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Decision 97-02-033 February 19, 1997

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application)
of TI Transcommunications, Inc.)
for a Certificate of Public)
Convenience and Necessity)
to Operate as a Reseller of)
Telecommunications Services)
Within California.)

Application 96-07-030
(Filed July 24, 1996)

ORIGINAL

O P I N I O N

TI Transcommunications, Incorporated (applicant), a Tennessee corporation qualified to transact business in California, seeks a certificate of public convenience and necessity (CPCN) under Public Utilities (PU) Code § 1001 to resell interLATA and intraLATA telephone services in California¹ via prepaid and postpaid calling cards. Applicant states that it will not own, construct, or extend any telecommunications facilities in California. Applicant also requests a waiver of Rule 18(b) of the Commission's Rules of Practice and Procedure (Rule) regarding service of its application upon cities and counties.

In circumstances where no construction is proposed, the Commission has routinely granted nondominant interexchange carriers (NDIECs) an exemption from Rule 18(b) to the extent that the rule requires an applicant to serve a copy of its application on cities and counties in the proposed service area. Consistent with this practice, applicant's request for a waiver of Rule 18(b) was

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 the same LATA.

granted by the assigned Administrative Law Judge (ALJ) in a ruling dated September 10, 1996.

By Decision (D.) 84-01-037 (14 CPUC2d 317 (1984)) and later decisions, the Commission authorized interLATA entry generally. However, the authority conferred was limited to interLATA service, and the applicants were subjected to the condition that they not hold themselves out to the public to provide intraLATA service. Subsequently, by D.94-09-065, the Commission 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 to provide resold interexchange telecommunications services. First, applicants must demonstrate that they possess the requisite financial resources. More specifically, applicants for switchless² resale authority must demonstrate that they possess at least \$25,000 in cash or cash equivalent that is reasonably liquid and readily available to meet the firm's start-up expenses; while applicants for facilities-based resale authority (e.g, applicants that will use their own switch in order to resell the services of other carriers) must demonstrate that they possess at least \$100,000 in cash or cash equivalent.³ All applicants must also demonstrate that they have additional

² D.93-05-010 defines a switchless reseller as a nondominant interexchange carrier 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. (29 CPUC2d, 197 at 207.)

³ D.91-10-041, 41 CPUC2d 505 at 520 (1991).

financial resources to cover any deposits required by local exchange companies or interexchange carriers.⁴

Applicant owns a switch but states that it will not use its switch to provide services in California. Applicant thus believes it should be held to the \$25,000 financial-entry requirement for switchless resellers and not the \$100,000 requirement for facilities-based resellers. However, applicant will use at least some of its other facilities to provide services in California, including a calling-card platform,⁵ thus indicating that perhaps the applicant should be held to the higher \$100,000 financial-entry requirement for facilities-based resellers. In any event, since applicant possess at least \$100,000 in cash and cash equivalents, as describe below, whether to apply the financial-entry requirement of \$25,000 or \$100,000 is a moot issue.

To demonstrate that it possesses the requisite financial resources, applicant provided an income statement and a balance sheet with its application.⁶ Applicant subsequently filed a bank statement and an updated income statement in response to a ruling

4 D.93-05-010, 49 CPUC2d 197 at 208 (1993).

5 Applicant uses its calling-card platform to maintain user account information, track user account balances, and to decrement user account balances in accordance with each user's calls.

6 Applicant filed a motion for a protective order for the financial statements included with its application on the basis that they contain confidential information. No opposition to the motion was filed. In a ruling dated August 28, 1996, the Law and Motion Judge ruled that the applicant's financial statements shall remain under seal for a period of one year.

dated September 10, 1996, issued by assigned ALJ Kenney.⁷ Applicant's bank statement shows that as of August 31, 1996, applicant possessed in excess of \$100,000 cash that is reasonably liquid and readily available. Applicant also represented that no deposits are required by an underlying carrier in order for applicant to provide the requested service. Applicant has thus satisfied our criterion that it possess sufficient financial resources that are reasonably liquid and readily available to meet the applicant's needs.

The second major criterion for determining whether a CPCN should be granted is whether the applicant has made a reasonable showing of technical expertise in telecommunications or a related business. To satisfy this criterion, applicant provided the following summary of the work experience and educational background of its key employees:

James Coppinger, President and Chief Executive Officer: Coppinger held positions as an information systems executive in several companies. Coppinger holds a Bachelor's Degree in Computer Science from the University of Tennessee-Chattanooga.

James Clerc, Director - Technical Operations: Clerc was formerly Director of Systems and Programming at U.S. Xpress. Clerc holds a Bachelor's Degree in Computer Science from the University of South Florida.

Dan Backus, Vice President - Sales and Marketing, Trucking Industry: Backus was previously President of Cummins Cash and Information Systems. Backus holds a Bachelor's Degree in Business Administration from Henderson State University.

⁷ Applicant requests that the income statement included with its supplemental financial information be placed under seal. Applicant's request shall be granted for the same reasons the financial statements filed with the application were placed under seal.

James Dunn, Manager - Telecommunications: Dunn served in the U.S. Army where he maintained major telephone switching networks. Dunn also held senior technical positions at large regional telephone interconnect companies in Georgia, Tennessee, and Alabama. Dunn holds a Bachelor's Degree in Electronics from the University of Maryland.

Applicant has satisfied our criterion that it possess sufficient technical expertise to provide the requested telecommunications services.

As an additional check on the applicant's fitness to serve, the ALLPUC file in the STATES library of the Lexis database was searched for the names of the applicant and the key employees listed above. This search found that applicant has received authority to operate in the states of Florida, Illinois, Indiana, and New York. No information was uncovered that might indicate the applicant is unfit to provide public utility service in California.

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

Findings of Fact

1. Applicant served a copy of its application upon 201 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 26, 1996.
3. No protests have been filed.
4. A hearing is not required.
5. Prior Commission decisions 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. D.94-09-065 authorized competitive intraLATA services effective January 1, 1995, for carriers meeting specified criteria.
7. Applicant demonstrated that it has a minimum of \$100,000 of cash that is reasonably liquid and readily available to meet its start-up expenses.

8. Applicant represented that no deposits are required by underlying telecommunications carriers in order for applicant to provide the services it seeks to offer.

9. Applicant demonstrated that its management possesses the requisite technical expertise to provide resold telecommunications services to the public.

10. A search of the ALLPUC file in the STATES library of the Lexis database did not reveal any information that might indicate the applicant is unfit to provide public utility service in California.

11. Applicant states it will not use its switch to provide telecommunications services in California.

12. Applicant submitted a draft of its initial tariff which complies with the requirements established by the Commission, including prohibitions on unreasonable deposit requirements.

13. Applicant represented that no one associated with or employed by applicant was previously associated with an NDIEC that filed for bankruptcy or went out of business.

14. A ruling by the Law and Motion Judge dated August 28, 1996, granted applicant's motion to file under seal the income statement and balance sheet included with its application.

15. Applicant requests that a more recent income statement, submitted in response to a ruling by the assigned ALJ, also be placed under seal.

16. Since applicant does not propose to construct any facilities, it can be seen with certainty that the proposed operation will not have a significant effect upon the environment.

17. The Commission has routinely granted NDIECs an exemption from Rule 18(b) to the extent that the rule requires an applicant to serve a copy of its application on cities and counties in the proposed service area.

18. A ruling by the assigned ALJ dated September 10, 1996, granted applicant's request for a waiver of the Rule 18(b) requirement that it serve its application on all counties and cities in which it proposes to provide service.

19. Exemption from the provisions of PU Code §§ 816-830 has been granted to other resellers. (See, for example, D.86-10-007 and D.88-12-076.)

20. 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.)

Conclusions of Law

1. Applicant meets the financial-entry requirement applicable to resale- and facilities-based resellers of telecommunications services.

2. Applicant has the financial ability to provide the proposed service.

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

4. Public convenience and necessity require the interLATA and intraLATA services to be offered by applicant.

5. 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, 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, p. 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.).
6. Applicant's request to place under seal the updated income statement submitted in response to the assigned ALJ ruling dated September 10, 1996, should be granted.
7. Applicant should be exempted from PU Code §§ 816-830.
8. Applicant should be exempted from PU Code § 851 when the transfer or encumbrance serves to secure debt.
9. The application should be granted to the extent set forth below.
10. 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 TI Transcommunications, Inc. (applicant), to operate as a reseller of interLocal Access and Transport Area (interLATA) and, to the extent authorized by Decision (D.) 94-09-065, intraLocal Access and Transport Area (intraLATA) 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/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):

"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 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 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'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.

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 interLATA service is first rendered to the public within 5 days after service begins and again within 5 days of when intraLATA 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. 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 having Commission staff travel to applicant's office.

10. 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 contained in Attachment A.

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

12. 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.

13. The corporate identification number assigned to applicant is U-5729-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.

14. 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.

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

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

17. Applicant's income statement submitted in response to a ruling by the assigned ALJ shall be placed under seal for a period of one year from the date of this order. This document shall not be made accessible or disclosed to anyone other than Commission staff except upon the further order of the Commission or the ALJ then designated as Law and Motion Judge.

18. 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 Telecommunications Division to file or remit late.

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

20. Application 96-07-030 is closed.

This order is effective today.

Dated February 19, 1997, at San Francisco, California.

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

A.96-07-030 ALJ/TIM/gab

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)