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Decision 97-04-064 April 23, 1997

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application by MIDCOM Communications,)
Inc. for a Certificate of Public)
Convenience and Necessity to Operate)
as a Facilities-Based Competitive)
Local Carrier.)

U-5261-C)

ORIGINAL
Application 96-09-024
(Filed September 18, 1996)

O P I N I O N

MIDCOM Communications, Inc. (applicant), seeks authority under the Public Utilities (PU) Code to permit it to provide facilities-based local exchange telecommunications service as a competitive local carrier (CLC).¹ By this decision, we grant authority requested subject to the terms and conditions set forth below.

Background

By Decision (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 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 certificate of public convenience and necessity (CPCN) to provide local exchange telecommunications service for a geographic area specified by such carrier.

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.

Applicant's request for authority to provide facilities-based local exchange service as made on September 18, 1996. Accordingly, the request was docketed as an application.

Applicant is a Washington corporation. Its articles of incorporation and certificate of qualification to do business in California were filed in Application (A.) 91-04-046.

By D.92-03-034 and D.93-04-063, the Commission authorized applicant to provide interLATA and intraLATA intrastate telecommunication services in California. In addition, by D.94-02-072, the Commission granted Adnet Telemanagement, Inc., which later merged with MIDCOM, authority to provide non-facilities-based competitive local exchange service.

In compliance with Rule 18(b), the names and addresses of the entities with which applicant may compete with respect to these services are listed in the service list to the application. A copy of the application and Notices of Availability were mailed to each likely competitor named.

MIDCOM seeks authorization to provide facilities-based local exchange services in California in the service areas of Pacific and GTEC.

Applicant does not plan to construct or extend any existing facilities in California to provide the services for which it now seeks authority, except to the limited extent required to accomplish interconnection with loops and trunks furnished by other carriers. Instead, applicant will provide local exchange services using a combination of existing switching facilities and other facilities that it will acquire by contract or under tariff from other carriers. MIDCOM states that, in the future, it may acquire

other switching facilities for use in providing local exchange services as well as other services.

Because applicant initially will provide its services exclusively through existing facilities, with respect to Rule 18(f), there is no construction for which applicant needs to provide costs at this time. Applicant proposes to provide services at rates competitive with those existing carriers. Applicant must submit proposed tariffs which conform to the consumer protection rules set forth in Appendix B of D.95-07-054.

Applicant's proposed tariffs, pursuant to Rule 18(h), containing its proposed rates and terms and conditions of service, was attached to the application and was amended to comply with a deficiency notice from the Commission's Telecommunications Division. We conclude that applicant's amended tariffs properly conform to Commission rules.

We have reviewed the applicant's request for CPCN and conclude that it qualifies as a facilities-based CLC and meets the financial requirements set forth in our adopted rules for a 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 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.

MIDCOM's financial resources satisfy the financial requirements for facilities-based CLC applicants. MIDCOM submitted audited consolidated balance sheets, dated March 29, 1996, with its application.

MIDCOM seeks to provide local exchange service within the areas defined by the existing areas in which Pacific and GTEC already are authorized to operate. The boundaries of these

exchange areas already are established by maps filed with the Commission by Pacific and GTEC in their local exchange tariffs, and MIDCOM intends initially to adopt those existing exchange boundaries in its tariff for purposes of its local exchange services. Pursuant to Rule 18(c), MIDCOM has provided a map of its proposed service area in its application.

In addition, an applicant is required to make a reasonable showing of technical expertise in telecommunications or a related business. As set out above, MIDCOM has been authorized by the Commission to provide telecommunications service in California for several years. Descriptions of the backgrounds of the MIDCOM management, which demonstrate the extensive telecommunications experience and expertise of MIDCOM's management team, are presented an attachment to the application. Thus, applicant has the technical expertise and qualifications to conduct its business.

California Environmental Quality Act (CEQA) Review

We have also reviewed the application for compliance with CEQA. CEQA requires the Commission to assess the potential environmental impact of a project in order that adverse environmental effects are avoided, alternatives are investigated, and environmental quality is restored or enhanced to the fullest extent possible. To achieve this objective, Rule 17.1 of the Commission's Rules of Practice and Procedure requires the proponent of any project, subject to Commission approval, to submit with the application for approval of such project an environmental assessment which is referred to as a Proponent's Environmental Assessment (PEA). The PEA is used by the Commission to focus on any impacts of the project which may be of concern and to prepare the Commission's Initial Study to determine whether the project would need a Negative Declaration or an Environmental Impact Report (EIR).

Applicant filed its PEA with the application. Applicant's proposed new facilities will be limited to those necessary to accomplish interconnection with loops and trunks furnished by other carriers. Apart from this limited installation, MIDCOM will not construct any new facilities (e.g., fiber optic cable) but will instead lease space in the existing facilities of other providers. MIDCOM will not engage in any construction as part of its proposed facilities-based operations. Accordingly, applicant claims that there is no possibility that authorization of MIDCOM as a facilities-based local exchange carrier will have a significant adverse effect on the environment.

We previously performed a CEQA review for the initial group of 40 facilities-based CLCs which were certified pursuant to D.95-12-057. We consolidated these 40 CLC petitioners into a single comprehensive CEQA review. Based on its assessment of those 40 facilities-based petitioners' filed PEAs, the Commission Staff prepared a draft Negative Declaration and Initial Study generally describing the facilities-based petitioners' project and their potential environmental effects. The Negative Declaration prepared by the Commission Staff was considered a mitigated Negative Declaration. This means that although the initial study identified potentially significant impacts, revisions which mitigate the impacts to a less than significant level were agreed to by the petitioners. (Pub. Res. Code § 21080(c)(2).)

Based upon our Initial Study and the public comments received, we determined that with the inclusion of mitigation measures incorporated in the projects, the proposed projects would not have potentially significant adverse environmental effects. Accordingly, we approved the Negative Declaration as prepared by the Commission Staff including the Staff's proposed Mitigation Monitoring Plan in D.95-12-057.

In order to assure compliance with CEQA for facilities-based CLC applications which were not included in the Negative

Declaration adopted in D.95-12-057, we initiated a second CEQA review on a consolidated basis for those applicants. MIDCOM was included among those applicants covered by our second consolidated CEQA review.

Following a procedure similar to that used for the Negative Declaration approved in D.95-12-057, the Telecommunications Division prepared and circulated a draft Negative Declaration and Initial Study based upon an assessment of the PEAs of MIDCOM and other CLC applicants. Public comments were requested.

All public comments were reviewed and answered. The Commission Staff then finalized the Negative Declaration covering eight facilities-based applications, including this applicant. Comments and responses are attached to the Final Negative Declaration.²

Based upon our Initial Study and the public comments, it has been determined that with the inclusion of mitigation measures incorporated in the projects, the proposed projects will not have potentially significant environmental effects. Accordingly, we shall approve the Negative Declaration as prepared by the Staff including the proposed Mitigation Monitoring Plan (attached to the Final Negative Declaration) which will ensure that the listed Mitigation Measures will be followed and implemented.

We have reviewed applicant's application, as amended, 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.

² The approved Final Negative Declaration covering this applicant is provided as Attachment B to D.97-02-038 which includes MIDCOM.

Findings of Fact

1. Applicant filed its application on September 18, 1996, for authority to offer local exchange telecommunications services.
2. Applicant served a Notice of Availability in lieu of its petition on each carrier holding authority that sought by the application, indicating that copies of the petition would be served at the request of any party receiving the notice.
3. A notice of the filing of the application appeared in the Daily Calendar on September 20, 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 \$100,000 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 descriptions of the background qualifications of MIDCOM executives as contained in the application.
10. Applicant has submitted with its application a complete draft of applicant's initial tariffs which, as amended, comply with the requirements established by the Commission.
11. The Commission staff has conducted an Initial Study of the environmental impact of certain facilities-based CLC applications filed after September 1, 1995, including the MIDCOM application, and prepared a Mitigated Negative Declaration.
12. Commission staff has concluded that with the incorporation of all mitigation measures discussed in the Mitigated

Negative Declaration certification of the CLCs covered therein, including MIDCOM will result in no significant impact on the environment.

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. Application has submitted Amendment No. 1 to its 1995 Form K report and requests an exemption from Rule 18(i) to the extent this information does not satisfy the rule.

15. 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.)

16. 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 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-16017, April 9, 1997);
 - 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 information applicant submitted substantially complies with Rule 18(i) such that no exemption from that rule is needed.

9. MIDCOM is required to carry out any specific mitigation measures outlined in the Negative Declaration applicable to its facilities to be in compliance with CEQA.

10. With the incorporation of the specific mitigation measures outlined in the Negative Declaration, MIDCOM's proposed project will not have potentially significant adverse environmental impacts.

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

12. 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.

13. 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 MIDCOM Communications, Inc. (applicant) to operate as a

facilities-based 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. The tariff shall be effective not less than one day after tariff approval by the 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 CTD. 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 five 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 CTD and contained in Attachment A.

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 having Commission staff travel to applicant's office.

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-5655-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 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.

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 Commission 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 Commission Telecommunications Division to file or remit late.

19. Applicant shall comply with the consumer protection rules contained in Appendix B of D.95-07-054.

20. Applicant shall comply with the Commission's rules for local exchange service competition in California contained in Appendix C of D.95-12-056, including the requirement that CLCs shall place customer deposits in a protected, segregated, interest-bearing escrow account subject to Commission oversight.

21. The Final Negative Declaration including the Mitigation Monitoring Plan prepared by the Commission Staff (see Attachment C to D.97-02-038 which includes MIDCOM) is hereby approved and adopted.

22. The applicant shall comply with the conditions and carry out the mitigation measures outlined in the Negative Declaration.

23. The applicant shall provide the Director of the Telecommunications Division with reports on compliance with the conditions and implementation of mitigation measures under the schedule as outlined in the Negative Declaration.

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

25. Application 96-09-024 is closed.

This order is effective today.

Dated April 23, 1997, at San Francisco, California.

P. GREGÓRY CONLON

President

JESSIE J. KNIGHT, JR.

HENRY M. DUQUE

JOSIAH L. NEEPER

RICHARD A. BILAS

Commissioners

A.96-09-024 ALJ/MAB/gab

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 Competitive Local Carriers in California. 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 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. 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)