

Decision 96-02-031 February 23, 1996

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of Access Plus Communications, Inc. now Community Telecom Corporation For a Certificate of Public Convenience and Necessity Authorizing Provision of InterLATA and IntraLATA Telecommunications Services as a "Switchless" Reseller with the State of California.

ORIGINAL

Application 95-07-020
(Filed July 17, 1995)
Supplemented
September 29, 1995

The Commission has determined that the criteria for granting a Certificate of Public Convenience and Necessity (CPCN) should be granted. An applicant who is a California corporation, seeks a certificate of public convenience and necessity (CPCN) under Public Utilities (PU) Code § 1001, to permit it to resell inter Local Access and Transport Area (LATA) telephone services in California and to resell IntraLATA telephone service as IntraLATA competition is permitted by this Commission.

Applicant originally sought authorization as Access Plus Communications, Inc. However, on September 15, 1995, applicant amended its articles of incorporation to change its name to Community Telecom Corporation. Applicant seeks to offer commercial and Residential MTS, 800, calling card, and operator services. Operator services will be provided through the resale of its underlying carrier's package. Applicant also seeks exemption from the requirements of PU Code §§ 816-830, dealing with the issuance-

interexchange carrier (IXC) with the following characteristics: it uses the switch of another carrier; it usually, but not always, uses access circuits that the underlying carrier purchases for an IXC; it provides service in its own name; and its customers view it as an IXC.

1 California is divided into ten 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 originating and terminating within a single LATA.

of stocks and other evidences of ownership and bonds, notes, and other evidences of indebtedness, and §§ 851-854 dealing with transfers of utilities assets and mergers and reorganizations. 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 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.

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 an unaudited balance sheet and income statements as of July 11, 1995.

As part of its application, applicant provided an unaudited balance sheet and income statements as of July 11, 1995. The Commission will be provided through the review of the underlying carrier's proposed service. Applicant also seeks exemption from the requirements of Bill Title 84-854 dealing with the 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, operate, or 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.

showing no liabilities and assets including \$25,000 in unencumbered cash. These demonstrate that applicant has more than \$25,000, consisting of cash. It satisfies our criteria for being reasonably liquid and readily available to meet the applicant's needs. Applicant will not be required to make a money deposit with its underlying carriers, but will give a security interest in its assets in lieu thereof. Applicant represents the security interest shall not affect the use of the \$25,000 in unencumbered cash.

Applicant is not yet operating and is in the process of obtaining Section 214 Authority from the Federal Communications Commission. Applicant has been authorized in New York and is awaiting certification by Florida and Texas.

Applicant has provided information on its key managers indicating their experience and education. It can be summarized as follows:

Eric El Castelblanco is the president and chief executive officer of applicant. He was formerly a corporate attorney working with corporate and regulatory issues in the telecommunications industry. He was also employed by KMPG Peat Marwick's business advisory group where he served the high technology and telecommunications industries. He is a certified public accountant and a graduate of Harvard Law School.

David Castelblanco is applicant's chief operating officer. He was formerly a senior consultant with Coopers & Lybrand's global telecommunications group performing strategic and organizational consulting in the telecommunications sector. He has experience in wireless and wireline telecommunications markets as well as voice and data communications with such clients as AT&T, Bell South and Bell Atlantic. He holds degrees in economics and history from Brown University.

We will authorize the interLATA and intraLATA services that applicant seeks to provide with certainty that the proposed operation will have a significant effect upon the environment.

Findings of Fact

1. Applicant served a copy of the application upon 231 telephone corporations with which it is likely to compete.

2. A notice of the filing of the application appeared in the Daily Calendar on August 4, 1995.

3. No protests have been filed.

4. A hearing is not required.
5. By prior Commission decisions, we 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.

6. By D.94-09-065 we authorized competitive intraLATA services effective January 17, 1995, for carriers meeting specified criteria.

7. Applicant has demonstrated that it has a minimum of \$25,000 of cash, reasonably liquid and readily available to meet its start-up expenses.

8. Applicant has also represented that no cash deposit will be required by the underlying carrier, which will instead take a security interest in its assets.

9. Applicant's technical experience consists of 2 employees with a combined experience of over 10 years in business, law, and accounting, and telecommunications.

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

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

12. 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.

13. 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.

14. 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.) However, we do not grant exemptions from the provisions of PU Code §§ 851-854.

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 business.

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

4. Applicant is subject to:

a. The current 3.2% surcharge applicable to all intrastate services except for those excluded by D.94-09-065, as modified by D.95-02-050, to fund the Universal Lifeline Telephone Service (PU Code § 879) Resolution T-15799;

b. The current 0.36% surcharge applicable to all intrastate services except for those excluded by D.94-09-065, as modified by D.95-02-050, to fund the California Relay Service and Communications Devices Fund (PU Code § 2881; Resolution T-15801);

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

d. The current 0.27% surcharge applicable to all intrastate services except for those excluded by D.94-09-065, as modified by D.95-02-050, to fund the California High Cost Fund (PU Code § 732.30; Resolution T-15826)

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

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

O.R.D.E.R

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

IT IS ORDERED that:

1. A certificate of public convenience and necessity is granted to Community Telecom Corporation (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 file a written acceptance of the certificate granted in this proceeding.

3. 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.

All NDIECs are hereby placed on notice that their California tariff filings

will be processed in accordance with paragraph (d) of 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 on 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.96-11-029 for existing services shall become effective on not less than 5 working days' notice. Customer notifications is not required for such minor rate increases.

"e. 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."

4. Applicant may deviate from the following provisions of (a) paragraph II.C.(1)(b), which requires consecutive sheet numbering and prohibits the reuse of sheet numbers; and

(b) paragraph (4), which requires 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 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.

5. 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.

6. 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.

7. 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.

8. 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.

9. Applicant shall ensure that its employees comply with the provisions of PU Code § 2889.5 regarding solicitation of customers.

10. 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.

11. The corporate identification number assigned to applicant is U-5562-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.

Within 60 days of the effective date of this order, applicant shall comply with PU Code § 708 Employee Identification

Cards, and notify the Chief of CACD's Telecommunications Branch in writing of its compliance.

13. Applicant is exempted from the provisions of PU Code §§ 816-830. Applicant is not exempted from the provisions of PU Code §§ 851-854.

14. In response to the applicant's request for waiver, 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.

15. 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.

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

17. Application 95-07-020 is closed.

This order is effective today.

Dated February 23, 1996, at San Francisco, California.

DANIEL Wm. FESSLER
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)