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Decision 96-11-049 November 26, 1996

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of Global TeleMedia International, Inc. for a Certificate of Public Convenience and Necessity to Operate as a Reseller of Telecommunications Services Within California

ORIGINAL

Application 96-06-055 (Filed June 24, 1996)

In addition, an applicant is required to make a reasonable showing of expertise in telecommunications or a related business.

Global TeleMedia International, Inc. (applicant), a Florida corporation, qualified to do business in California, seeks a certificate of public convenience and necessity (CPCN) under Public Utilities Code § 1001 to permit it to resell interLATA and intraLATA telephone services in California.

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 out to themselves out to the public to provide intraLATA services. Subsequently, 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

D. 93-02-010 defines a switchless reseller as a nonexchange carrier (NDEC) 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 a LEC.

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

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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, 41 CPUC2d 505 at 520 (1991)), reasonably liquid and readily available to meet the firm's start-up expenses. Such applicants shall also document any deposits required by local exchange carriers (LECs) or interexchange carriers (IECs) and demonstrate that they have additional resources to cover all such deposits. (D.93-05-010, 49 CPUC2d 197 at 208 (1993).) In addition, an applicant is required to make a reasonable showing of technical expertise in telecommunications or a related business.

(The application did not include adequate information to satisfy the Commission's unencumbered cash requirement. However, in response to the assigned administrative law judge's request, the applicant provided an affidavit executed by its President, Roderick McClain, confirming that applicant has deposited \$25,000 into an account with the First Union Bank of Georgia for the purpose of meeting the Commission's unencumbered cash requirement. According to the affidavit, which was received on October 3, 1996, the cash is liquid and readily available. It satisfies our criteria for being reasonably liquid and readily available to meet the applicant's needs. The Commission has established two major criteria for determining whether a CPUC should be granted. An applicant who

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.

Applicant provides telecommunications service using leased facilities of other interexchange carriers. Applicant does not have any plans to construct telecommunications facilities.

Applicant has provided information on its managerial and technical staff in Exhibit IV to the application which demonstrates its ability to provide the proposed service.

We will authorize the interLATA and intralATA services to that applicant seeks to provide.

Pursuant to PU Code § 495.7, this Commission is authorized to dispense with the tariffing requirements of §§ 454, 489, and 495 of the PU Code in certain circumstances. Effective January 1, 1997, NDIECs which are neither LECs, competitive local exchange carriers (CLECs) nor affiliates of LECs or CLECs are no longer required to file or maintain tariffs with this Commission. NDIECs which are either LECs, CLECs, or affiliates of LECs and CLECs can only acquire such exemption by separate application. (PU Code § 495.7, D.96-09-098.)

Applicant has represented that it is neither an LEC, nor a CLEC, nor an affiliate of either a LEC or CLEC; therefore, applicant will be exempt from filing tariffs after January 1, 1997. A tariff must be filed for services rendered prior to that date.

Findings of Fact

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

2. A notice of the filing of the application appeared in the Commission's Daily Calendar on July 10, 1996.

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 intra-LATA services effective January 1, 1995, for carriers meeting specified criteria.

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

8. Applicant's managerial and technical experience consists of eight employees with a combined experience of several years in the telecommunications and customer service business.

9. Applicant has submitted with its application a complete draft of applicant's initial tariff which complies with the requirements established by the Commission.

10. Applicant is not an LEC, CLC, or affiliate of an LEC or CLC; therefore, its tariffs will be necessary and effective only through December 31, 1996.

11. 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.

12. 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.

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 §§ 1816-1830 has been granted to other resellers. (See, e.g., D.86-10-007 and D.88-12-076.)

The transfer or encumbrance of property of non-dominant carriers has been exempted from the requirements of PU Code § 8511 whenever such transfer or encumbrance serves to secure debt. (See D.85-11-044).

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 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 3.12% 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, 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

Applicant may not offer interLATA and intraLATA services until

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. Section 495.7 of the Public Utilities Code authorizes this Commission to dispense with the tariffing requirements of Sections 454, 489, 491 and 495 of the Public Utilities Code in certain circumstances.

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

10. By D.96-09-098, NDIECs who are neither LECs, CLCs, affiliates of LECs, nor affiliates of CLCs are exempt from the filing of tariffs beginning January 1, 1997, however, they will be required for services provided between now and that date.

11. 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 Global TeleMedia International, Inc. (applicant) to operate as a reseller of the interLocal Access and Transport Area (LATA) and intraLATA telecommunication service offered by communication common carriers in California.

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

3. a. To provide service between now and January 1, 1997, 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. Applicant shall comply with the provisions in its tariffs.

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 (37 CPUC2d 130 at 158), as modified by D.91-12-013 (42 CPUC2d 220 at 231) and D.92-06-034 (44 CPUC2d 617 at 618):

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 notification 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

10. 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 order having Commission staff travel to applicant's office.

11. Applicant shall file an annual report in compliance with GO 104A, on a calendar-year basis using the information request form developed by the Commission Staff and contained in Attachment A.

12. Applicant shall ensure that its employees comply with the provisions of PU Code § 2882.5 regarding solicitation of customers.

13. 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.

14. The corporate identification number assigned to applicant is U-5705-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.

15. 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.

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

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

18. 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 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 by the date of filing. If applicant is 90 days or more late in filing an annual report or in remitting the fees listed in conclusion of Law 4, Telecommunications Division 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 Telecommunications Division to file or remit late.

20. The application is granted as set forth above.
21. Application 96-06-055 is closed.
This order is effective today.
Dated November 26, 1996, at San Francisco, California.

P. GREGORY CONLON
President
DANIEL WM. FESSLER
JESSIE J. KNIGHT, JR.
JOSIAH L. NEPPER
Commissioners

Commissioner Henry M. Duque, being necessarily absent, did not participate.

16. Applicant is exempt from the provisions of PU Code 22 816-830.

17. Applicant is exempt from PU Code 2 821 for the transfer or encumbrance of property, whenever such transfer or encumbrance serves to secure debt.

18. In response to the applicant's request for waiver, applicant is exempt 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

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)