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Decision 97-03-013 March 7, 1997

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
 Hospitality Communications)
 Corporation d/b/a HCC Telemanagement)
 for an authority to operate as a)
 resale provider of local exchange)
 service within the State of)
 California.)

ORIGINAL

Application 96-09-051
(Filed September 23, 1996)

O P I N I O N

Hospitality Communications Corporation d/b/a HCC Telemanagement (applicant) seeks a certificate of public convenience and necessity (CPCN)¹ under Public Utilities (PU) Code § 1001 to permit it to resell local exchange telecommunications service as a competitive local carrier (CLC). By this decision, we grant the authority requested subject to the terms and conditions set forth below.

Background

In Decision (D.) 95-07-054 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 CLCs 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

¹ A competitive local carrier is a common carrier that is issued a CPCN to provide local exchange telecommunications service for a geographic area specified by such carrier.

and GTEC was authorized effective March 31, 1996. Any subsequent filings for CLC CPCN authority after September 1, 1995, were to be treated as applications and processed in the normal course of the Commission's business.

Applicant, a California corporation, filed its application on September 23, 1996. Applicant was previously authorized by the Commission in D.92-07-005 to resell interLATA telecommunications services within California. Applicant now seeks authority to provide local exchange services throughout the service territories of Pacific and GTEC. Applicant states that it will act as a reseller using the switches, facilities, and related services of other certificated carriers. Applicant also states that it will not construct or extend any facilities in order to provide the requested services. There were no protests to the application.

Applicant served on each of its likely competitors a Notice of Availability of its application. However, applicant requests a waiver of Rule 18(b) of the Commission's Rules of Practice and Procedure (Rule) to the extent that the rule requires applicant to serve a copy of its application on the cities and counties in the proposed service area, on the grounds that applicant does not intend to engage in any construction in said cities and counties in connection with the authority sought in the instant application.

To be granted a CPCN, 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. To meet this requirement, applicant provided unaudited financial statements which show that applicant meets the minimum cash requirements of D.95-07-054, and is capable of financing and operating its proposed operations.

Applicants for CLC authority must also submit proposed tariffs which conform to the consumer protection rules set forth in

Appendix B of D.95-07-054. We find that applicant's tariffs properly conform to our rules, except for the list of tariff deficiencies identified in Appendix B to this decision. In its compliance tariff filing, applicant is directed to correct the identified deficiencies as a condition of our granting approval of the tariffs.

CLCs must also conform to the financial responsibility requirements adopted in D.95-12-056. Among these requirements is that customer deposits collected by a CLC must be deposited in a protected, segregated and interest-bearing escrow account subject to Commission oversight.

In addition, applicants for CLC authority are required to make a reasonable showing of technical expertise in telecommunications or a related business. To meet this requirement, applicant submitted the following biographical information on its key employees:

Stan Slaton, President: Mr. Slaton has over 10 years' experience in the telecommunications industry. He graduated from Cal State University Northridge with Bachelor and Masters degrees in Business.

James DeArkland, Treasurer: Mr. DeArkland has 10 years' experience in the telecommunications industry. He will be responsible for business development and operations at HCC.

The experience of applicant's key personnel demonstrates that applicant has the technical expertise and qualifications to conduct its business.

Applicant states that it will not construct any facilities and therefore granting its application will not have an adverse impact upon the environment. We agree with applicant since we previously stated in D.96-02-072, Conclusion of Law 3, that for "CLC resellers [who] do not use any of their own facilities and will not be constructing any facilities of any kind, it can be seen

with certainty that granting their petitions will not have an adverse impact on the environment."

We have reviewed applicant's proposed filing and conclude that applicant is qualified to provide the proposed services. We shall accordingly grant the application subject to the terms and conditions set forth in this order.

In deciding on applicant's request for a waiver of the Rule 18(b) requirement to serve its application on cities and counties in which applicant proposes to provide service, we note again that applicant does not propose to construct any facilities. We have routinely granted requests for waivers of Rule 18(b) under such circumstances, and shall likewise grant applicant's request.

Findings of Fact

1. Applicant filed its application on September 23, 1996, for authority to resell local exchange telecommunications services.
2. Applicant served on telephone corporations with which applicant is likely to compete a Notice of Availability of its application.
3. A notice of the filing of the application appeared in the Daily Calendar on October 4, 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.95-07-054, 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.
8. Applicant has demonstrated that it has a minimum of \$25,000 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 two key employees have a total of more than 20 years of combined experience in the telecommunications industry.

10. Applicant submitted with its application a complete draft of its initial tariff which complies with the requirements established by the Commission, except for the deficiencies identified in Appendix B of this order.

11. Since no facilities are to be constructed, the proposed operation will not have a significant effect upon the environment.

12. 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

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

14. 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 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 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, pp. 3-4, App. B, Rule 1.C.); set by Resolution T-15987 at 0.0% 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.

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 Rulemaking (R.) 96-04-043 shall be subject to sanctions including, but not limited to, revocation of its CLC certificate.

10. Applicant should file revised tariffs that do not contain the deficiencies identified in Finding of Fact 10.

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 Hospitality Communications Corporation d/b/a HCC Telemanagement (U-5235-C) to operate as a reseller of competitive local exchange services, subject to the terms and conditions set forth below.

2. Hospitality Communications Corporation d/b/a HCC Telemanagement (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 to this decision. 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.

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 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 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 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 current corporate identification number assigned to applicant is U-5235-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 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.

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 Commission's 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 the Commission's 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 96-09-051 is closed.

This order is effective today.

Dated March 7, 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
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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
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.

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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 APPENDIX A)

APPENDIX B
HCC Telemanagement

List of Deficiencies in tariffs filed by Hospitality Communications Corporation d/b/a/ HCC Telemanagement in A.96-09-051 to be corrected in Tariff Compliance Filing.

1. Include sample forms in your tariff.
2. Numbering system used in tariffs: The company currently uses 1-T as its IEC tariff. How do you intend to fit that tariff schedule with the 1-T in the proposed tariff? You need to renumber your proposed tariff schedules to fit the numbering system already in use.
3. 1-T, Sheet 41, Blocking Service: You need to revise your proposed tariff to reflect the requirements of Appendix B, Rule 15 which states that "At the customer's request, utility will block the customer's access to "900" and "976" calls. Also if no blocking is available at a particular switch then the company cannot offer the service.
4. 1-T, Sheet 50, ULTS Income Limitations. Please update the limits to reflect those adopted by Resolution T-15829, on February 23, 1996.
5. 1-T, Sheet 53: ULTS service: D.95-09-065 established statewide ULTS rates of \$5.62 for 1FR and \$3.00 for 1MR. Those rates must be shown in your tariff. You may not charge more than those rates.
6. 1-T, Sheet 59: Description of Service indicates that the company will serve business customers only. This contradicts your rate schedule tariff which indicates that the company intends to offer both business and residential service and there is reference to ULTS which is applicable to residential service only. You need to clarify which is correct. Also since rates vary based on customer's location, you need to state those rates separately.
7. 1-T, Sheets 63 & 101: Individual Case Basis (ICB) & Contract arrangements must be submitted by Advice Letter on a case by case basis. There is no blanket authority for ICB arrangements.
8. 1-T, Sheet 65: Modify the language in the proposed tariff from "30 calendar days of the invoice date" to "30 calendar days of presentation date" per Rule 3(A) of Appendix B.
9. 1-T, Sheet 69, Rule 7A, correct typographical error: "by the customer's authorized representative" to "to the customer's authorized representative."
10. 1-T, Sheet 93: The provision that the company will serve all locations within 300 feet of its facilities must be deleted as it is not applicable to resellers.

(END OF APPENDIX B)