

ALJ/RLR/sid

Decision 97-12-075 December 16, 1997

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**ORIGINAL**

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Application of LCI International, Inc., USLD Communications Corp. and USLD Communications, Inc., for authority for USLD Communications, Inc. and USLD Communications Corp. to transfer and LCI International, Inc. to acquire control of USLD Communications.

Application 97-09-037  
(Filed September 22, 1997)

**O P I N I O N**

**Summary**

This decision grants the joint application of LCI International, Inc. (LCII), USLD Communications Corp. (USLDC), and USLD Communications, Inc. (USLDI) (U-5186-C) seeking authority for USLD Communications Corp. to transfer and LCI International, Inc. to acquire control of USLD Communications, Inc.

Notice of the filing of the application appeared in the Daily Calendar on September 25, 1997, and no protests or other opposition to the application were submitted, and the time for submitting such opposition has expired. No hearing on the application is necessary.

**The Parties**

LCI International, Inc. (LCII) is a Delaware corporation having its principal place of business at 8180 Greensboro Drive, Suite 800, McLean, Virginia 22102. The company is publicly traded on the New York Stock Exchange under the symbol "LCI." LCII's primary operating subsidiary, LCI International Telecom, Inc. (LCIT) (U-5270-C), is the sixth largest interexchange telecommunications company in the nation based upon presubscribed telephone lines as reported by the Federal Communications Commission (FCC). LCIT provides a full array of local and worldwide long distance voice and data transmission services to businesses, residential customers and other

carriers over its own nationwide network of digital fiber optic facilities, transmission facilities leased from other carriers, and resold telecommunications services.

LCIT is authorized to provide intrastate services in 48 states, including California, and the District of Columbia, and is also authorized to provide local exchange services in 32 states, including California. LCIT is not, however, directly affected by the transfer of control for which approval is sought by the application herein.

USLD Communications Corp (USLDC) is a Delaware corporation having its principal place of business at 9311 San Pedro, Suite 100, San Antonio, Texas 78216, and is publicly traded on the NASDAQ exchange under the symbol "USLD."

USLD Communications, Inc. (USLDI) (U-5186-C) is a Texas corporation authorized to do business in California, having its principal place of business at 9311 San Pedro, Suite 100, San Antonio, Texas 78216. USLDI is a wholly-owned operating subsidiary of USLDC.

USLDI is a fully integrated local and interexchange telecommunications company that offers a variety of services, including local exchange services, direct dial long distance, prepaid calling cards, travel cards, Internet access, data transmission services, and calling center services, to customers throughout the United States. USLDI received its authority to provide interLATA interexchange services in California on July 6, 1989 (Application (A.) 88-12-031, Decision (D.) 89-07-021) and intraLATA interexchange services on September 15, 1994 (Investigation (I.) 92-04-008, D.94-09-065). It received its authority to provide resale local exchange services in California on February 23, 1996 (Rulemaking (R.) 95-04-044, D.96-02-072) and facilities-based local service on May 6, 1997 (A.96-11-026, D.97-05-004). USLDI is also authorized by the FCC to provide interstate and international telecommunications services.

#### **The Transaction**

On September 18, 1997, LCII and USLDC entered into a definitive Agreement and Plan of Merger (Merger Agreement), a copy of which is annexed as Attachment A to the application, pursuant to which LCII will acquire USLDC by purchasing all of the

company's outstanding shares of stock from the current USLDC shareholders. Since USLDI is wholly-owned by USLDC, the acquisition of USLDC by LCII will result in a transfer of ultimate control of USLDI to LCII. The transfer of control will be accomplished through the use of a "reverse triangular merger" whereby a newly formed, special purpose subsidiary of LCII, LCI Acquisition Corp. will be merged with and into USLDC. The boards of directors of LCII and USLDC have approved the Merger Agreement.

After the merger, USLDC will survive for an indefinite period as a wholly-owned subsidiary of LCII, and USLDI will remain a subsidiary of USLDC. The company will continue to operate as it has in the past, pursuant to the same name, tariff and operating authority. Thus, the transfer of control will be seamless and will have no adverse impact on USLDI's customers in California. USLDI's access to LCII's capital, economies of scale, and various service offerings will enable it to improve its services to both existing and new customers.

#### **Discussion**

In a situation where a company which does not possess a certificate of public convenience and necessity (CPCN) desires to acquire control of a company that possesses a CPCN issued by this Commission, we will apply the same requirements as in the case of an applicant seeking a CPCN to exercise the type of authority held by the company being acquired. Since USLDI possesses CPCNs to provide interLATA interexchange services in California (D.89-07-021, A.88-12-031), intraLATA interexchange services (D.94-09-065, I.92-04-008), resale local exchange service in California (D.96-02-072, R.95-04-014), and facilities based local services (D.97-05-004, A.96-11-026), we will apply the requirements for those CPCN's in evaluating the application. Since the requirements for authority to provide facilities based services are the most stringent of the requirements for the various authorities held by USLDI, we will apply the criteria for that authority to this application.

The Commission has established two major criteria for the issuance of a CPCN to act as a facilities based provider of telecommunications services. An applicant that desires to act as such must demonstrate that it has a minimum of \$100,000 cash or cash equivalent (as described in D.91-10-041, Appendix A, Paragraph 5.1 (41 CPUC2d 505 at 520)), reasonably liquid and readily available to meet the firm's start-up expenses. In addition, those seeking a CPCN to provide facilities based services must make a reasonable showing of technical/managerial expertise in telecommunications or a related business.

#### **Financial Information**

LCII's financial ability to meet the Commission's requirements is demonstrated by the information contained in LCII's Form 10-K submitted to the U.S. Securities and Exchange Commission for the period ending December 31, 1996 (Exhibit C to the application), the latest comprehensive financial information available, which indicates that LCII exceeds the Commission's financial requirements for a facilities based supplier of telecommunications services.

#### **Technical/Managerial Expertise**

LCII has provided information on its key managers indicating their experience in telecommunications and related industries. It can be summarized as follows:

H. Brian Thompson has been Chairman of the Board of Directors and Chief Executive Officer of LCI and its subsidiaries since July 1991. Thompson previously served as Executive Vice President of MCI Communications Corporation and its affiliates (MCI) where he was responsible for all eight of MCI's operating divisions and various other senior management capacities from 1981 to 1991. Thompson is a director of Microdyne Corporation, Golden Books Family Entertainment, Inc. and Comcast UK Cable Partners Limited. Thompson also serves as Chairman of the Competitive Telecommunications Association and is a member of the Listed Company Advisory Committee to the NYSE Board of Directors.

Joseph A. Lawrence has been Senior Vice President - Finance and Development and Chief Financial Officer of LCI and its subsidiaries since October 1993. From January 1985 through October 1993, Lawrence held several executive positions with MCI, including Senior Vice President -

Finance and Vice President Finance and Administration for the Consumer Division and Vice President Finance for the Mid-Atlantic Division.

Marshall Hanno was Senior Vice President – Sales of LCI since June 1993 and was Vice President of Sales of LCI Management Services since July 1991. In January 1997, after an internal organization, Hanno was appointed Senior Vice President – Commercial Segment. From 1987 to July 1991, Hanno was Vice President of Sales of MCI and prior thereto was Vice President of Sales and Marketing with Allnet Communications.

Lawrence Bouman has been Senior Vice President – Engineering, Operations and Technology of LCI and its subsidiaries since October 1995. From October 1990 through October 1995, Bouman held several executive positions at MCI, including Senior Vice President of Network Operations, Senior Vice President of Network Engineering and Senior Vice President of Planning and Program Management.

Roy M. Gamse has been Senior Vice President – Business Marketing of LCI since March 1996. From 1982 to 1993, Gamse held several positions at MCI, including Senior Vice President of Marketing for Consumer Markets and Senior Vice President of Customer Service. In addition, Gamse was previously a policy advisor at the U.S. Environmental Protection Agency.

Anne K. Bingaman was appointed Senior Vice President – Local Telecommunications Division in January 1997. From 1993 to 1996, Bingaman was assistant attorney general of the antitrust division at the U.S. Department of Justice.

#### **Public Interest**

According to the application, the addition of USLDC and USLDI to the LCI family of companies will enhance both LCI's and USLDI's ability to compete in the market for telecommunications services in California. Both companies will benefit from increased economies of scale that will permit them to operate more efficiently and thus to compete more effectively. Specifically, the transaction significantly expands LCI's direct geographic presence and market coverage in the Southwest and Northwest portions of the U.S., and enhances its customer base in the West and Southwest. Over time, consumers in California will benefit from the availability of increased local and

long distance telecommunications products and service options. Nothing has been submitted that would indicate the contrary.

### **Conclusion**

LCII having met the Commission's requirements, and the public interest not being adversely impacted by the transaction, we will approve the application and authorize the acquisition of control of USLD Communications, Inc. by LCI International, Inc.

### **Findings of Fact**

1. USLDI (U-5186-C) is the holder of CPCNs issued by the Commission to provide facilities based and resale intraLATA and interLATA telecommunications services, as well as local exchange services and interexchange services.

2. USLDI is a wholly-owned subsidiary of USLDC.

3. LCII is a Delaware corporation having its principal place of business in McLean, Virginia, whose operating subsidiary, LCI International Telecom, Inc., is the sixth largest interexchange telecommunications company in the U.S.

4. On September 18, 1997, LCII and USLDC entered into an agreement pursuant to which LCII will acquire USLDC by purchasing all of its outstanding shares of stock from USLDC shareholders.

5. The transfer of control will be accomplished through the use of a "reverse triangle merger" whereby a newly formed, special purpose subsidiary of LCII, LCI Acquisition Corp., will be merged with and into USLDC. After the merger, USLDC will survive for an indefinite time as a wholly-owned subsidiary of LCII, and USLDI will remain a subsidiary of USLDC.

6. After the merger, USLDI will continue to operate as it has in the past, pursuant to the same name, tariff and operating authority; thus the transfer of control will be "seamless" and will have no impact on its California customers.

7. As a result of the merger, USLDI will have access to LCII's capital.

8. Financial information submitted by LCII indicates it has in excess of \$100,000 cash or cash equivalent available to cover "start-up" expenses.

9. LCII's six top managers collectively have approximately 65 years' experience in various aspects of the telecommunications industry.

#### **Conclusions of Law**

1. The Commission will apply the same requirements to a request for approval of an agreement to acquire control of a company that holds a CPCN as it does to an applicant for authority for a CPCN of the same class as that held by the company to be acquired.

2. LCII meets the Commission's financial and managerial requirements to acquire control of USLDI.

3. The transfer of control of USLDI to LCII is not adverse to the public interests.

4. The application should be granted and made effective immediately.

5. After the acquisition, USLDC will be a wholly-owned subsidiary of LCII; USLDI will continue to be a wholly-owned subsidiary of USLDC; and USLDI will continue to exercise, in its current name and under its current tariffs, the authority granted by its CPCN.

### **O R D E R**

#### **IT IS ORDERED that:**

1. The joint application of LCI International, Inc. (LCII), USLD Communications Corp. (USLDC) and USLD Communication Inc. (USLDI) seeking authority for USLD Communications Corp. to transfer, and LCI International, Inc. to acquire, control of USLD Communications, Inc. is approved.

2. The CPCN currently held by USLDI shall remain in that company's name, and the telecommunications services authorized by that CPCN will continue to be offered by USLDI under tariffs currently on file with the Commission.

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3. Application 97-09-037 is closed.

This order is effective today.

Dated December 16, 1997, at San Francisco, California.

P. GREGORY CONLON

President

JESSIE J. KNIGHT, JR.

HENRY M. DUQUE

JOSIAH L. NEEPER

RICHARD A. BILAS

Commissioners