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Decision 95-11-037 November 21, 1995

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA
In the Matter of the Application of Tel-Save, Inc. d/b/a Tel-Save, Inc. of Pennsylvania for a Certificate of Convenience and Necessity to Operate as a Reseller of Telecommunications Services Within the State of California.

Application 95-06-029

(Filed June 15, 1995)

Supplemented August 31, 1995 and September 12, 1995

ORIGINAL

Additional resources to conduct a reasonable showing in addition, an applicant is required to take a reasonable showing of Pennsylvania as to (applicant) of Pennsylvania corporation qualified to do business in California seeks a certificate of public convenience and necessity (CPCN) under Public Utilities (PU) Code § 1001 to permit it to resell interLATA telephone services in California and to resell also intraLATA telephone services as intraLATA competition is permitted by this Commission. Applicant seeks to offer outbound 1+000,001\$ inbound 800 service and travel card services as an add-on to its present interstate services. By Decision (D.) 84-01-037 (14 CPUC 2d 317 (1984)) and later decisions, we authorized interLATA entry, generally. However, we limited the authority conferred to interstate (interLATA service) and we subjected the applicants to the condition that they not hold themselves out to the public to provide intraLATA service. By D. 94-09-065, we authorized competitive intraLATA services effective January 1, 1995, for carriers meeting specified criteria.

California is divided into ten Local Access and Transport Areas (LATAs) of various sizes, each containing numerous local telephone exchanges. "InterLATA" describes services, revenues and functions that relate to telecommunications originating in one LATA and terminating in another. "IntraLATA" describes services, revenues and functions that relate to telecommunications operated, originating and terminating within a single LATA.

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The Commission has established two major criteria for determining whether a CPCN should be granted. An applicant who is a switchless reseller² must demonstrate that it has a minimum of \$25,000 of cash or cash equivalent (as described in D.91-10-041, Appendix A, Paragraph 5.1), reasonably liquid and readily available to meet the firm's start-up expenses. Such applicants shall also document any deposits required by local exchange companies or interexchange carriers (IECs) and demonstrate that they have additional resources to cover all such deposits. (D.93-05-010.)

In addition, an applicant is required to make a reasonable showing of technical expertise in telecommunications or a related business. As part of its application, applicant provided and (unaudited) balance sheet and income statements as of December 31, 1994, demonstrating that it has assets of \$21,435,000 (\$11,500,000 in cash) against liabilities of \$7,392,725. Applicant also submitted a statement from Coamerica Bank showing a cash balance of over \$100,000 as well as a representation that it has a revolving loan agreement with MidAtlantic Bank in the amount of \$5,000,000 available to it. This indicates that applicant has more than \$25,000 consisting of cash and cash equivalents. It satisfies our criteria for being reasonably liquid and readily available to meet the applicant's needs. The financials are not a deposit already

that they not hold themselves out to the public to provide interstate service. By D.94-09-065, we authorized competitive interstate service effective January 1, 1995.

² D.93-05-010 defines a switchless reseller as a nondominant interexchange carrier (NDIEC) with the following characteristics: it uses the switch of another carrier; it usually, but not always, uses access circuits that the underlying carrier purchases from an LEC; it provides service in its own name, and its customers view it as their telephone company for interLATA and interstate calls. D.92-06-069 noted that it is possible to control operation and manage telephone lines without owning them. The decision also notes that resellers which do not own or directly operate their own telephone wires may still have plant which is owned, controlled, operated, and/or managed in order to facilitate communication by telephone. AT&T is a single entity within a single

paid to its underlying carriers. No further deposit will be required to extend service into California. Applicant has provided information on its key managers indicating their education and experience. It can be summarized as follows:

a. Daniel Borislow is the president and sole shareholder of applicant. He was the first person to obtain a software defined network contract from AT&T. Applicant has been operating successfully under his control since 1989. Prior to forming, applicant Borislow was one of the first cable construction contractors for cable television in Philadelphia.

b. Emmanuel De Maio is vice president of product management and joined applicant in 1992. He was employed previously by AT&T for ten years in various technical functions. He has a bachelor of science degree from the New York Institute of Technology.

c. Peter Morrison is vice president of computer services and joined applicant in 1990. Prior to working with applicant he spent 19 years at Unisys Corp. in computer systems and programs.

d. Gary McCulla is vice president of marketing and joined applicant in 1994 after serving as a consultant since 1992. His prior experience includes serving as vice president and chief financial officer of the Harvard Group, a marketing services company.

e. Joseph M. Morena is chief financial officer and secretary/treasurer of applicant. He joined applicant in 1994. Prior to joining applicant, he served as vice president and treasurer of Air and Technologies Corporation, an environmental treatment and services company.

Applicant and another reseller Target Telecom, Inc.

(Target) were fined \$1,000 by the North Carolina Utilities

Commission (NCUC) in March 1995 as a result of a settlement arising out of an investigation involving applicant Target and a marketing agent Business Network Communications (BNC). In response to the Administrative Law Judge's ruling requesting an affidavit providing more information to the Commission, applicant filed an affidavit of explanation on September 12, 1995. Applicant stated that North Carolina is the only state where applicant has been fined. Applicant stated that while Target used BNC as an agent, applicant and BNC had a supplier/customer relationship with BNC purchasing long distance services from applicant to resell to BNC customers. The bulk of applicant's business is done on a wholesale basis, and it does not currently market to end-user consumers. Applicant does not use BNC as an agent in any state nor does it contemplate doing so in California.

The NCUC found that BNC had distributed solicitation materials which contained offers of untariffed services. NCUC imposed the fine as a result of a finding that applicant was selling to an uncertificated reseller. The NCUC is currently reviewing applicant's billing procedures as to how they relate to its reseller customers. Applicant has put into place a process requiring its resale customers to provide copies of their certificates of authorization prior to processing service orders for states which require interexchange carriers to verify certification prior to providing services to resellers. Applicant is willing to accept such a requirement in its California CPCN. Applicant has provided a copy of its agreement with its resellers, which requires them to maintain all necessary regulatory compliance. Applicant has never received a complaint through any state regulatory agency from a direct sale customer, nor are any pending. We believe applicant has taken necessary steps to rectify the problems which arose in North Carolina and, with the condition it is willing to accept, is fit to provide service in California. Applicant and another reseller Target Telecom, Inc. (Target) were fined \$1,000 by the North Carolina Utilities

We will authorize the interLATA and intraLATA services that applicant seeks to provide.
Findings of Fact

1. Applicant served a copy of the application upon 158 telephone corporations with which it is likely to compete. A notice of the filing of the application appeared in the Daily Calendar on June 29, 1995. Supplements to the application were filed on August 31, 1995 and September 12, 1995. No protests have been filed since.

2. A hearing is not required. The proposed service is barred by prior Commission decisions which authorized competition in providing interLATA telecommunications service but generally barred those offering such service from holding out to the public the provision of intraLATA service.

3. By D.94-09-065, we authorized competitive intraLATA services effective January 1, 1995, for carriers meeting specified criteria.

4. Applicant has demonstrated that it has a minimum of \$25,000 of cash and cash equivalent including cash deposits in a bank and a revolving line of credit of \$5,000,000 reasonably liquid and readily available to meet its start-up expenses.

5. Applicant has also represented that no additional deposits will be required by IECs.

6. Applicant's technical experience consists of five employees with a combined experience of over 30 years in telecommunications and related fields.

7. Applicant has submitted with its application and supplemental filed information a complete draft of applicant's initial tariff which complies with the requirements established by the Commission including prohibitions on unreasonable deposit requirements.

The current 0.3% surcharge applicable to interstate services except for those excluded by D.94-09-065 to fund the California Relay Service and Communications Device Fund (PU Code 8 2881; D.94-09-065).

11. Applicant has represented that no one employed by applicant was previously associated with a NDIEC that filed for bankruptcy or went out of business.

12. Applicant has revised its procedures for verifying authorization by state authorities of its reseller customers, and with a requirement that such verification procedures be used in California should not be barred from certification in California due to the prior fine by the NCUC on August 31, 1993.

13. Since no facilities are to be constructed, it can be seen with certainty that the proposed operation will not have a significant effect upon the environment.

14. The Commission has routinely granted NDIECs, such as applicant, an exemption from Rule 18(b) to the extent that the rule requires applicant to serve a copy of its application on cities and counties in the proposed service area.

15. Exemption from the provisions of PU Code §§ 816-830 has been granted to other resellers. (See, e.g., D.86-10-007 and D.88-12-076)

Conclusions of Law

1. Applicant has the financial ability to provide the proposed service.

2. Applicant has made a reasonable showing of technical expertise in telecommunications and related businesses.

3. Public convenience and necessity require the interLATA and intraLATA services to be offered by applicant.

4. Applicant is subject to the current 0.3% surcharge applicable to all intrastate services except for those excluded by D.94-09-065 to fund Universal Lifeline Telephone Service (PU Code § 879; D.94-09-065).

b. The current 0.3% surcharge applicable to all intrastate services except for those excluded by D.94-09-065 to fund the California Relay Service and Communications Device Fund (PU Code § 2881; D.94-09-065);

The user fee provided in PU Code Sections 431-435, which is 0.1% of gross intrastate revenue for the 1995-96 fiscal year (Resolution M-4778); and

d. The current 0.5% surcharge applicable to all intrastate services, except for those excluded by D.94-09-065 to fund the California High Cost Fund (PU Code § 79.30; D194-09-065)

5. Applicant should be exempted from Rule 18(b)'s requirement of service of the application on cities and counties in the proposed service area.

6. Applicant should be required to verify possession of certificates or orders approving the certification of any reseller customer by this Commission prior to processing such wholesale service orders in California.

7. The application should be granted to the extent set forth below.

8. Because of the public interest in competitive interLATA and intraLATA services, the following order should be effective immediately.

O.R.D.E.R.
IT IS ORDERED that:

1. A certificate of public convenience and necessity is granted to Tel-Save, Inc. d/b/a Tele-Save, Inc. of Pennsylvania (applicant) to operate as a reseller of the interLocal Access and Transport Area (LATA) and to the extent authorized by Decision (D.) 94-09-065, intralATA telecommunication services offered by communication common carriers in California.

2. Applicant shall be required to verify possession of certificates or orders approving the certification of any reseller customer by this Commission prior to processing such wholesale service orders in California.

3. Applicant shall file a written acceptance of the certificate granted in this proceeding.

4. a. Applicant is authorized to file with this Commission tariff schedules for the provision of interLATA and intralATA service. Applicant may not offer interLATA and/or intralATA service until tariffs are on file. Applicant's initial 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.

b. Applicant is a nondominant interexchange carrier (NDIEC). The effectiveness of its future tariffs is subject to the schedules set forth in Ordering Paragraph 5 of D.90-08-032, as modified by D.91-12-013 and D.92-06-034;

5. All NDIECs are hereby placed on notice that their California tariff filings will be processed in accordance with the following effectiveness schedule:

"a. Inclusion of FCC approved rates for interstate services in California public utilities tariff schedules shall become effective on one (1) day's notice.

"b. Uniform rate reductions for existing services shall become effective on five (5) days' notice.

"c. Uniform rate increases, except for minor rate increases, for existing services shall become effective thirty (30) days' notice, and shall require bill inserts, a message on the bill itself or first class mail notice to customers of the pending increased rates.

"d. Uniform minor rate increases, as defined in D.90-11-029 for existing services shall become effective not less than 5 working days' notice. Customer notifications is

not required for such minor rate increases.

Advice letter filings for new services and for all other types of tariff revisions, except changes in text not affecting rates or relocations of text in the tariff schedules, shall become effective on forty (40) days' notice.

"f. Advice letter filings merely revising the text or location of text material which do not cause an increase in any rate or charge shall become effective on not less than five (5) days' notice."

Applicant may deviate from the following provisions of GO 96-41 (a) paragraph II.C.(1) (b) which, requires consecutive sheet numbering and prohibits the reuse of sheet numbers, and (b) paragraph II.C.(4), which requires that "a separate series of sheets should be used for each rule." Tariff filings incorporating these deviations shall be subject to the approval of the Commission Advisory and Compliance Division's (CACD) Telecommunications Branch. Tariff filings shall reflect all fees and surcharges to which applicant is subject as reflected in Conclusion of Law 4. Applicant shall file as part of its initial tariff, after the effective date of this order and consistent with Ordering Paragraph 3, a service area map.

7. Applicant shall notify this Commission in writing of the date interLATA service is first rendered to the public within 5 days after service begins and again within 5 days of when intraLATA service begins.

8. Applicant shall keep its books and records in accordance with the Uniform System of Accounts specified in Title 47, Code of Federal Regulations, Part 32.

9. In the event the books and records of the applicant are required for inspection by the Commission or its staff, applicant shall either produce such records at the Commission's offices or reimburse the Commission for the reasonable costs incurred in having Commission staff travel to applicant's office.

10. Applicant 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.

11. Applicant shall ensure that its employees comply with the provisions of Public Utilities (PU) Code § 2889.5 regarding solicitation of customers.

12. 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.

13. The corporate identification number assigned to applicant is U-5535-C which shall be included in the caption of all original filings with this Commission and in the titles of other pleadings filed in existing cases.

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

15. Applicant is exempted from the provisions of PU Code §§ 816-830.

16. Applicant is exempted from Rule 18(b) of the Commission's Rules of Practice and Procedure to the extent that the rule requires applicant to serve a copy of its application on the cities and counties in which it proposes to operate. Applicant shall comply with the Uniform System of Accounts specified in Title 47, Code of Federal Regulations, Part 32.

17. If applicant is 90 days or more late in filing an annual report or in remitting the fees listed in Conclusion of Law 4, CACD shall prepare for Commission consideration a resolution that revokes the applicant's certificate of public convenience and necessity, unless the applicants have received the written permission of CACD to file or remit late.

18. The application is granted, as set forth above.

This order is effective today.

Dated November 21, 1995, at San Francisco, California.

DANIEL Wm. PESSLER
President
P. GREGORY CONLON
JESSIE J. KNIGHT, JR.
HENRY M. DUQUE
JOSIAH L. NEEPER
Commissioners

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) 703-1961.

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 a:
 - 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)