

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the)	Application No. C-994
Application of LDDS Communica-)	
tions, Inc., Seeking Authority)	GRANTED AND
to Merge with Metromedia Communi-)	CERTIFICATE NO. C-969
cations Corporation and Resur-)	REVOKED
gens Communications, Group. Inc.)	
Nebraska.)	Entered: August 2, 1993

APPLICANTS' ATTORNEYS

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PRELIMINARY MATTERS

By application filed May 18, 1993, (1) LDDS Communications, Inc. ("LDDS") and its Nebraska certificated operating subsidiaries (MidAmerican Communications Corporation dba LDDS Communications, TelaMarketing Investments, Ltd., and Dial-Net, Inc.), (2) Metromedia Communications Corporation ("MCC"), and (3) Resurgens Communications Group, Inc. ("Resurgens") petition this Commission to approve a merger involving the parties named above.

The principal applicants' addresses are:

LDDS Communications, Inc.
LeFleur's Bluff Tower, Suite 500
4780 I-55 North
Jackson, MI 39211

Resurgens Comm. Group, Inc.
2210 Resurgens Plaza South
945 East Paces Rd., N.E.
Atlanta, GA 30326

Metromedia Communications Corp.
One Meadowlands Plaza
East Rutherford, NJ
07073

The Omaha *DAILY RECORD* published notice of the application May 28, 1993. No one protested the application. We therefore, dispose of this matter pursuant to the Commission's modified procedure rule.

BY THE COMMISSION

O P I N I O N A N D F I N D I N G S

Upon consideration of the application, the governing statutes and rules¹, the exhibits submitted with the application, and being fully informed, the Commission is of the opinion and finds:

The applicants and the various subsidiaries have been before the Commission on several past occasions and, with the exception of LDDS, are common carriers providing long distance telecommunications reseller services (in addition, Resurgens is authorized to provide Alternate Operator Service pursuant to Application No. C-953 issued February 16, 1993). LDDS is a holding company and, as such, is not a common carrier. If this application is granted, the end product will be a common carrier corporate entity known as LDDS-METRO Communications, Inc.

First of all, we recognize that the parties have designated a separate prior merger of Resurgens and MCC as the "M/R Merger" and the resulting corporate entity as the "M/R Corp.". This merger was previously approved by this Commission in Application No. C-969 (March 22, 1993). However, that particular merger is pending in the sense that its approval is still needed in some states. For simplicity, we shall refer to this particular transaction's result as the "M/R Corp." also.

The gist of the pending application is approval of the merger of LDDS with the M/R Corp., i.e., the "LDDS Merger." Upon approval, the corporate existence of LDDS will end and M/R Corp., the surviving Georgia corporation, will formally and legally assume the name "LDDS-METRO Communications, Inc."

LDDS is a publicly held Tennessee corporation whose principal offices are located in Jackson, Mississippi. It is the parent company of a number of non-dominant common carriers which resell long distance interexchange telecommunications services. LDDS also has facilities-based operating subsidiaries which provide intrastate service in several state jurisdictions.

LDDS, as holding company, does not provide the services described above. Two of LDDS's wholly-owned operating subsidiaries do provide intrastate service in Nebraska (the previous-

¹ Interexchange reseller applications are governed by Neb. Rev. Stats. §75-604 and 86-805 (1990 and 1987 Reissues, respectively) and Title 291 NAC Ch. 5, Rule 003.12. In addition, transfers and mergers are governed by Neb. Rev. Stats. §75-146 to 75-152 (1990 Reissue).

ly described MidAmerican Communications Corporation dba LDDS Communications and Dial-Net, Inc.²

MCC is a Delaware corporation located in New Jersey. Prior to the M/R Merger, MCC had authority in Nebraska to provide the resale of intrastate interLATA interexchange long distance telecommunications services pursuant to authority granted in Application No. C-919 (March 18, 1992).

Resurgens is a Georgia corporation located in Atlanta, Georgia. Prior to the M/R Merger, in Application No. C-953 (February 16, 1993), the Commission granted Resurgens authority to provide Alternate Operator Services, but denied its application to provide long distance interexchange telecommunications services on a resale basis. However, the Commission, as previously mentioned, approved the merger of Resurgens with MCC in Application No. C-969 (March 22, 1993) (the M/R Merger) and that order recognized that the surviving entity (the M/R Corp.) has the authority to operate as a resale carrier of intrastate interexchange interLATA telecommunications services within the State of Nebraska and to operate as an alternate operator service provider in the both the interLATA and intraLATA telecommunications long distance market in the State of Nebraska.³

After the M/R Merger was approved, the Commission, as part of its final order in Application No. C-969, revoked the certificates of authority issued in Application Nos. C-771, C-818, C-918, and C-953. Therefore, the M/R Corp., with which LDDS seeks to merge pursuant to this application, has, after all is said and done, the authority printed in boldface in the preceding paragraph.

²MidAmerican Communications Corporation dba LDDS Communications is a wholly-owned operating subsidiary of MidAmerican Technologies, Inc. which is a wholly-owned subsidiary of LDDS. MidAmerican Communications Corporation dba LDDS Communications originally operated under the name of MidAmerican Long Distance Company under the authority issued in Application No. 758 (October 28, 1988) and Application No. C-796. Also, LDDS has acquired the assets and operating authority of TelaMarketing Investments, Ltd. ("TMI") and assigned them to MidAmerican Communications Corporation dba LDDS Communications pursuant to the Commission order entered in Application No. C-938 (September 15, 1992). TMI continues to operate as a separate entity.

In addition, Dial-Net, Inc. is a wholly-owned subsidiary of LDDS as provided by Commission order in Application No. C-967 (February 23, 1993).

³Because MCC had the requisite authority to operate as a reseller of long distance services.

The Agreement and Plan of Merger (the "Agreement") between LDDS and the M/R Corp. provides that current holders of LDDS Class A common stock, \$.01 par value per share, will generally receive in exchange for each such share .9595 shares of newly issued Common Stock, \$.01 par value per share, of LDDS-METRO stock. Current holders of LDDS Series B 6.5% Cumulative Senior Perpetual Convertible Preferred Stock will generally receive in exchange for each such share .9595 shares of LDDS-METRO's newly issued Series 2 Preferred Stock. Current holders of M/R Corp. Class A Common Stock (which will have been newly issued by M/R Corp. in conjunction with consummation of the M/R Merger) will receive in exchange for each such share a number of shares of LDDS-METRO's newly issued Series 1 Preferred Stock, the amount to be determined in accordance with a formula set forth in the Agreement.

In conjunction with the merger, LDDS-METRO will assume, and each wholly-owned subsidiary will be required to execute a guaranty of, LDDS's pre-existing Credit Facility and Senior Notes and the line of credit under the Credit Facility will increase.

After completion of the LDDS Merger, the current stockholders and holders of derivative securities of LDDS collectively will own approximately 68.5% of the fully diluted equity of LDDS-METRO, while the stockholders and holders of derivative securities of M/R Corp. collectively will own approximately the remaining 31.5%. As a result of the M/R Merger, the previous equity holder of MCC will hold approximately 63% of the fully diluted common equity, and control approximately 93% of the fully diluted voting power, of M/R Corp.

After the merger is completed, LDDS will have the right to elect seven members of LDDS-METRO's ten-member board of directors while the holder(s) of a majority of the Series 1 Preferred Stock (that is, the current owners of MCC) will be entitled to elect the remaining three members.

The LDDS Merger will change the underlying ownership of LDDS's existing Nebraska-certificated operating subsidiaries and no other change will take place in regard to those subsidiaries, including their names, terms and conditions of operations, and the type and degree of intrastate operating authority they possess. The LDDS Merger will be transparent to the customers using the subsidiaries' services.

The applicant's proposed tariff should reflect the new name of LDDS-METRO Communications, Inc.

Since no physical plant will be installed in Nebraska pursuant to a grant of authority, there is no duplication of facilities.

ties and no consideration of that issue pursuant to section 75-604 is required.

We also observe that in the exhibits there is no amended certificate to do business in Nebraska as a foreign corporation filed by the surviving entity, LDDS-METRO Communications, Inc. This is understandable since the transaction is not yet finalized. However, upon the LDDS Merger's completion, LDDS-METRO Communications, Inc. should amend its current certificate with the Nebraska Secretary of State's office and file with this Commission as a late filed exhibit a copy of that amended certificate.

There are no complaints pending against any of the named entities here in Nebraska. Approval of the merger does not appear to alter or adversely affect the management or policies of the entity which will serve Nebraska customers. The transaction appears largely to be transparent to those customers.

Finally, the certificate issued in Application No. C-969 (March 22, 1993) to the M/R Corp. should be revoked since that entity will have no existence independent of LDDS-METRO subsequent to the LDDS Merger.

Based on the application's contents and the exhibits the application is fair and reasonable, is in the public interest, and should be granted.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that Application No. C-994 be, and it is hereby, granted and LDDS-METRO Communications, Inc. is hereby authorized to operate as a resale carrier of intrastate interexchange interLATA telecommunications services within the State of Nebraska and to operate as an alternate operator service provider in the both the interLATA and intraLATA telecommunications long distance market in the State of Nebraska.

IT IS FURTHER ORDERED that LDDS-METRO Communications, Inc. amend its current certificate with the Nebraska Secretary of State's office and file with this Commission as a late filed exhibit a copy of that amended certificate.

IT IS FURTHER ORDERED that LDDS-METRO Communications, Inc. shall file, in accordance with the applicable statutes, an annual report with this Commission consisting of (a) a copy of any report filed with the Federal Communications Commission, (b) the annual report to stockholders, and (c) for the state of Nebraska on a combined interstate-intrastate basis, the investment in telephone plant and equipment located within the state,

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accumulated depreciation thereon, operating revenues, operating expenses, and taxes.

IT IS FURTHER ORDERED that the LDDS-METRO Communications, Inc. file an updated tariff prior to offering service pursuant to the certificate granted in this order.

IT IS FURTHER ORDERED the certificate issued in Application No. C-969 (March 22, 1993) to the M/R Corp. be, and it is hereby, revoked.

IT IS FURTHER ORDERED that this order be, and it is hereby, made the Commission's official certificate of authority to furnish the service described and authorized herein.

MADE AND ENTERED at Lincoln, Nebraska this 2nd day of August, 1993.

NEBRASKA PUBLIC SERVICE COMMISSION

Commissioners Concurring:

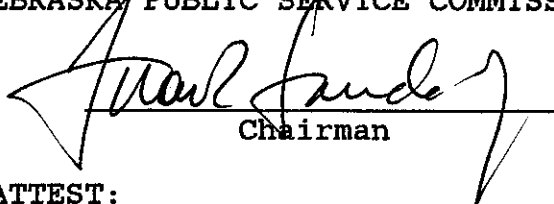
//s//Duane D. Gay

//s//Rod Johnson

//s//Frank E. Landis, Jr.

//s//James F. Munnelly

ATTEST:


Chairman


Executive Director