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Decision 90-05-066 May 22, 1990

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application
 of Tel Com International, Inc.
 for a certificate of public
 convenience and necessity to
 provide intrastate interLATA
 operator-assisted resold
 telecommunications service.

ORIGINAL

Application 90-01-022
 (Filed January 12, 1990)

O P I N I O N

Tel Com International, Inc. (TCI) seeks a certificate of public convenience and necessity to operate as a reseller of telephone services offered by communications common carriers providing telecommunications services in California. TCI proposes to resell intrastate interLATA telecommunications services including related operator services (AOS).

By order dated June 29, 1983, the Commission instituted an investigation to determine whether competition should be allowed in the provision of telecommunications transmission services within the state (Order Instituting Investigation (OII) 83-06-01). Numerous applications to provide competitive service were consolidated with that investigation and by Interim Decision (D.) 84-01-037 dated January 5, 1984 and subsequent decisions, these applications were granted, limited to the provision of interLATA service and subject to the condition that applicants not hold out to the public the provision of intraLATA service pending our decision in the OII.

On June 13, 1984 we issued D.84-06-113 in OII 83-06-01 denying the applications to the extent not previously granted and directing persons not authorized to provide intraLATA telecommunications services to refrain from holding out the availability of such services and to advise their subscribers that

intraLATA communications services should be placed over the facilities of the local exchange company.

TCI seeks authority to originate and terminate interLATA calls throughout the State of California, primarily providing AOS to private payphones, hospitals, and hotels/motels.

Since 1988, we have granted numerous certificates for AOS. However, as an integral part of the authority granted, each AOS operator was required to conform to a uniform set of conditions.¹ Therefore, these conditions should be equally applicable to TCI and are incorporated in Ordering Paragraph 3 below.

The Director of the Commission Advisory and Compliance Division (CACD) sent a letter on April 13, 1988 directing all AOS companies which provide intrastate services in California to file applications for certificates of public convenience and necessity and proposed tariffs for their intrastate services within 60 days. CACD has reviewed tariffs submitted by other AOS companies with their respective applications. CACD should continue its review, since this order provides that TCI's tariff schedules for the provision of AOS are subject to pre-filing review and approval of the Chief of CACD's Telecommunications Branch. Upon receipt of a letter from the Chief of the Telecommunications Branch indicating CACD's approval of the AOS-related tariff schedules, applicant is authorized to file with this Commission its tariff schedules for the provision of such services. TCI may not offer AOS-related service until these tariffs are on file.

1 See AOS Continental of California, Inc., Application (A.) 88-03-034, D.88-05-062; National Telephone Services, Inc., A.87-12-043, D.88-06-025; Elcotel LD*OS, Inc., A.88-04-051, D.88-08-019; Pamtel Long Distance Management Company, Inc., A.88-06-030, D.88-12-042.

TCI is authorized to file with this Commission, five days after the effective date of this order, tariff schedules for the provision of other interLATA service, unconnected with its proposed AOS-related service. However, applicant may not offer such service until tariffs are on file.

TCI is placed on notice that this Commission may review issues affecting the AOS industry in more general terms in I.88-04-029 or another appropriate proceeding. Nothing in today's decision should be construed as a prejudgment on our part of issues already identified in I.88-04-029 or other generic issues, as such issues may ultimately affect applicant.

This application is granted to authorize interLATA service, including interLATA AOS, under the conditions specified, and to the extent the application may be construed as a request for authorization to provide intraLATA service, it will be denied.

Findings of Fact

1. By D.84-01-037 the Commission authorized interLATA entry generally.

2. By D.84-06-113 the Commission denied applications to provide competitive intraLATA telecommunications service and required persons not authorized to provide intraLATA telecommunications service to refrain from holding out the availability of such services and to advise their subscribers that intraLATA communications should be placed over the facilities of the local exchange company.

3. There is no basis for treating this applicant differently than those which filed earlier except to the extent addressed in the AOS-related conditions specified in this order.

4. Because of the public interest in effective interLATA competition this order should be effective today.

5. As a telephone corporation operating as a telecommunications service supplier, TCI should be subject to the 2.5 percent surcharge on gross intrastate interLATA revenues as

established by Commission decisions and resolutions pursuant to PU Code § 879.

6. As a telephone corporation operating as a telecommunications service supplier, applicant should also be subject to the three-tenths of one percent (0.3 percent) surcharge on gross intrastate interLATA revenues to fund Telecommunications Devices for the Deaf. This surcharge became effective on July 1, 1989 as set forth in Resolution T-13061 dated April 26, 1989 and issued pursuant to PU Code § 2881.

7. TCI should be subject to the user fee as a percentage of gross intrastate revenue pursuant to PU Code §§ 431-435. The fee is currently 0.1 percent for the 1989-90 fiscal year.

8. It can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.

Conclusion of Law

This application should be granted in part to the extent set forth below.

O R D E R

IT IS ORDERED that:

1. The application of Tel Com International, Inc. (TCI) is granted to the limited extent of providing the requested service on an interLATA basis, subject to the condition that TCI refrain from holding out to the public the provision of intraLATA service and subject to the requirement that it advise its subscribers that intraLATA communications should be placed over the facilities of the local exchange company.

2. To the extent that the application requested authorization to provide intraLATA telecommunications services, the application is denied.

3. In connection with the provision of AOS services, TCI shall adhere to the following four conditions:

- a. All intraLATA calling shall be directed by TCI to the local exchange company for completion by the local exchange company as intraLATA calling. As used herein "intraLATA calling" shall mean all calls that originate and terminate within the same LATA. The routing of intraLATA calls to the local exchange carrier requires that (1) all such calls, as dialed by the end user customer, be routed as dialed to the local exchange carrier and may not be routed to any other person or entity for call processing, billing, transmission or completion, and (2) all such routing be accomplished in a manner that permits application of the local exchange carrier's charges for intraLATA calling by the local exchange carrier from the central office where the call originates to the central office or wire center serving the device where the call terminates. In addition, the routing of intraLATA calls to the local exchange carrier shall be done in a manner which permits the performance by the local exchange carrier of functions for which a local exchange carrier charge applies (including, without limitation, all intraLATA operator and operator surcharge functions). By way of example, and without limitation, TCI shall not, by itself or in conjunction with any other entity or person, permit, allow, or hold out the availability of any routing arrangement that directs intraLATA calls as dialed by an end user customer to any person or entity other than the local exchange carrier.
- b. TCI shall not offer, hold out, provide, or otherwise make available intraLATA operator-handled calls. As used herein intraLATA operator-handled calls (also referred to as "non-sent paid calls"), whether handled mechanically or manually, includes all intraLATA credit card, bill third number, collect, Station-to-Station, Person-to-Person, conference calls, or any

combination thereof. The routing of intraLATA operator-handled calls (non-sent paid calls) by the local exchange company requires that (1) all such calls as dialed by the end user customer be routed to the local exchange company and to no other person or entity, including TCI, (2) routing shall be accomplished in a manner that permits application of the local exchange company's operator charges, and (3) such non-sent paid calls shall be billed by the local exchange company to the number or account designated by the calling person and acceptable by the local exchange company. InterLATA operator-handled calls may be provided by TCI so long as those who provide AOS on behalf of TCI clearly identify themselves as TCI operators when first connected to the caller.

- c. TCI shall inform all customers who inquire that intraLATA calls and intraLATA operator-handled calls are to be provided by the local exchange company. In addition, TCI shall take all necessary action to ensure that such calls are returned to the local exchange company central office serving the calling party for completion and billing by the local exchange company as an intraLATA call.
- d. For completion of calls from non-utility pay phones, TCI will charge customers no more for interLATA - intrastate calling than the tariffed rates of AT&T-Communications, Inc., plus any additional amounts permitted by the Commission.

4. TCI shall provide tariff schedules for the provision of interLATA AOS to the CACD for its review. Upon review of these tariff schedules and the written approval of them by the Chief of CACD's Telecommunications Branch, TCI is authorized to file with this Commission tariff schedules for the provision of interLATA AOS. TCI may not offer such services until these tariffs are on file.

5. In connection with non-AOS related interLATA telecommunication services, TCI is authorized to file its tariff schedules with this Commission 5 days after the effective date of this order. TCI may not offer service until tariffs are on file. If TCI has an effective Federal Communications Commission (FCC) approved tariff, it may file a notice adopting such FCC tariff with a copy of the FCC tariff included in the filing. Such adoption notice shall specifically exclude the provision of intraLATA service. If TCI has no effective FCC tariffs, or wishes to file tariffs applicable only to California intrastate interLATA service, it is authorized to do so, including rates, rules, regulations, and other provisions necessary to offer service to the public. Such filing shall be made in accordance with General Order (GO) 96-A, excluding Sections IV, V, and VI, and shall be effective not less than 1 day after filing.

6. TCI is authorized to deviate on an ongoing basis from the requirements of GO 96-A in the following manner: (a) to deviate from Paragraph II.C.(1)(b) which requires consecutive sheet numbering and prohibits the reuse of sheet numbers, and (b) to deviate from the requirements set forth in Paragraph II.C.(4) that "a separate sheet or series of sheets should be used for each rule". Tariff filings incorporating these deviations shall be subject to the approval of CACD's Telecommunications Branch. Tariff filings shall reflect the 4 percent interim surcharge noted in Ordering Paragraph 9.

7. If TCI fails to file tariffs within 90 days of the effective date of this order, TCI's certificate may be suspended or revoked.

8. The requirements of GO 96-A relative to the effectiveness of tariffs after filing are waived in order that changes in FCC tariffs may become effective on the same date for California interLATA service for those companies that adopt the FCC tariffs.

9. TCI shall notify this CACD's Division Director in writing of the date service is first rendered to the public within 5 days after service begins.

10. TCI shall keep its books and records in accordance with the Uniform System of Accounts specified in Part 32 of the FCC rules.

11. TCI shall file an annual report, in compliance with GO 104-A, on a calendar year basis using the information request form developed by the CACD Auditing and Compliance Branch and contained in Attachment A.

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

13. Within 60 days of the effective date of this order, TCI shall comply with PU Code S 708, Employee Identification Cards, and notify the Chief of CACD's Telecommunications Branch in writing of its compliance.

14. TCI is subject to the 2.5 percent surcharge applicable to the gross revenues of intrastate interLATA services as established by Commission decisions and resolutions pursuant to PU Code S 879.

15. Effective on and after July 1, 1989, TCI is subject to a three-tenths of one percent (0.3 percent) monthly surcharge to fund Telecommunications Devices for the Deaf as outlined in Resolution T-13061 dated April 26, 1989 pursuant to PU Code S 2881.

16. TCI is subject to the user fee as a percentage of gross intrastate revenue pursuant to PU Code §§ 431-435.

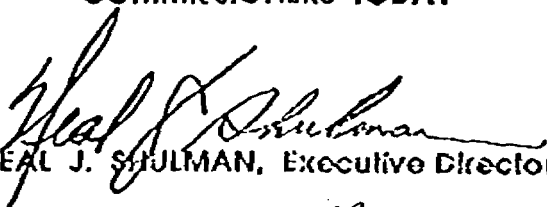
17. The corporate identification number assigned to TCI is U-5205-C which should be included in the caption of all original filings with this Commission, and in the titles of other pleadings filed in existing cases.

18. The application is granted as set forth above.
This order is effective today.
Dated May 22, 1990, at San Francisco, California.

G. MITCHELL WILK
President
STANLEY W. HULETT
JOHN B. OHANIAN
PATRICIA M. ECKERT
Commissioners

Commissioner Frederick R. Duda,
being necessarily absent, did
not participate.

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


NEAL J. SHULMAN, Executive Director

ps

APPENDIX A

TO: ALL INTEREXCHANGE TELEPHONE UTILITIES

Article 5 of the Public Utilities Code grants authority to the California Public Utilities Commission to require all public utilities doing business in California to file reports as specified by the Commission on the utilities' California operations.

A specific annual report form has not yet been prescribed for the California interexchange telephone utilities. However, you are hereby directed to submit an original and two copies of the information requested in Attachment A no later than March 31st of the year following the calendar year for which the annual report is submitted.

Address your report to:

California Public Utilities Commission
Auditing and Compliance Branch, Room 3251
505 Van Ness Avenue
San Francisco, CA 94102-3298

Failure to file this information on time may result in a penalty as provided for in §§ 2107 and 2108 of the Public Utilities Code.

If you have any question concerning this matter, please call (415) 557-2484.

(END OF APPENDIX A)

ATTACHMENT A

Information Requested of California Interexchange Telephone Utilities.

To be filed with the California Public Utilities Commission, 505 Van Ness Avenue, Room 3251, San Francisco, CA 94102-3298, no later than March 31st of the year following the calendar year for which the annual report is submitted.

1. Exact legal name and U # of reporting utility.
2. Address.
3. Name, title, address, and telephone number of the person to be contacted concerning the reported information.
4. Name and title of the officer having custody of the general books of account and the address of the office where such books are kept.
5. Type of organization (e.g., corporation, partnership, sole proprietorship, etc.).
If incorporated, specify:
 - a. Date of filing articles of incorporation with the Secretary of State.
 - b. State in which incorporated.
6. Commission decision number granting operating authority and the date of that decision.
7. Date operations were begun.
8. Description of other business activities in which the utility is engaged.
9. A list of all affiliated companies and their relationship to the utility. State if affiliate is at:
 - a. Regulated public utility.
 - b. Publicly held corporation.
10. Balance sheet as of December 31st of the year for which information is submitted.
11. Income statement for California operations for the calendar year for which information is submitted.

(END OF ATTACHMENT A)