

Decision 89 02 016 FEB 8 1989

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of TELEPORT
 COMMUNICATIONS-SAN FRANCISCO, INC.)
 for a Certificate of Public)
 Convenience and Necessity to provide)
 private line high-speed digital)
 service for the purpose of)
 interLATA transmissions at speeds)
 of 1.544 mbps or higher for the San)
 Francisco metropolitan area,)
 State of California.)

FEB 10 1989

Application 88-09-059
(Filed September 30, 1988)

O P I N I O N

Applicant, Teleport Communications San Francisco, Inc. (TCSF), seeks a certificate of public convenience and necessity to provide private line high-speed digital service for interLATA transmissions at transmission speeds of 1.544 mbps or higher in the State of California in the San Francisco metropolitan area (California LATA 1). TCSF is a wholly-owned subsidiary of Merrill Lynch Technology Group, Inc. (MLTG) organized and operating under the laws of the State of Delaware. MLTG, in turn, is a wholly-owned subsidiary of Merrill Lynch & Co., Inc. (Merrill Lynch).

TCSF proposes to establish a fiber optic metropolitan area network to provide dedicated private line nonswitched service at transmission speeds of DS-1 (1.544 mbps) or higher, connecting end users to interexchange carriers' points of presence (POPs) and POPs to POPs, in the San Francisco metropolitan area, for the purpose of facilitating interLATA transmissions carried primarily by interexchange interLATA carriers. The system design and operations philosophy of TCSF will be based on the design and philosophy of Teleport Communications-New York (TCNY).

The primary users of the TCSF system will be interexchange carriers having requirements for low cost, high quality and customized facilities. Interexchange carriers will use TCSF's network to connect their POPs in the San Francisco LATA in order to provide their interLATA services. These POP-to-POP connections are expected to be the major initial use of the network based on the fact that over 70% of TCNY's services involve such direct POP-to-POP connections between interexchange carriers. The TCSF network will also be used to connect large telecommunications users directly to an interexchange carrier's POP to facilitate such large users' interLATA communications. All services provided by TCSF will be dedicated, nonswitched.

TCSF, as a nondominant carrier under the Federal Communications Commission's (FCC) regulatory framework, has authority to provide nonswitched transmission services between POPs, and from POPs to end users, for the purpose of facilitating interexchange carriers' interstate interLATA service offerings. Nondominant carriers are viewed as having blanket authority to provide interstate telecommunications service under Section 214 of the Communications Act of 1934,¹ and thus are not required to file tariffs or applications for certification under Section 214.² TCSF will utilize the interstate services facilities to furnish the intrastate communications services for which authorization is sought herein.

TCSF will provide initial service from a "backbone" fiber optic cable in the downtown financial district of San Francisco.

1 47 U.S.C. § 214 (1982).

2 See Policy and Rules Concerning Rates and Facilities Authorizations for Competitive Carrier Services, CC Docket No. 79-252, Notice of Inquiry and Proposed Rulemaking, 77 FCC 2d 308 (1979), First Report and Order, 85 FCC 2d 1 (1980), and subsequent reports and orders in the same Docket.

The backbone cable will be routed such that TCSF will be able to provide service to buildings housing interexchange carriers' POPs as well as to major telecommunications users. To the extent possible, TCSF will utilize existing facilities, e.g., underground conduits or ducts, or utility poles, in order to construct the proposed system. In the event new construction is required, TCSF will obtain all required construction permits and approvals from local authorities.

Customers typically will be connected to the backbone fiber system using fiber optic cable. In some special cases, other transmission media, such as microwave, will be used to connect customers to the backbone, if necessary. The system will be based on the proven design, operating methods, and practices which have been utilized by TCNY over the past three years.

All interLATA services proposed in this application will utilize facilities operated by TCSF as a nondominant interstate common carrier.

The Commission has previously determined that the public convenience and necessity require that competition be allowed in the provision of interLATA telecommunications services. (Decision (D.) 84-01-037.) Subsequently, the Commission has authorized interLATA private line high-speed data transmission authority of the type and character sought by the present application. (See D.88-02-044.) In D.88-02-044, the Commission expressly found that such private line high-speed data transmission service should be authorized on the same basis previously accorded to interexchange carriers and that it should be regulated within the nondominant framework adopted in D.84-06-113.

TCSF's proposed private line high-speed digital transmission service for interLATA transmissions will offer several identifiable benefits to consumers:

1. TCSF's service will further the public interest by providing customers with innovative, customized service designed to meet specific customer needs.
2. TCSF's service will expand the availability of technologically advanced telecommunications facilities.
3. TCSF's service will improve the quality and reliability of service offered by interexchange carriers to the public by providing interexchange carriers with customized, technologically advanced transmission facilities.

Under the authority requested by this application, TCSF will only offer private line high-speed digital service for interLATA transmissions at transmission speeds of 1.544 mbps or higher. Should TCSF decide to offer high-speed private line service for intraLATA transmissions, or to provide lower speed private lines for interLATA or intraLATA transmissions or to introduce other services, TCSF will do so only pursuant to and in compliance with the Commission's decisions and rules and regulations governing permissible modes of service, and, if required, by specific application to offer any such additional service.

All funds for the operation of TCSF will, to the extent necessary, be provided by Merrill Lynch, TCSF's ultimate parent, which has the financial ability to provide the proposed service.

TCSF presently estimates that its DS-1 service will be offered at rates in the range of \$600-900/circuit/month and that its DS-3 service will be provided on the basis of special contracts. TCSF estimates that the total number of customers served during the first year of service will be 32 and that service will be provided to 60 total customers in year five. It is anticipated that most customers will have multiple circuit requirements.

Since the services to be provided will be provided from facilities constructed pursuant to TCSF's FCC authority using underground conduits or ducts, utility poles, and other existing facilities, it can be seen with certainty there is not any possibility that the proposed services will have a significant impact on the environment.

The telecommunications utilities with whom TCSF is likely to compete in the provision of its private line high-speed digital transmission service for interLATA transmission have been served with a copy of this application. There are no protests. A public hearing is not necessary.

Findings of Fact

1. Applicant seeks a certificate of public convenience and necessity to provide private line high-speed digital service for the purpose of interLATA transmissions at speeds of 1.544 mbps or higher in the San Francisco metropolitan area, defined as California LATA 1.
2. There is a demand for the proposed service.
3. Applicant has the financial resources to provide the proposed service.
4. It can be seen with certainty that there is no possibility that the granting of this application may have a significant adverse effect on the environment.
5. Applicant is a nondominant carrier.
6. Applicant has the ability and willingness to provide the requested service immediately.
7. Public convenience and necessity require the granting of the application.

Conclusions of Law

1. The application should be granted to the extent provided in the following order.
2. Applicant is subject to the one-half percent (1/2%) surcharge on gross intrastate revenues to fund Telecommunications.

Devices for the Deaf. (Resolution T-13005, dated July 22, 1988; Public Utilities Code § 2881, as amended by SB 2268, signed June 30, 1988.)

ORDER

IT IS ORDERED that:

1. A certificate of public convenience and necessity is granted to Applicant Teleport Communications San Francisco, Inc., a Delaware corporation, to provide private line high-speed digital service for the purpose of interLATA transmissions at speeds of 1.544 mbps or higher in the California LATA 1 area.
2. Within 30 days after this order is effective, applicant shall file a written acceptance of the certificate granted in this proceeding.
3. Applicant shall file, after the effective date of this order and in compliance with General Order 96-A, tariffs applicable to the service authorized containing applicable rates, charges, and rules. The tariffs shall become effective on not less than 5 days' notice.
4. Applicant shall file as part of its individual tariff, after the effective date of this order and, consistent with Ordering Paragraph 3, a service area map.
5. Applicant shall notify this Commission in writing of the date service is first rendered to the public as authorized herein, within 5 days after service begins.
6. Applicant shall keep its books and records in accordance with the Uniform System of Accounts specified in Part 32 of the FCC Rules.
7. Applicant shall file an annual report, in compliance with General Order 104-A, on a calendar year basis using CPUC Annual Report Form L and prepared according to the instructions included in that form.

8. The certificate granted and the authority to render service under the rates, charges, and rules authorized will expire if not exercised within 12 months after the effective date of this order.

9. Applicant shall send a copy of this decision to concerned local permitting agencies not later than 30 days from today.

10. The corporate identification number assigned to Teleport Communications San Francisco, Inc. is U-5167-C which should be included in the caption of all original filings with this Commission, and in the title of other pleadings filed in existing cases.

This order is effective today.

Dated FEB 8 1989, at San Francisco, California.

G. MITCHELL WILK
President
FREDERICK R. DUDA
STANLEY W. HULETT
JOHN B. O'BANIAN
Commissioners

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


Vince Wesson, Executive Director