

Decision 96-02-065 February 23, 1996

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
Texcom, Inc. for a Certificate of)
Public Convenience and Necessity)
to provide intrastate interLATA and)
intraLATA telecommunications)
services.)

Application 95-04-011
(Filed April 3, 1995)

O P I N I O N

ORIGINAL

Texcom, Inc. (Texcom or applicant), a California corporation, seeks a certificate of public convenience and necessity (CPCN) under Public Utilities (PU) Code § 1001 to permit it to resell interLATA and intraLATA telephone services in California.¹ The applicant seeks authority to provide 24-hour voice and fax mail, voice and fax broadcasting, voice and fax on demand and a calling card with optional long distance services, as a nonfacilities based nondominant interexchange carrier.

Applicant initially filed its application on April 3, 1995. The original application contained a number of omissions and ambiguities, which the assigned administrative law judge (ALJ) required the applicant to rectify before the application could be processed. In response, the applicant filed an amended application

¹ 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 originating and terminating within a single LATA.

on September 27, 1995, containing complete, accurate, and unambiguous material in support of its request. Applicant also filed a motion for a limited protective order for its financial statements, which had been filed under seal. That motion, which was unopposed, was granted on December 5, 1995, by the law and motion ALJ.

Description of Applicant and the Services to be Offered

Texcom is in the business of designing, developing, assembling, marketing, installing, supporting and servicing multi-media voice and facsimile processing systems for individual customers and businesses, especially equipment to meet the high demands of an active business setting. In its amended application, Texcom describes its products as follows:

"Fax and Voice Mail

[...] The dedicated users can record their own personalized greeting and change their password at any time they want. The voice messages and fax documents can be stored for up to two weeks, which is made possible by the store-and-forward as well as the retrieving functions embodied in the facility.

"Fax and Voice Broadcasting

Through a centralized concentration storing facility, voice broadcasting and fax broadcasting enables both voice messages and fax documents to be broadcast to multiple receiving parties at the same time through public switched lines services upon the user's request. ...

"Fax and Voice-on-Demand

Utilizing a centralized ... storing facility with callers accessing [it] through DID trunk lines or public switched lines services, voice-on-demand and fax-on-demand can support services to multiple parties at one time. Voice messages and fax documents stored in the facility in advance can be transmitted upon the caller's request through the one call or two call methods as explained below.

One call --- The incoming call shall be from a touch tone phone (if to listen to a voice message) or a fax phone (if to receive a fax document) so that the desired information is received instantly during the call. Inward calling only.

Two call --- The incoming call can be from a touch phone or a fax number that the messages should be sent to. The information requested will then be [immediately] sent to the number provided. ... Includes inward calling and outward calling.

"Calling Card

A calling card providing long distance service access for customers who travel and make long distance calls away from home. Dialing instructions are on the back of each card. It can be used in the contiguous (states,) Hawaii, Alaska, Puerto Rico, (and) the U.S. Virgin Islands. The card can be used with interstate, intrastate and international calls, where authorized.

"Debit Card

A prepaid calling card providing domestic and optional long distance service access for customers. Dialing instructions are on the back of each card. It can be used in the contiguous states: Hawaii, Alaska, Puerto Rico, and the U.S. Virgin Islands. The cards can be used with interstate, intrastate and international calls, where authorized."

Texcom's amended application and financials make it clear that Texcom is a going concern engaged in the sale of telecommunications products, with current sales activities in Asia. As present, it has neither state nor federal regulatory authority to engage in telecommunications resale activities domestically.

Discussion

By Decision (D.) 84-01-037 (14 CPUC2d 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 amended application, applicant provided a balance sheet and an income statement demonstrating that applicant has more than \$25,000 consisting of cash and other reasonably liquid assets which are readily available to meet the applicant's needs.

Insofar as its showing of technical expertise is concerned, Texcom's application is somewhat unorthodox. As a experienced purveyor of highly specific telecommunications services, its relevant experience for providing resold interLATA

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, 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.

and intraLATA services is minimal, yet there is little question that its management is competent to add such services to its present offerings. The amended application sets forth the experience of three of its key managers, Ping Ping Tu, Cheng Ping Kuo, and Jennifer Chang. The first is the current chief executive of the company, with three years of experience in his current role. The second has five and one-half years' experience in telecommunications, principally as a network engineer designing and developing multi-media voice and facsimile processing systems. The third has managed the startup of Texcom's marketing, and has researched the telecommunications industry's produce offerings and tariffs. We find that collectively these key managers have sufficient expertise to enable Texcom to offer the inter- and intraLATA services for which it seeks authority. Accordingly, 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 telephone corporations with which it is likely to compete.
2. A notice of the filing of the application appeared in the Daily Calendar on April 19, 1995.
3. No protests have been filed.
4. No opposition to the motion for confidentiality of the applicant's financial documents has been filed.
5. A hearing is not required.
6. 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.
7. By D.94-09-065, we authorized competitive intraLATA services effective January 1, 1995, for carriers meeting specified criteria.

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

9. Applicant's technical experience consists of three employees with a combined experience of over seven years in the telecommunications services industry.

10. Applicant has submitted with its application 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 nondominant interexchange carrier 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 nondominant interexchange carriers, such as applicant, an exemption from Rule 18(b) where no construction is involved to the extent that the rule requires applicant to serve a copy of its application on cities and counties in the proposed service area and to the extent that it requires applicant to provide a conformed copy of all exhibits attached to applicant's filed application to potential competitors.

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.)

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 a related 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, November 21, 1995);
- 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 1995-1996 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 § 739.30; Resolution T-15826, December 20, 1995).

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 and service of all exhibits attached to this application on potential competitors.

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

IT IS ORDERED that:

1. A certificate of public convenience and necessity is granted to Texcom, Inc. (applicant) to operate as a reseller of the interLocal Access and Transport Area (LATA) and, to the extent authorized in Decision (D.) 94-09-065, intraLocal Access and Transport Area (LATA) 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 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 Decision (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 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.90-11-029 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 GO 96-A: (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 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 Public Utilities (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-5568-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.

12. 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.

14. 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 it proposes to operate in and to the extent that the rule requires applicant to serve a copy of all exhibits attached to its application on potential competitors.

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. A limited protective order keeping applicant's financial documents confidential is granted to the extent of the ALJ ruling dated December 5, 1995.

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

18. Application 95-04-011 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)