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Decision 97-02-002 February 5, 1997

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)	
Justice Technology Corp. for a)	Application 96-08-045
Certificate of Public Convenience)	(Filed August 20, 1996)
and Necessity to Provide Local)	
Exchange Services.)	

O P I N I O N

Summary

Justice Technology Corp. (Applicant), a California corporation, seeks a certificate of public convenience and necessity (CPCN) for authority to operate as a competitive local exchange resale 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 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 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.

Summary of Application

Applicant seeks authority to provide local exchange resale services in the service areas of Pacific and GTEC, as authorized by this Commission. Applicant represents that it will comply with all requirements and conditions for CLC services as set forth in D.95-07-054 and consistent with D.95-12-057. Applicant will provide its service by reselling calls routed solely over facilities owned by other certificated carriers. 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 CLC reseller and meets the financial requirements set forth in our adopted rules for a facilities-based CLC. A CLC reseller must demonstrate that it has a minimum of \$25,000 of cash or cash equivalent, reasonably liquid and readily available to meet the firm's start-up expenses as prescribed in Rule 4.B(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.

Applicant filed a motion for a limited protective order for copies of its bank statements stating that they contain confidential information and would do harm to applicant if revealed. No opposition to the motion has been filed. Such statements show applicant to have in excess of \$25,000 in cash available to meet reasonable projected operational costs.

Applicant must also submit proposed tariffs which conform to the consumer protection rules set forth in Appendix B of D.95-07-054.

Applicant's proposed schedule of rates is set forth in its Amendment to the Application of Justice Technology Corp. filed November 20, 1996, 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. In its compliance tariff filing, 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 president, David P. Glickman, is a graduate of the Wharton School of Business and holds a master's degree from UCLA. He has more than one year's experience in the telecommunications industry. Leon J. Richter, applicant's director of operations, is a graduate of Brown University, and has at least one year's experience in the telecommunications industry. Thus, Applicant has the technical expertise and qualifications to conduct its business.

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.

Findings of Fact

1. Applicant filed its application on August 20, 1996, for authority to resell local exchange telecommunications services.
2. A notice of the filing of the application appeared in the Daily Calendar on August 23, 1996.
3. No protests have been filed.
4. A hearing is not required.

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

6. By D.95-07-054, D.95-12-056, 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.

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

8. Applicant's technical experience is demonstrated by the fact that its operations are conducted by persons who have at least 2 years' combined experience in the telecommunications industry.

9. 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.

10. 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.

11. Exemption from the provisions of Public Utilities (PU) Code §§ 816-830 has been granted to other resellers. (See, e.g., D.86-10-007 and D.88-12-076.)

12. 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.)

13. Since no facilities are to be constructed, it can be seen with certainty that the proposed operation will not have a significant effect on the environment.

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.

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);
- d. The current 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-A (PU Code § 739.30; D.96-10-066, pp. 3-4, App. B, Rule

1.C.); set by Resolution T-15987 at 0.0% for 1997, effective February 1, 1997;

- e. The current 2.87% 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-B (D.96-10-066, p. 191, App. B, Rule 6.F.); and
- f. The current 0.41% 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 Teleconnect Fund (D.96-10-066, p. 88, App. B, Rule 8.G.).

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.

9. 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. Applicant should not be exempt from the requirement of maintaining its books according to USOA.

11. Because of the public interest in competitive local exchange 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 Justice Technology Corp. (Applicant) to operate as a reseller of competitive local exchange services, 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. 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, and must include a satisfactory correction of each deficiency listed in Appendix B in this decision. The tariff shall be effective not less than 1 day after tariff approval by Commission's Telecommunications Division. Applicant shall comply with the provisions in its tariffs.

b. 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.

- "(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.

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.

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-5727-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 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 late.

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

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

20. Application 96-08-045 is closed.

This order is effective today.

Dated February 5, 1997, at San Francisco, California.

P. GREGORY CONLON
President
JESSIE J. KNIGHT, JR.
HENRY M. DUQUE
JOSIAH L. NEEPER
RICHARD A. BILAS
Commissioners

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
505 Van Ness Avenue, Room 3251
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 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

Justice Technology Corporation

List of deficiencies in tariffs filed by Justice Technology Corp.
in A.96-08-045

1. You must include sample forms with your compliance filing.
2. Sheet 6-T: Service Area Map has been omitted. Also you must concur in exchange maps of Pacific and/or GTEC.
3. Sheet 16-T: CPUC address for Los Angeles is incomplete. Show the Consumer Affairs Branch and room number.
4. Sheet 16.1-T: Rule 12, New or Optional rates must be submitted to the Commission by Advice Letter on a case-by-case basis. There is no blanket authority for new rates.
5. Sheet 17-T, Liability: You cannot just concur in Pacific Bell's limitations of liability, need to make specific reference to Pacific Bell's Tariff Schedule No., and if so, they need to concur in the limitations of liability tariff for Pacific Bell's end user customers, Tariff Schedule A2, Rule 2.1.
6. Sheet 21-T: Rule 27. Per D.95-12-057, the tariff must be revised to state which provider the company will use to administer the Deaf and Disabled Distribution Program. Also if you intend to charge the deactivate blocking, the charge must be tarified.
7. Attachment No. 1-A: ULTS Income Limitations: Update the limits shown in subsections C and D to reflect those adopted by Resolution T-15829, on February 23, 1996.

(END OF APPENDIX B)