

ORIGINAL

Decision 96-09-073 September 20, 1996

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of The Telephone Connection of Los Angeles, Inc. to Amend its Certificate of Public Convenience and Necessity to Include Provision to Operate as a Facilities Based Carrier of Local Exchange Services Within the State of California.

Application 96-04-008
(Filed April 5, 1996)
amended August 2, 1996

OPINION

On April 5, 1996, The Telephone Connection of Los Angeles, Inc. (TCLA or applicant) filed an application, on an expedited ex parte basis, seeking to amend its existing certificate of public convenience and necessity (CPC&N) to authorize applicant to operate as a facilities-based provider of local exchange telecommunications service within the State of California to the full extent authorized by the Commission in Investigation (I.) 95-04-044. TCLA, pursuant to Commission Decision (D.) 96-02-072, received a CPC&N to operate as a reseller of local exchange services.

By this decision, we grant the authority requested subject to the terms and conditions set forth below.

I. Background

By D.95-07-054 (Rulemaking (R.) 95-04-043/I.95-04-044), we established initial procedures for the filing for CPC&N authority to offer competitive local exchange service within the service territories of Pacific Bell (Pacific) and GTE California Incorporated (GTEC). Prospective competitive local carriers (CLC) who filed petitions by September 1, 1995, for CPC&N authority to enter the local exchange market and otherwise met eligibility

requirements were authorized to offer local exchange service under the following schedule. Competitive local exchange service for facilities-based carriers was authorized effective January 1, 1996. Competitive resale of the bundled local exchange service of Pacific and GTEC was authorized effective March 31, 1996. Any filings for CLC CPCN authority made after September 1, 1995, were to be treated as applications and processed in the normal course of the Commission's business. Since TCLA filed its request for facilities-based authority after September 1, 1995, it is treated as an application.

H O L I N O

II. Overview of the Application

As noted above, applicant is a certificated reseller of local exchange services in the GTEC and Pacific service areas in LATA 5, as granted by D.96-02-072. Applicant seeks to amend its authority to operate as a facilities-based provider of local exchange telecommunications service within the State of California to the full extent authorized by the Commission in I.95-04-044. Applicant initially proposes to offer local exchange services by installing its own switching facilities and reselling the services of Pacific, GTEC, and facilities-based CLCs within Los Angeles, Orange, and Ventura Counties, where applicant has operated a voice mail service for the past eight years. Applicant's proposed services include, but are not limited to, single and multi-line local exchange residential and business service, access to directory assistance services and local operator services. Applicant will also provide access to 911 emergency services for all local exchange customers.

service territories of Pacific Bell (Pacific) and GTE California Incorporated (GTEC). Prospective competitive local carriers (CLC) who filed petitions by September 1, 1995, for CPCN authority to enter the local exchange market and otherwise met eligibility

Applicant, as set forth in the Financial Statement attached to the application, has a cash reserve of \$100,000. **III. Service Area and Rates** Applicant initially seeks to provide its facilities-based services in Los Angeles, Orange, and Ventura Counties, as shown by the map of applicant's proposed initial facilities-based service area (Exhibit A). Applicant requests reserving the right to provide such services in other portions of the State to the full extent authorized by the Commission in 195-04-044. Applicant's proposed tariff describing its services, rates, and the general rules applicable to such services were provided as Exhibit B to the application. By letter dated July 23, 1996, we advised TCLA of deficiencies in its proposed tariff. By amendment dated August 12, 1996, TCLA filed corrections in compliance with the deficiency letter. We conclude that applicant's corrected tariffs, along with the additional corrections specified in Attachment B, properly conform to Commission rules.

We have reviewed the applicant's CPC&N filing and concluded that it qualifies as a facilities-based CLC and meets the financial requirements set forth in our adopted rules for facilities-based CLCs. A facilities-based CLC must demonstrate that it has a minimum of \$100,000 of cash or cash equivalent, reasonably liquid and readily available to meet the firm's start-up expenses as prescribed in Rule 4.B(1) of D.95-07-054. CLCs must also conform to the following financial requirements adopted in D.95-12-056: customer deposits collected by a CLC must be deposited in a protected, segregated interest-bearing escrow account subject to Commission oversight.

1 The Financial Statements, due to their confidential nature, are the subject of a Limited Protective Order.

Applicant, as set forth in the Financial Statements attached to its application as Exhibit C, has in excess of the \$100,000 cash reserve, as required by D.95-07-054 to demonstrate adequate financial resources. Applicant's finances are also sufficient to pay any deposits that may be required by the local exchange companies.

In addition, applicant is required to make a reasonable showing of technical expertise in telecommunications or a related business. TOLA is managed by Marco Krent, who has worked for more than 11 years in the telecommunications industry. He served for two years as a national account representative for MOI in 1988. In 1989, he founded a voice mail service bureau and has operated it successfully for more than seven years. As a result, applicant has developed an expertise in the operations, sales, and management of telecommunications services. In sum, we conclude that applicant has the requisite technical capacities to carry out the proposed California service.

IV. California Environmental Quality Act (CEQA) Review

We have also reviewed the application for compliance with CEQA. CEQA requires the Commission to assess the potential environmental impacts of a project in order that adverse effects are avoided, alternatives are investigated, and environmental quality is restored or enhanced to the fullest extent possible. To achieve this objective, Rule 17.11 of the Commission's Rules of Practice and Procedure requires the proponent of any project subject to CEQA Commission approval to submit with the application for approval of

¹ The Financial Statements, due to their confidential nature, are the subject of a Limited Protective Order.

such project an environmental assessment which is referred to as a Proponent's Environmental Assessment (PEA). The PEA is used by the Commission to focus on any impacts of the project which may be of concern and to prepare the Commission's initial study to determine whether the project would need a Negative Declaration or an Environmental Impact Report (EIR).

Applicant filed its PEA as Exhibit D to the application. As described in the PEA, applicant's proposed new facilities will consist only of the installation of a telephone switch to be placed entirely within TCLA's existing place of business. Apart from this installation, TCLA will not construct any new facilities (e.g. fiber optic cable) but will instead lease space in the existing facilities of other providers. TCLA will not engage in any construction as part of its proposed facilities based operations. Accordingly, applicant claims that there is no possibility that approval of TCLA's facilities based local exchange carrier will have a significant adverse effect on the environment. To the extent necessary, TCLA will obtain all local permits from the relevant county agency for the installation of the switch.

We previously performed a CEQA review for the initial group of 40 facilities based CLCs which were certified pursuant to D.95-12-057. We consolidated these 40 CLC petitioners into a single comprehensive CEQA review. Based on its assessment of those 40 facilities based petitioners' filed PEAs, the Commission and Advisory and Compliance Division (ACD) prepared a draft Negative Declaration and Initial Study generally describing the facilities based petitioners' project and their potential environmental effects. The Negative Declaration prepared by ACD was considered a mitigated Negative Declaration. This means that although the initial study identified potentially significant impacts, revisions which mitigate the impacts to a less than significant level were agreed to by the petitioners. (Pub. Res. Code § 21080(c)(2))

Based upon our Initial Study and the public comments received, we determined that with the inclusion of mitigation measures incorporated in the projects, the proposed projects would not have potentially significant adverse environmental effects. Accordingly, we approved the Negative Declaration as prepared by CACD including CACD's proposed Mitigation Monitoring Plan in D.95-12-057.

In order to assure compliance with CEQA for facilities based on CLC applications which were not included in the Negative Declaration adopted in D.95-12-057, we initiated a second CEQA review on a consolidated basis for those applicants. TCLA was included among those applicants covered by our second consolidated CEQA review.

Following a procedure similar to that used for the Negative Declaration approved in D.95-12-057, CACD prepared and circulated a draft Negative Declaration and Initial Study based upon an assessment of the PEAs of TCLA and other CLC applicants. Public comments were received by August 30, 1996.

All public comments were reviewed and answered. CACD then finalized the Negative Declaration covering eight facilities-based applications, including this applicant. Comments and responses are attached to the Final Negative Declaration, D.95-12-057.

Based upon our Initial Study and the public comments, it has been determined that with the inclusion of mitigation measures incorporated in the projects, the proposed projects will not have potentially significant environmental effects. Accordingly, we shall approve the Negative Declaration as prepared by CACD including CACD's proposed Mitigation Monitoring Plan (attached to

mitigated Negative Declaration. This means that although the initial study identified potentially significant impacts, revisions

² The approved Final Negative Declaration covering this applicant is provided as Attachment C of today's decision in A.95-12-050 approving CPCN authority for Frontier Local Services, Inc.

the Final Negative Declaration) which will ensure that the listed Mitigation Measures will be followed and implemented.

Conclusion

Based upon our review of TCLA's application, we conclude that it conforms to the adopted Commission rules for competitive local exchange certification subject to compliance to the terms and conditions set forth in this order. Accordingly, we approve TCLA's application subject to the terms and conditions set forth herein. Findings of Fact

1. Applicant filed its application on April 5, 1996, for the authority to provide facilities-based local exchange telecommunications services.

2. Applicant served a Notice of Availability in lieu of its application on parties of record in R.95-04-043/I.95-04-044, indicating that copies of the application would be served at the request of any party receiving the notice.

3. A notice of the filing of the application appeared in the Daily Calendar on April 9, 1996.

4. No protests have been filed.

5. A hearing is not required.

6. By prior Commission decisions, we authorized competition in providing local exchange telecommunications service within the service territories of Pacific and GTE.

7. By D.95-07-054, D.95-12-056, D.96-02-072, and D.96-03-020, we authorized facilities-based CLO services effective January 1, 1996, and CLC resale services effective March 31, 1996, for carriers meeting specified criteria.

8. Applicant has demonstrated that it has a minimum of \$100,000 of cash or cash equivalent reasonably liquid and readily available to meet its start-up expenses.

9. Applicant's technical experience is demonstrated by the fact that its operations are headed by Marc O'Krent who has more than 11 years of telecommunications experience.

10. Applicant has submitted with its application a complete draft of applicant's initial tariff which, as amended, along with corrections submitted on August 2, 1996, complies with the requirements established by the Commission, except for the deficiencies identified in Attachment B. The Commission's local exchange CEQA requires the Commission to assess the potential environmental impact of a project subject to the application.

12. The Commission staff has conducted an Initial Study of the environmental impacts of certain facilities-based CLCA applications filed after September 1, 1995, including the TCLA application, and prepared a Mitigated Negative Declaration.

13. Commission staff has concluded that with the incorporation of all mitigation measures discussed in the Mitigated Negative Declaration certification of the CLCs covered therein, including TCLA, will result in no significant impact on the environment.

14. No facilities are to be constructed except for a telephone switch to be installed entirely within TCLA's existing place of business.

15. Exemption from the provisions of Public Utilities (PU) Code §§ 816-830 has been granted to other nondominant carriers.

16. The transfer or encumbrance of property of nondominant carriers has been exempted from the requirements of PU Code § 851 whenever such transfer or encumbrance serves to secure debt.

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.

Public convenience and necessity require the competitive local exchange services to be offered by applicant, subject to these terms and conditions set forth below:

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 Universal Lifeline Telephone Service Fund, (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, October 5, 1995);

c. The user fees provided in PU Code §§ 431-435, which is 0.11% of gross intrastate revenue for the 1996-1997 fiscal year (Resolution M-4782); 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 § 739.130; Resolution T-15826, December 20, 1995).

5. Applicant should be exempted from PU Code § 851 when the transfer or encumbrance serves to secure debt.

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

7. (TCLA) is required to carry out any specific mitigation measures outlined in the Negative Declaration applicable to its facilities to be in compliance with CEQA.

8. With the incorporation of the specific mitigation measures outlined in the Negative Declaration, TCLA's proposed project will not have potentially significant adverse environmental impacts.

Any CLC which does not comply with our rules for local exchange competition adopted in R.95-04-043 shall be subject to sanctions including, but not limited to, revocation of its CLC certificate.

10. Because of the public interest in competitive local exchange services, the following order should be effective immediately.

ORDER

IT IS ORDERED that:

1. A certificate of public convenience and necessity is granted to The Telephone Connection of Los Angeles, Inc. (applicant), to operate as a facilities-based competitive local carrier, subject to the terms and conditions set forth below.

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 competitive local exchange services conforming to its proposed tariff, as amended August 2, 1996, and as further amended by this decision. Applicant may not offer competitive local exchange services 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. The tariff shall be effective not less than 1 day after tariff approval by the Commission's Telecommunications Division. Applicant shall comply with the provisions in its tariffs.

Applicant is a competitive local carrier (CLC). The effectiveness of its future tariffs is subject to the schedules set forth in Appendix A, Section 4B of Decision (D) 95-07-054.

With the incorporation of the specific language in the proposed "E. CLCs shall be subject to the following tariff and contract filing, revision and service pricing standards project will not have any adverse environmental impacts. [Contracts shall be subject to GO 96-A

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's Telecommunications Division. 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 or written description of its facilities. Such maps or written descriptions must be adequate for staff to determine that the CLC is providing service to interested customers located within 300 feet of the CLC's facilities.

6. Prior to initiating service, applicant shall provide the Commission's Consumer Services Division with the applicant's designated contact person(s) for purposes of resolving consumer complaints and the corresponding telephone number. This information shall be updated if the name or telephone number changes or at least annually.

7. Applicant shall notify this Commission in writing of the date local exchange service is first rendered to the public within 5 days after local exchange 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. 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 Commission staff and contained in Attachment A.

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

Applicant may deviate from the following provisions of GO 96-A: (a) paragraph II.C.(1)(b), which requires consecutive

11. 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.

12. The corporate identification number assigned to applicant is U-5522-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.

13. Within 60 days of the effective date of this order, applicant shall comply with PU Code § 708, Employee Identification Cards, and notify the Director of the Telecommunications Division in writing of its compliance.

14. Applicant is exempted from PU Code § 851 for the transfer or encumbrance of property whenever such transfer or encumbrance serves to secure debt.

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, the Telecommunications Division shall prepare for Commission consideration a resolution that revokes the applicant's certificate of public convenience and necessity, unless the applicant has received the written permission of the Telecommunications Division to file or remit late.

16. Certificated CLCs as authorized under this decision shall be subject to the rights and obligations of interconnection with Pacific or GTEC as prescribed in the interim rules adopted in the companion decision being issued today in this docket.

17. The Final Negative Declaration including the Mitigation Monitoring Plan prepared by CACD (see Attachment C to today's decision in A.95-12-050) is hereby approved and adopted.

18. The applicant shall comply with the conditions and carry out the mitigation measures outlined in the Negative Declaration.

19. The applicant shall provide the Director of the Telecommunications Division with reports on compliance with the

conditions and implementation of mitigation measures under the schedule as outlined in the Negative Declaration. The service under the 2010 Application shall comply with the customer notification and education rules adopted in D.96-04-049 regarding passage of calling party number. The corporate identification number assigned to the application is U-2528-C-2222.

The application is granted as set forth above. Application 96-04-008 is closed with this Commission's order.

This order is effective today.

San Francisco, California, September 20, 1996.

Applicant shall comply with PU Code § 708, Employee Identification Cards, and notify the Director of the Telecommunications Division in writing of its compliance.

P. GREGORY CONLON
President

DANIEL Wm. FESSLER
JESSIE J. KNIGHT, JR.

HENRY M. DUQUE
JOSIAH L. NEPPER
Commissioners

14. The transfer is exempt from PU Code § 821 for the transfer or enclosure whenever such transfer or enclosure serves to seek compliance.

15. The applicant shall file an annual report or in submitting the fees listed in Conclusion of Law 4, the Telecommunications Division shall prepare for Commission consideration a resolution that revokes the applicant's certificate of public convenience and necessity, unless the applicant has received the written permission of the Telecommunications Division to file or remit late.

16. Certified CMCs as authorized under this decision shall be subject to the rights and obligations of interconnection with Pacific or GTEC as prescribed in the interconnection rules adopted in the companion decision being issued today in this docket.

17. The Final Negative Declaration including the Mitigation Monitoring Plan prepared by GACD (see Attachment C to today's decision in A.96-12-050) is hereby approved and adopted.

18. The applicant shall comply with the conditions and carry out the mitigation measures outlined in the Negative Declaration.

19. The applicant shall provide the Director of the Telecommunications Division with reports on compliance with the

ATTACHMENT A
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APPENDIX A
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INFORMATION REQUESTED OF COMPETITIVE LOCAL CARRIERS

To be filed with the California Public Utilities Commission 200
Van Ness Avenue
San Francisco, CA 94102-3298
Information requested of the year following the calendar year for which
the annual report is submitted.

TO: ALL COMPETITIVE LOCAL CARRIERS

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 Competitive Local Carriers in California. 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:
Type of organization (e.g., corporation, partnership, sole proprietorship, etc.)

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.

1. Exact legal name and UIC of reporting utility
2. Date operations were begun
3. Description of other business activities in which the utility is engaged
4. 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
5. Balance sheet as of December 31st of the year for which information is submitted
6. Commission decision number granting operating authority
7. Income statement for California operations for the calendar year for which information is submitted

ATTACHMENT B

List of deficiencies in tariffs filed by The Telephone Connection of Los Angeles, Inc. in A.96-04-008 to be corrected in tariff compliance filing.

1. Schedule 2-T, Sheets 22 and 27: delete flat-rated ULTS service offering because the company does not have flat-rated service for non-ULTS customers.
2. Schedule 2-T, Sheets 25 and 30: income limitations for ULTS service were revised in Resolution T-15829 dated February 23, 1996.
3. Schedule 2-T, sheet 42: The rates for Number Call Forwarding are not in compliance with D.96-04-052. The company must offer rates equivalent to those of the LECs.
4. Schedule 2-T, Sheet 44: The reference to holidays in the definition of "evening" is not clear.

(END OF ATTACHMENT B)