLD subsidiaries, CAC and Telecom possessed sufficient technical, financial, and managerial expertise to meet the

obligations to be assumed with post-approval of the mergers and transfers.

9. The mergers and transfers appearing to be in the public interest and with no known opposition, draft decisions to authorize nunc pro tunc decisions were placed on the Commission meeting agenda of March 16, 1995.

10. On the eve of the March 16, 1995 Commission meeting, the ALJ became aware of substantial unremitted ULTS applicable to both Donyda and Inland, and accordingly caused removal of both draft decisions from the agenda.

11. At an off-the-record in chambers conference convened by the ALJ at the request of the applicants, a proposal was formulated and presented by applicants as to the ULTS amounts owed and applicants requested nunc pro tunc Commission authorization of the March 1994 otherwise void mergers and transfers, and in exchange USLD agreed to remit the ULTS amounts owed plus applicable interest.

12. By amendments to the respective applications, USLD was substituted for CAC and Telecom was the acquiring entity in both applications.

13. USLD has remitted to the Commission the \$301,768 determined to be owned the ULTS Trust Fund, including interest, from Donyda and Inland.

14. Nunc pro tunc authorizations, as of March 15, 1994 and March 1, 1994, for mergers and transfers of control, and for the transfers of the CPCNs of Donyda and Inland, respectively, to USLD, being in the overall public interest should be approved.

15. The applicants present sufficient reasons for granting their motions for Protective Orders against public disclosure of the Donyda and Inland financial statements and balance sheets.

16. There is no known opposition to the proposed mergers, control transfers, and transfers of the Donyda and Inland CPCNs to USLD.

The applications should be consolidated for decision.
Conclusions of Law

1. A public hearing is not necessary.
2. The parties' motions for a protective order against disclosure of Donyda and Inland financial statements and balance sheets should be granted.

3. Resolution of the ULTS issues requiring a payment by USLD of \$301,768 (\$74,884 for Donyda and \$226,884 for Inland) to the Commission for the ULTS Trust Fund should be approved as being in the public interest.

4. The applications for approval under protective orders of March 15, 1994 and March 17, 1994 of the mergers, control transfers, and transfers of the CPCNs, respectively, of Donyda and Inland to USLD as permitted under PU Code § 853(b) being in the public interest, should be approved.

5. Since applicants seek to retroactively effectuate their agreements as amended, and since the applications are uncontested, the order that follows should be effective immediately.

ORDER

IT IS ORDERED that:

1. The financial records and balance sheets submitted by Donyda, Inc. dba Call America of Palm Desert (Donyda), and Inland Call America, Inc. (Inland), identified as supplemental exhibits to each application, shall be maintained until one year from the effective date of this order, and not be included in the public record of either application. Extension of the time such records are held under seal shall require a subsequent application, and applicants must demonstrate good cause for any extension.

2. The proposal is approved.
3. The \$301,768 payment received by the Commission in settlement of the Universal Lifeline Telephone Service (ULTS).

accounts owned by Donyda and Inland will be remitted to the ULTS Trust Fund.

4. USLD is authorized to merge Donyda and Inland with and into USLD, with USLD to be the surviving entity and to exchange Donyda's and Inland's outstanding common stock for USLD common stock as provided in the applications (as amended) and thereby transferring control of Donyda and Inland and possession of Donyda's and Inland's certificates of public convenience and necessity to USLD.

5. The authorization contained in Order Paragraph 4 of this order is approved under protest as of March 15, 1994 for Donyda and as of March 1, 1994 for Inland.

6. Effective upon acceptance and implementation of this order, USLD will be subject to the following surcharges and fees, the current amounts of which became effective January 1, 1995:

a. The current 3.0% surcharge applicable to service rates of intralATA toll and intrastate interLATA toll (PU Code § 879; Decision (D.) 94-09-065) to fund the Universal Lifeline Telephone Service (ULTS);

b. The current 0.3% surcharge on gross intrastate interLATA revenues to fund Telecommunications Devices for the Deaf (PU Code § 2881; Resolution T-15254);

c. The user fee provided in PU Code §§ 431 and 435, which is 0.1% of gross intrastate revenue for the 1994-95 fiscal year (Resolution M-4777); and

d. The California High Cost Fund fee of 0.5% (D. 94-09-065).

7. The request contained in the September 21, 1994 Inland amendment to the application that the Commission waive certain user fees and surcharges, including but not limited to those associated with the Universal Lifeline Telephone Service (ULTS) and the California Relay Services and Communications Devices Fund (CRS) for

which Inland became liable prior to concluding the agreement with US Long Distance (USLD), is denied.

Donyda, Inland, and USLD shall file with the Director of CACD, within 90 days of the effective date of this order, annual reports of their respective operations of their telecommunication systems for 1994, as to Donyda from the first day of 1994 through March 15, 1994, as to Inland from the first day of 1994 through March 15, 1994, and as to USLD from March 15, 1994 and March 15, 1994 (respectively as regards the former Donyda and Inland operations) through the balance of 1994.

Donyda, Inland, and USLD shall make all books and records available for review and inspection in California upon Commission staff request.

Donyda, Inland, and USLD shall jointly notify the Director of CACD in writing of the actual transfer as authorized herein, and a true copy of the instruments of transfer shall be attached to the notification.

11. The corporate identification numbers assigned heretofore to Donyda (U-5295-C) and Inland (U-5453-C) are canceled, and corporate identification number U-5485-C will apply to USLD and shall be included in the caption of all original filings with this Commission and in the titles of all other pleadings in future cases.

12. The authority granted by this order shall expire if not exercised within three months after the effective date of this order.

13. After the merger and transfer of control and CPCNs, the tariffed rates of Donyda and Inland will remain in effect as to each's respective customers until otherwise changed by Advice Letter procedures, and USLD shall provide four copies of each such tariffs under USLD headings to CACD Telecommunications Branch as USLD Advice Letter 1; thereupon Donyda's and Inland's tariffs will be canceled.

14. Applications 94-07-020 and 94-07-018 are closed.
This order is effective today.
Dated July 19, 1995, at San Francisco, California.

DANIEL Wm. PESSLER
President
P. GREGORY CONLON
JESSIE J. KNIGHT, JR.
HENRY M. DUQUE
Commissioners

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

Wesley Franklin
Acting Executive Director

DONYDA
 Cal America -- Palm Desert
 Schedule of ULTS Payments
 July 16, 1987 to December 31, 1989

A Month	B Total Revenues	C Uncollect Ities	D Paid to Others	E Subject to Surcharge	F ULTS Surcharge	G Payment Made	Total Due	Prnt 02/21/90	Remaining Balance	Int @ 5.00% From 3/15/91 to 6/5/95	Balance Due
Jul-September 1987	\$283,727		\$36,383	\$247,344	\$9,891	\$529	9,365	9,365	0	0	0
Oct-December 1987	282,674		36,248	246,426	9,857	2,386	7,471	7,471	0	0	0
January 1988	99,540		12,764	86,776	3,471	794	2,677	2,677	0	0	0
February	101,271		12,986	88,285	3,531	886	2,645	2,645	0	0	0
March	106,356		13,638	92,718	3,709	967	2,742	2,742	0	0	0
April	103,758		13,305	90,453	3,618	893	2,725	2,725	0	0	0
May	109,647		14,060	95,587	3,823	803	3,021	2,376	645	135	780
June	118,656		15,203	103,353	4,134	813	3,321	0	3,321	697	4,019
July	117,378		15,052	102,326	4,093	845	3,248	0	3,248	682	3,930
August	123,440		15,829	107,611	4,304	839	3,465		3,465	720	4,193
September	121,665		15,602	106,063	4,243	876	3,367		3,367	707	4,073
October	124,257		15,934	108,323	4,333	795	3,538		3,538	743	4,281
November	122,093		15,656	106,437	4,257	864	3,393		3,393	713	4,106
December	112,258		14,395	97,863	3,915	674	3,241		3,241	681	3,922
January 1989	120,215		15,416	104,799	4,192	721	3,471		3,471	729	4,200
February	113,975		14,615	99,360	3,974	684	3,291		3,291	691	3,982
March	129,544		16,612	112,932	4,517	777	3,740		3,740	785	4,525
April	116,162		14,896	101,266	4,051	0	4,051		4,051	851	4,901
May	131,100		16,812	114,288	4,572	787	3,785		3,785	795	4,580
June	139,050		17,831	121,219	4,849	834	4,014		4,014	843	4,857
July	124,145		15,920	108,225	2,706	466	2,240		2,240	470	2,711
August	137,058		17,575	119,483	2,987	514	2,473		2,473	519	2,992
September	129,544		16,612	112,932	2,823	486	2,338		2,338	491	2,828
October	146,682		18,810	127,872	3,197	550	2,647		2,647	556	3,203
November	155,791		19,978	135,813	3,395	584	2,811		2,811	590	3,401
December	155,761		19,974	135,787	3,395	584	2,811		2,811	590	3,401
Total	3,525,647	0	452,106	3,073,541	111,840	19,952	91,888	30,000	61,888	12,996	74,884

(END OF APPENDIX A)

A-94-07-020, A-94-07-018

APPENDIX A

INLAND

CALL AMERICA OF RIVERSIDE

SUMMARY OF UNIVERSAL LIFELINE TELEPHONE SERVICE SURCHARGE

	REVENUE	PAID TO OTHERS	SUBJECT TO SURCHARGE	%	ULTS	LESS: PAID	UNPAID	INTEREST @ 5.00%	BALANCE DUE
1991 MAR	210,074	33,555	176,519	3.4	6,002	0	6,002	358	6,360
APR	255,002	33,433	221,569	3.4	7,533	0	7,533	450	7,983
MAY	243,881	36,782	207,099	3.4	7,041	0	7,041	421	7,462
JUN	246,045	39,206	206,839	3.4	7,033	8,366	(1,333)	(80)	(1,413)
JUL	223,517	33,341	190,176	3.4	6,466	6,697	(231)	(14)	(245)
AUG					5,760	5,760	0	0	0
SEPT					4,312	4,312	0	0	0
OCT					5,067	5,067	0	0	0
NOV					5,014	5,014	0	0	0
DEC					4,524	4,524	0	0	0
	1,178,519	176,317	1,002,202		58,752	39,740	19,012	1,135	20,147
1992 JAN					3,638	3,638	0	0	0
FEB					4,471	4,471	0	0	0
MAR					5,834	5,834	0	0	0
APR					5,691	5,691	0	0	0
MAY					4,369	4,369	0	0	0
JUN					5,912	5,912	0	0	0
JUL					5,882	5,882	0	0	0
AUG	226,756	12,682	214,074	4	8,563	0	8,563	511	9,074
SEPT	222,440	13,912	208,528	4	8,341	0	8,341	498	8,839
OCT	202,405	14,537	187,868	4	7,515	0	7,515	449	7,964
NOV	226,863	16,034	210,829	4	8,433	0	8,433	504	8,937
DEC	204,730	14,170	190,560	4	7,622	0	7,622	455	8,077
	1,083,194	71,335	1,011,859		76,271	35,797	40,474	2,417	42,891
1993 JAN	198,291	15,650	182,641	4	7,306	0	7,306	436	7,742
FEB	231,172	15,992	215,180	4	8,607	0	8,607	514	9,121
MAR	219,356	17,285	202,071	5	10,104	0	10,104	603	10,707
APR	239,426	16,438	222,988	5	11,149	0	11,149	666	11,815
MAY	232,584	16,948	215,636	5	10,782	0	10,782	644	11,426
JUN	236,402	18,180	218,222	5	10,911	0	10,911	652	11,563
JUL	235,345	17,626	217,719	6	13,063	0	13,063	780	13,843
AUG	265,511	17,948	247,563	6	14,854	0	14,854	887	15,741
SEPT	238,342	17,550	220,792	6	13,248	0	13,248	791	14,039
OCT	250,053	18,023	232,030	6	13,922	0	13,922	831	14,753
NOV					14,534	0	14,534	868	15,402
DEC					13,035	0	13,035	778	13,813
	2,346,482	171,640	2,174,842		141,515	0	141,515	8,450	149,965
1994 JAN	236,366	18,043	218,323	6	13,099	0	13,099	782	13,881
FEB					14,666	14,666	0	0	0
MAR					13,821	13,821	0	0	0
APR					15,004	15,004	0	0	0
MAY					15,294	15,294	0	0	0
JUN	288,776	0	288,776	6	17,327	17,327	0	0	0
JUL					14,708	14,708	0	0	0
AUG					16,404	16,404	0	0	0
SEPT					14,849	14,849	0	0	0
OCT		* NO TRANSMITTAL REC'D				0	0	0	0
NOV		* NO TRANSMITTAL REC'D				0	0	0	0
DEC		* NO TRANSMITTAL REC'D				0	0	0	0
					135,172	122,073	13,099	782	13,881
TOTAL ULTS SURCHARGE							214,100	12,784	226,884

(END OF APPENDIX B)