

Decision \_\_\_\_\_

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

Application of Looking Glass Networks, Inc.  
For Grant of Authority Necessary for an Indirect  
Transfer of Control.

Application 04-07-026  
(Filed July 14, 2004)

**OPINION AUTHORIZING INDIRECT TRANSFER OF CONTROL  
OF LOOKING GLASS NETWORKS, INC.****Summary**

This decision grants the application of Looking Glass Networks, Inc. (LGN) for approval of a series of transactions in which the majority of stock in LGN's parent company, Looking Glass Networks Holding Company, Inc. (LGN Holding) will be acquired by current LGN Holding lenders, pursuant to Sections 852 and 854.<sup>1</sup>

**Parties to the Transaction**

LGN is a Delaware corporation with its principal business office located in Oak Brook, Illinois. LGN holds a certificate of public convenience and necessity (CPCN) to provide limited facilities-based and resold local exchange and interexchange services in California.<sup>2</sup> LGN is a wholly-owned subsidiary of LGN Holding, a corporation formed under the laws of the State of Delaware.

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<sup>1</sup> All Code references are to the Public Utilities Code, unless otherwise stated.

<sup>2</sup> See Decision (D.) 00-09-023

**Proposed Transaction**

Under this transaction, the transfer of control of LGN will be indirectly transferred to several lenders that, after completion of these transactions, will collectively hold an 80 percent indirect voting and economic interest in LGN Holding. More specifically, control of LGN Holding will be held collectively by JP Morgan Chase & Company, Barclays Bank PLC, Cisco Capital, Citibank USA, Inc., Credit Suisse First Boston LLC, Deutsche Bank Trust Company Americas, and Merrill Lynch Capital Corporation (collectively, LGN Lenders) through the conversion of current loans into equity interests. No individual lender is expected to have an interest in LGN Holding's common stock of more than 19 percent. All preferred stock in LGN Holding, currently owned by Looking Glass Networks, will be cancelled.

In addition, as a result of these transactions, LGN shareholders will hold a collective 20 percent interest in LGN Holding.

The LGN lenders' current loans to LGN of approximately \$167 million will be reduced to approximately \$55 million in exchange for an 80 percent equity interest in LGN Holding. The LGN Lenders will also provide an amended credit arrangement that provides up to \$7.5 million in credit available to LGN.

LGN will continue to hold its CPCN to provide telecommunications services in California.

LGN represents that this change in ownership will benefit LGN and its customers, because it will strengthen LGN's financial position.

The applicants further represent that the transaction will be transparent to customers. There will be no change in the name or management of LGN because the transaction will be completed at the parent company level only. Customers

will continue to receive service from LGN under the same rates, terms, and conditions after the transaction is approved.

### **Discussion**

Under Section 852, no public utility, and no subsidiary, affiliate of, or corporation holding a controlling interest in, a public utility, shall purchase or acquire, take or hold, any part of the capital stock of any other public utility, organized or existing under the laws of this state, without prior Commission authorization. Section 854 further requires Commission authorization before a company may “merge, acquire, or control . . . any public utility organized and doing business in this state . . . “. The purpose of these and related sections is to enable the Commission, before any transfer of a public utility is consummated, to review the situation and to take such action, as a condition of the transfer, as the public interest may require. (San Jose Water Co. (1916) 10 CRC 56.)

In a situation where a company that does not possess a CPCN desires to acquire control of a company that does possess a CPCN, 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. Therefore, although the LGN lenders do not hold CPCNs to provide telecommunications services in California, they must meet the requirements for issuance of a CPCN because they are acquiring indirect control of LGN.

The Commission has established two major criteria for determining whether a CPCN should be granted. An applicant who desires to operate as a facilities-based and resale provider of local exchange and interexchange service must demonstrate that it has a minimum of \$100,000 in cash or cash equivalent, reasonably liquid and readily available to meet the firm’s start-up costs. In

addition, the applicant is required to make a reasonable showing of technical expertise in telecommunications or a related business.

The application includes financial statements and other evidence that demonstrates that the LGN lenders have sufficient resources to meet our financial requirements. Since LGN is expected to continue to operate under the same management, we find that our requirement for technical expertise is satisfied, for the purposes of this transaction only.<sup>3</sup> The transaction will reduce LGN's debt and improve LGN's access to capital, which should improve LGN's financial position and ability to serve customers in this state. In addition, this transaction will be transparent to customers. Therefore, the proposed transaction is in the public interest.

Therefore, we will grant the application pursuant to Sections 852 and 854.

### **Categorization and Need for Hearings**

In Resolution ALJ 176-3137 dated August 19, 2004, the Commission preliminarily categorized this application as ratesetting, and preliminarily determined that hearings were not necessary. No protests have been received. There is no apparent reason why the application should not be granted. Given these developments, a public hearing is not necessary, and it is not necessary to disturb the preliminary determinations.

### **Comments on Draft Decision**

This is an uncontested matter, in which the decision grants the relief requested. Accordingly, pursuant to Pub. Util. Code § 311(g)(2), the otherwise applicable 30-day period for public review and comment is being waived.

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<sup>3</sup> We made no determination that the LGN lenders would otherwise meet the technical and managerial requirements for authorization to provide telecommunications services in this state.

**Assignment of Proceeding**

Susan P. Kennedy is the Assigned Commissioner and Myra J. Prestidge is the assigned Administrative Law Judge in this proceeding.

**Findings of Fact**

1. LGN is a Delaware corporation and a wholly owned subsidiary of LGN Holding, another Delaware corporation.
2. In D.00-09-023, LGN was granted a CPCN to provide limited facilities-based and resold local exchange and interexchange services in California.
3. As a result of the transaction, the LGN lenders will have an approximately 80% ownership interest in LGN Holding and will therefore have ultimate control of LGN Holding and LGN.
4. The LGN lenders do not hold CPCNs that authorize them to provide telecommunications services in California.
5. There will be no change in the name or management of LGN as a result of the transaction.
6. LGN Customers will continue to receive service under the same rates, terms, and conditions after the transaction.
7. The LGN Lenders have sufficient financial resources to meet the Commission's requirements to provide facilities-based and resold local exchange and interexchange services.
8. Since this transaction will reduce LGN's debt and give LGN access to increased funding and credit to expand its operations, this transaction will improve the financial stability of LGN.
9. Since LGN's management will remain the same, the LGN lenders have met the requirements for technical and managerial expertise to provide telecommunications services, for the purposes of this transaction only.

10. Notice of this application appeared on the Commission's Daily Calendar on August 20, 2004. There were no protests to this application.

11. No hearings are necessary.

**Conclusions of Law**

1. The Commission will apply the same requirements to a request for approval of an agreement to acquire control of a facilities-based and resale provider of local exchange and interexchange telecommunications services within California as it does to an applicant for authority to provide such services.

2. The LGN lenders meet the Commission's requirements for the issuance of a CPCN to provide facilities-based and resold local exchange and interexchange telecommunications services, for the purposes of this transaction only.

3. This transaction is in the public interest.

4. In order to avoid delaying this transaction, the approval of the application should be made effective immediately.

**O R D E R**

**IT IS ORDERED** that:

1. Pursuant to Public Utilities Code Sections 852 and 854, the application of Looking Glass Networks, Inc., (LGN) for approval of the indirect transfer of control of LGN to the current Looking Glass Networks Holding Company lenders is approved.

2. This proceeding is closed.

This order is effective today.

Dated \_\_\_\_\_, at San Francisco, California.