

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

In the Matter of the Joint Application of Lynch Telephone Corporation XI, Lynch Interactive Corporation, Brighton Communications Corporation, Cal-Ore Telephone Co. (U-1006-C), and California-Oregon Telecommunications Corporation to Authorize the Acquisition of Indirect Control of Cal-Ore Telephone Co. (U-1006-C) by Lynch Telephone Corporation XI, Lynch Interactive Corporation, and Brighton Communications Corporation through their Acquisition of Control of California-Oregon Telecommunications Company.

Application 04-05-039  
(Filed May 25, 2004)

**ADMINISTRATIVE LAW JUDGE'S RULING DIRECTING THE APPLICANTS TO FILE A SECOND SUPPLEMENT TO THE APPLICATION**

In Application (A.) 04-05-039, Lynch Telephone Corporation XI, Lynch Interactive Corporation, Brighton Communications Corporation, Cal-Ore Telephone Co., and California-Oregon Telecommunications Corporation (collectively, "Applicants") request authority under Pub. Util. Code § 854<sup>1</sup> for Lynch Telephone Corporation XI, Lynch Interactive Corporation, Brighton Communications Corporation (collectively, "Lynch") to acquire indirect control of Cal-Ore Telephone Co. (Cal-Ore).

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<sup>1</sup> All statutory references are to the Public Utilities Code.

On July 7, 2004, the assigned Administrative Law Judge (ALJ) issued a ruling that directed the Applicants to file a supplement to A.04-05-039 that contained, among other things, responses to the following questions:

**Question 16:** Please provide a detailed description of how [California-Oregon Telecommunications Corporation (COTC)] and its subsidiaries will collectively generate sufficient cash during the next five years (i.e., 2004 through 2008) to pay for (a) the cost of capital identified in response to Questions 7, 8, and 9 that is used by [Lynch] to acquire COTC, and (b) historical levels of investment and maintenance expenditures for (i) Cal-Ore and (ii) other COTC subsidiaries identified in response to Questions 13 and 14. This description should identify and describe all significant assumptions.

**Questions 17:** Please provide any projected internal rate of return, return on investment, net present value, and/or similar analyses that [Lynch] relied upon in deciding to acquire COTC.

On July 30, 2004, the Applicants filed a supplement that contained, among other things, the following responses:

**Response to Question 16:** “Lynch’s history demonstrates that Lynch has always provided exemplary service to its customers at its 14 existing study areas. Capital expenditures at the Lynch companies have met or exceeded levels prior to acquisition. In fact, Lynch has completely rebuilt the network of two of its operations since acquiring those companies.”

**Response to Question 17:** “As noted in the Introductory section above, Applicants do not believe that some of the requests seek information required pursuant to § 854 for the Commission to consider whether to approve the Application. Request No. 17 is particularly problematic because it seeks information that is not only not required by § 854, but also seeks highly proprietary, confidential

and even privileged information that has no bearing on Lynch's fitness to acquire Cal-Ore. For this reason, Lynch will not disclose such information."

The Applicants have willfully disregarded the ALJ's ruling by not providing the information sought by the ALJ's ruling. The apparent basis for the Applicants' willful disregard is their asserted belief that the ruling seeks information that is not required by Section 854. The Applicants are mistaken. The purpose of Section 854 is to enable the Commission to review a proposed transaction, before it takes place, in order to take such action as the public interest may require.<sup>2</sup> The Commission has broad discretion to determine if a transaction should be authorized pursuant to Section 854. The primary standard used by the Commission is whether the transaction will adversely affect the public interest. The Commission may also consider if the transaction will serve the public interest. Where necessary and appropriate, the Commission may attach conditions to a transaction in order to protect and promote the public interest.<sup>3</sup>

The information sought by Questions 16 and 17 of the ALJ's ruling of July 7, 2004, is essential for determining whether the proposed transaction will adversely affect Cal-Ore's financial capacity to provide safe, reliable, and affordable telephone service to the public. Therefore, this information is material and relevant to the central issue in this proceeding, namely, whether the Commission should authorize Lynch to acquire indirect control of Cal-Ore pursuant to Section 854. Failure by the Applicants to provide this information

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<sup>2</sup> See, for example, Decision (D.) 04-04-016, *mimeo.*, p. 5.

<sup>3</sup> See, for example, D.04-04-016, *mimeo.*, pp. 3 - 4.

will impede, if not thwart, the Commission's ability to discharge its fundamental duties and responsibilities under Section 854.

For the preceding reasons, this ruling requires the Applicants to file a second supplement that contains full and complete responses to Questions 16 and 17 of the ALJ ruling issued on July 7, 2004. The second supplement shall be filed at the Commission's Docket Office by August 27, 2004. The contents of the supplement shall be verified in accordance with Rule 2.4 of the Commission's Rules of Practice and Procedure. Applicants shall email an electronic copy of the supplement to the assigned ALJ at [tim@cpuc.ca.gov](mailto:tim@cpuc.ca.gov). The electronic copy should be in Microsoft Word and Excel, if possible. Applicants shall also provide a hardcopy of the supplement to the assigned ALJ.

If the Applicants believe the second supplement contains confidential or proprietary information, they may file a motion to place this information under seal. If the Applicants believe that some or all of the information is protected by attorney-client privilege or other privilege, the Applicants shall include in the second supplement a legal memorandum of points and authorities that explains why the information is privileged.

If the Applicants do not provide full and complete responses to Questions 16 and 17, and assuming the information the Applicants do not provide is not privileged, this will be deemed good cause to impose an issues sanction on the Applicants for their noncompliance with this ALJ ruling and the ALJ ruling issued on July 7, 2004. Specifically, the assigned ALJ will presume certain facts, namely, that (1) the proposed transaction will negatively affect Cal-Ore's ability to serve the public, and (2) Lynch is unfit to acquire indirect control of Cal-Ore because of the Applicants' failure to comply with two

ALJ rulings. With these facts in mind, the assigned ALJ will prepare for the Commission's consideration a draft decision that denies A.04-05-039.

**IT IS RULED** that:

1. On or before August 27, 2004, Applicants shall file at the Commission's Docket Office a second supplement to Application 04-05-039 that contains the information and documents specified in the body of this ruling.
2. The contents of the supplement shall be verified in accordance with Rule 2.4 of the Commission's Rules of Practice and Procedure.
3. Applicants shall email an electronic copy of the supplement to the assigned Administrative Law Judge (ALJ) at tim@cpuc.ca.gov. The electronic copy should be in Microsoft Word and Excel, if possible. Applicants shall also provide a hardcopy of the supplement to the ALJ.
4. If the Applicants do not provide the information required by this ruling, and the information the Applicants do not provide is not privileged, an issues sanction will be imposed on the Applicants as described in the body of this ruling and, based on the issues sanction, a draft decision will be prepared for the Commission's consideration that denies the Application.

Dated August 18, 2004, at San Francisco, California.

/s/ TIMOTHY KENNEY

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Timothy Kenney  
Administrative Law Judge

**CERTIFICATE OF SERVICE**

I certify that I have by mail, and by electronic mail to the parties who have provided an electronic mail address, this day served a true copy of the original attached Administrative Law Judge's Ruling Directing the Applicants to File a Second Supplement to the Application on all parties of record in this proceeding or their attorneys of record.

Dated August 18, 2004, at San Francisco, California.

/s/ KE HUANG

Ke Huang

**N O T I C E**

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to ensure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

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