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Decision 96-10-064 October 25, 1996

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of )  
TCI Telephony Services of )  
California, Inc. for a Certificate ) Application 96-07-024  
for a Certificate of Public Convenience and Necessity to ) (Filed July 31, 1996)  
Provide Competitive Local Carrier )  
Services )

Applicant will provide service by reselling calls

Summary

TCI Telephony Services of California, Inc. (Applicant), a Colorado corporation duly authorized to transact intrastate business in California, seeks a certificate of public convenience and necessity (CPCN) for authority to operate as a competitive local exchange resale and facilities-based carrier to the full extent allowed by the Commission in Decision (D.) 95-07-054. By this decision, we grant the authority requested subject to the terms and conditions set forth below.

Background

By D. 95-07-054 (Rulemaking (R) 95-04-043/Investigation (I) 95-04-044), we established initial procedures for the filing for CPCN authority to offer competitive local exchange service within the service territories of Pacific Bell (Pacific) and GTB California Incorporated (GTEC) as 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 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,

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1995, were to be treated as applications and processed in the  
normal course of the Commission's business.

Summary of Application

In the Matter of the Application of  
Applicant seeks authority to provide local exchange  
resale (and facilities based services in selected Pacific exchanges,  
as authorized by this Commission. Applicant represents that it  
will comply with all requirements and conditions for CLC services<sup>2</sup>  
as set forth in D.95-07-054 and consistent with D.95-12-057.

Applicant will provide some of its service by reselling calls  
routed solely over facilities owned by other certificated carriers.

Other services will be carried over existing facilities of

Applicant's affiliates engaged in the cable television business.<sup>1</sup>

Applicant contemplates no proposed construction or extension of  
facilities outside of existing conduits or ducts in existing

utility rights-of-way in metropolitan areas as a result of this  
application.

We have reviewed the Applicant's CPCN 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 CLC. 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 47B(2) of D.95-07-054. CLCs must also conform  
to the following financial requirement 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.

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  
<sup>1</sup> Applicant has not described the contractual or other arrangements by which it  
is entitled to use the cable television facilities of its affiliates.  
Accordingly, we shall direct that applicant file by advice letter proof of its  
legal right to use such facilities prior to commencing operations.

included in Exhibit 6 to the application is an undertaking (in an amount of at least \$100,000) of applicant's corporate parent to make available to applicant, at its request, such funds, guarantees, credit, or other financial resources, as may be necessary to meet reasonable projected operational costs. Applicant's corporate parent represents that it, itself, has assets substantially in excess of the amount of its undertaking. However, applicant requested that the unaudited balance sheet that its parent provided to demonstrate its financial soundness not be made public and the balance sheet would not have been sufficient to meet the applicable standard because the resources were not as liquid as we require. As both applicant and its parent, however, are affiliates of a very large conglomerate of media firms, we will impose a condition that applicant present an officer's certificate prior to commencing operations under the CPCN granted to show that it has at least \$25,000 in cash on deposit. For each of three subsequent three-month periods, applicant shall present an officer's certificate showing cash on deposit in an amount equal to the sum of the previous balance less expenditures plus \$25,000.

Applicant must also submit proposed tariffs which conform to the consumer protection rules set forth in Appendix B of D.95-07-054. We have reviewed Applicant's proposed tariffs and find that they conform to the short-term consumer protection rules set forth in Appendix B of D.95-07-054, except for the deficiencies noted for the deficiencies noted in Appendix B of this decision. In its compliance tariff filings and accounting records, Applicant is directed to correct the identified deficiencies as a condition of our granting approval of the tariffs.

Applicant's proposed schedule of rates is set forth in its Exhibit 5, which contains Applicant's proposed tariff. We conclude that Applicant's tariffs properly conform to Commission rules, except for the list of tariff deficiencies identified in Appendix B of this decision. In its compliance tariff filings and accounting records, Applicant is directed to correct the identified deficiencies as a condition of our granting approval of the tariffs. In addition, Applicant is required to make a reasonable showing of technical expertise in telecommunications or a related

business. Applicant's operations are headed by its general manager, Beatriz Molina-Amparan, who has 23 years' experience in marketing and public relations. She will be assisted by Cheryl Melanson, who will server as applicant's Network Manager and who has 25 years' experience with Pacific. In addition, John Gutierrez, Manager of Regulatory Policy & Compliance, has 6 years' experience in telecommunications regulation. Thus, Applicant has the technical expertise and qualifications to conduct its business.

Applicant will be constructing facilities for the purpose of providing local exchange services. Such facilities consist of improvements to be constructed at various points along existing rights-of-way. On September 16, 1996, we published a Negative Declaration covering CLCS projects for local exchange telecommunications service throughout California. The Negative Declaration addressed the applications of Applicant and seven other facilities-based providers who like Applicant, plan to use cable television facilities. The Negative Declaration concluded that with the implementation of mitigation measures set forth in the Negative Declaration, that none of the projects, including Applicant's, would have one or more potentially significant environmental effects.

We have reviewed Applicant's proposed filing and conclude that it conforms to the adopted Commission rules, including the Consumer Protection Rules set forth in Appendix B of D.95-07-054, except for the deficiencies noted in Appendix B.

Applicant requests that it be permitted to keep its books and accounts according to generally accepted accounting principles (GAAP), rather than the Uniform System of Accounts (USOA). Applicant represents that it is required to report consolidated results with its corporate parents pursuant to GAAP, and that it

showing of technical expertise in telecommunications or a related

would be necessary for it to keep two sets of books if it were also required to report under USOA. This is not an issue that uniquely affects Applicant. While it is true that USOA's major role historically has been in connection with traditional rate-of-return ratemaking, it performs other duties as well. Among these is assisting the Commission in auditing or investigating, as required from time to time, the calculation of various fees and surcharges that telephone corporations are responsible for collecting from subscribers to the extent that GAAP may differ from regulatory accounting under USOA, the potential exists for inconsistent practices among telephone corporations with respect to such fees and charges and increased burdens on the Commission to detect and correct such inconsistencies. We will take up the general question of accounting treatment in the competitive regulatory environment by considering first how it affects nondominant interexchange carriers (NDIECs), as part of the pending Rulemaking (R.) and Investigation (I.) on the Commission's Own Motion to Establish a Simplified Registration Process for Telecommunications Firms (R.94-02-003/I.94-02-004). NDIECs operate in the most competitive portion of the industry, and based on the results of that inquiry, we may consider whether CLCs present any different situation. Until we reach a conclusion in that proceeding, we will look with disfavor upon requests for exemption from USOA.

**Findings of Fact**

1. Applicant filed its application on July 3, 1996, for authority to provide facilities based and resale local exchange telecommunications services.
2. Applicant served a Notice of Availability in lieu of its petition on parties to record in R.95-04-043/I.95-04-044.

indicating that copies of the petition would be served at the request of any party receiving the notice.

A notice of the filing of the application appeared in the Daily Calendar on July 24, 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 GTEC.

7. By D.95-107-054, D.95-112-056, D.96-02-072, and D.96-03-020, we authorized facilities-based CLC services effective January 1, 1996, and CLC resale services effective March 31, 1996, for carriers meeting specified criteria.

8. Applicant has provided the undertaking of its corporate parent to advance its start-up expenses as necessary in an amount at least equal to \$100,000.

9. Applicant did not provide sufficient information to confirm that its corporate parent has cash and cash equivalent equal to \$100,000.

10. Applicant's technical experience is demonstrated by the fact that its operations are headed by its general manager who has over 25 years' experience in the telecommunications industry.

11. Applicant has submitted with its application a complete draft of Applicant's initial tariff which complies with the requirements established by the Commission, except for the deficiencies identified in Appendix B.

12. The Commission published a Negative Declaration on September 16, 1996.

13. The Commission has routinely granted nondominant telecommunications 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 Public Utilities (PU) Code §§ 816-830 has been granted to nondominant interexchange carriers. (See §§ 816-830 and 816-831)

15. 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. (See D.85-11-044.)

16. Applicant requests that it be permitted to keep its books and accounts according to GAAP, rather than USOA.

17. USQA performs an important function in promoting consistence among telephone corporations with respect to user fees and surcharges.

18. Applicant has not described the contractual or other arrangements by which it is entitled to use the cable television facilities of its affiliates.

Conclusions of Law

1. Subject to confirmation of its parent's liquidity, Applicant has the financial ability to provide the proposed service.

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

3. Public convenience and necessity require the competitive local exchange services to be offered by Applicant, subject to the 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 fee 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 § 739.30; 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. Applicant should be exempted from PU Code §§ 816-830.

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

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



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

E. CLCs shall be subject to the following tariff and contract filing, revision, and service pricing standards (Contracts shall be subject to GO 96-A rules for NDIECS, except those for interconnection):

(1) Uniform rate reductions for existing tariff services shall become effective on five (5) working days, notice to the Commission. Customer notification is not required for rate decreases.

O R D E R

(2) Uniform major rate increases for existing tariff services shall become effective on thirty (30) days' notice to the Commission, and shall require bill inserts, or a message, on the bill itself, or first class mail notice to customers at least 30 days in advance of the pending rate increase.

(3) Uniform minor rate increases, as defined in D.95-07-054, shall become effective on not less than five (5) working days, notice to the Commission. Customer notification is not required for such minor rate increases.

(4) 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 to the Commission.

(5) Advice letter filings revising the text or location of text material which do not result in an increase in any rate or charge shall become effective on not less than five (5) days, notice to the Commission.

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 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 written description or maps must be adequate for staff to determine whether Applicant is providing service to interested customers located within 300 feet of Applicant'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.

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.

Telecommunications Division shall prepare for Commission

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

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-5698-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 Chief of the Commission's Telecommunications Division in writing of its compliance.

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

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

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 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.

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, 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 later, an application for a certificate of public convenience and necessity.

18. Applicant shall comply with the customer notification and education rules adopted in D.96-04-049 regarding passage of calling party number.

19. Applicant shall file by advice letter proof of its legal right to use the facilities of its cable television affiliates prior to commencing operations.

20. Applicant shall file by advice letter an officer's certificate prior to commencing operations under the authority granted hereby to show that it has at least \$25,000 in cash on deposit. For each of three subsequent three-month periods, Applicant file by advice letter an officer's certificate showing cash on deposit in an amount equal to the sum of the previous balance less expenditures plus \$25,000.

21. Applicant shall conduct its construction activities in the manner prescribed by the Commission's Negative Declaration dated September 16, 1996, including, without limitation, Appendix C thereof.

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

23. Application 96-07-024 is closed.

This order is effective today.

Dated October 25, 1996, at Sacramento, California.

18. Applicant shall copy with the customer notification and education Pi GREGORY CONLON

President  
JESSIE J. KNIGHT, JR.

HENRY M. DUQUE  
JOSIAH L. NEPPER

19. Applicant shall file by advice letter proof of its legal right to Commissioners

Commissioner Daniel Wm. Fessler,  
being necessarily absent, did not participate.

20. Applicant shall file by advice letter an officer's certificate prior to commencing operations under the authority

granted hereby to show that it has at least \$25,000 in cash on deposit. For each of three subsequent three-month periods, Applicant file by advice letter an officer's certificate showing cash on deposit in an amount equal to the sum of the previous balance less expenditures plus \$25,000.

21. Applicant shall conduct its construction activities in the manner prescribed by the Commission's Negative Declaration dated September 16, 1996, including, without limitation, Appendix C thereof.

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

**APPENDIX A**

**INFORMATION REQUESTED OF COMPETITIVE LOCAL CARRIERS**

**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 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 Staff, 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.

**(END OF APPENDIX A)**

ATTACHMENT A

INFORMATION REQUESTED OF COMPETITIVE LOCAL CARRIERS

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)

APPENDIX B

TCI Telephony Services of California, Inc.

List of Deficiencies in Tariffs Filed by TCI Telephony Services of California in A.96-07-024 to be corrected in Tariff Compliance Filing.

Hereinafter, "Tariff No. 1-T" refers to. Schedule Cal CLC 1-T, of the sample tariffs accompanying TCI's Application

1. Tariff No. 1-T, Sheet 62, Shortage of Equipment or Facilities. The first paragraph states that the Company may limit or allocate service where necessary facilities are not available. This provision is in conflict with the Commission's general requirement that the utility provide sufficient capacity to serve all customers within 300 feet of the CLC's facilities. Delete the first paragraph.

2. Tariff No. 1-T, Sheet 107. Since TCI is offering Caller ID Service, it must have an approved Customer Notice and Education Plan (CNEP).

3. Include sample forms in TCI's compliance filing.

4. "Competitive Local Carrier" should be centered over the horizontal line at the top rather than over to the right under the tariff sheet number.

(END OF APPENDIX B)