

Decision 97-05-015 May 6, 1997

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application)
of Meridian Telecom Corporation)
for a Certificate of Public)
Convenience and Necessity to)
Operate as a reseller of interLATA)
and intraLATA telecommunication)
services within California.)

Application 96-12-003
(Filed December 3, 1996)

ORIGINAL

O P I N I O N

Meridian Telecom Corporation (applicant), a Delaware 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 California.¹ In particular, applicant requests authority to provide long distance, directory assistance, calling card, and prepaid calling card services as a nonfacility-based (switchless) reseller of interexchange services utilizing the network facilities of MCI. Applicant states that it will not construct or extend any facilities in order to provide the requested services.

Applicant also requests a waiver of Rule 18(b) of the Commission's Rules of Practice and Procedure (Rule) to the extent the Rule requires applicant to: (1) serve its application upon cities and counties; and (2) to serve the exhibits of its application on all of its likely competitors. In circumstances

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.

where no construction is proposed, we have routinely granted nondominant interexchange carriers (NDIECs) such as applicant leave to forgo service of their applications upon cities and counties in the proposed service area. Likewise, we have repeatedly granted requests by NDIECs to forgo the service of the exhibits to their applications upon likely competitors.² Consistent with this precedent, we shall grant applicant's request for a partial waiver of Rule 18(b).³

By 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.

² Examples of the Commission having granted NDIECs a waiver of the Rule 18(b) requirement to serve the exhibits to their applications upon all of their competitors include Decisions (D.) 96-04-072, D.93-07-003, and D.92-03-009.

³ Applicant did not submit draft tariffs with its application pursuant to D.96-09-098 which dispensed with tariffing requirements for many NDIECs effective January 1, 1997. Subsequently, in D.96-12-033, the elimination of tariffs for these NDIECs was postponed until July 1, 1997. At the behest of assigned Administrative Law Judge Kenney, applicant submitted draft tariffs on March 6, 1997. Applicant also filed on March 6, 1997, a motion requesting a waiver of the Rule 18(b) requirement to serve its draft tariffs upon its competitors. According to the applicant, its draft tariffs would normally have been an exhibit to its application, and the Commission has routinely granted waivers of the requirement to serve competitors with exhibits to NDIEC applications. We agree with applicant that its draft tariffs are functionally equivalent to an exhibit to an application, and we shall grant applicant's motion for a waiver of the requirement to serve its draft tariffs upon its competitors for the same reasons stated in the body of this order.

The Commission has established two major criteria for determining whether a CPCN should be granted to resellers of interexchange telecommunications services. First, an applicant who is a switchless reseller⁴ 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)) that is reasonably liquid and readily available to meet the firm's start-up expenses. Such applicants must also demonstrate that they have additional financial resources to cover any deposits required by local exchange companies or interexchange carriers (IECs). (D.93-05-010, 49 CPUC2d 197 at 208 (1993).)

To demonstrate its compliance with the first criterion, applicant submitted an income statement and balance sheet with its application. Applicant's balance sheet shows that as of September 30, 1996, applicant possessed in excess of \$25,000 in cash that was reasonably liquid and readily available to meet the firm's start-up expenses. Applicant also represented that in addition to its cash, it had previously posted a deposit with MCI, and that no additional deposit would have to be posted with any other carrier in order to provide service in California. 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.

⁴ D.93-05-010 defines a switchless reseller as an 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; and 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.

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 qualifications of its two key employees:

Stephen Scheerer, President: Scheerer was previously a Marketing Director for Western Union. Scheerer is also a speaker and writer for high-tech presentations, most recently having opened the Voice Processing and Interactive Voice Response Conference at the United Nations.

Lawrence Rabine, Secretary: Since 1973, Rabine has been in the private practice of law with corporate law, business planning, and tax evaluation experience. Rabine received a B.A. from New York University and a J.D. degree from Brooklyn Law School.

As additional evidence of its technical expertise and fitness to serve, applicant represented that none of its employees was previously employed by an NDIEC that went out of business or filed for bankruptcy during the course of such previous employment. Applicant also states that it has received authorization to operate in the states of Iowa, Michigan, Montana, New Jersey, Utah, and Virginia; and that it has interstate and international tariffs on file with the Federal Communications Commission.

As a further check on the applicant's technical qualifications and fitness to provide public utility service, the names of the applicant and each of the two key employees were searched in various files of the Lexis database.⁵ No information was uncovered that would indicate that the applicant or its two key

⁵ The following files of the Lexis database were searched: (1) the ALLNWS file in the NEWS library; (2) the FCC file in the FEDCOM library; and (3) the ALLPUC file in the STATES library.

employees are unqualified or unfit to provide public utility service.

We find that applicant has satisfied our criterion that it possess sufficient technical expertise in telecommunications or a related business. 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 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 December 5, 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. Decision 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 \$25,000 of cash that is reasonably liquid and readily available to meet its start-up expenses.

8. In addition to having at least \$25,000 in readily available cash, applicant represented that it has posted all necessary deposits required by its underlying telecommunications carrier 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. Applicant submitted a draft of its initial tariff which complies with the criteria established by the Commission, including the Commission's prohibition on unreasonable deposit requirements.

11. Applicant represented that no one associated with or employed by applicant was previously employed by an NDIEC that filed for bankruptcy or went out of business during the course of such previous employment.

12. A search of the following files within the Lexis database did not reveal anything to indicate that the applicant or its two key employees is unqualified or unfit to provide public utility service: (a) the ALLNWS file in the NEWS library; (b) the FCC file in the FEDCOM library; and (c) the ALLPUC file in the STATES library.

13. 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.

14. Applicant requests a waiver of Rule 18(b) to the extent that the Rule requires applicant to serve a copy of its application on cities and counties in the proposed service area.

15. Applicant requests a waiver of Rule 18(b) to the extent that the rule Requires applicant to serve a copy of the exhibits to its application, including its draft tariffs, upon its competitors.

16. The Commission has routinely granted NDIECs that do not propose to construct any facilities 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. The Commission has also routinely granted NDIECs a waiver of Rule 18(b) to the extent the Rule requires the applicant to serve a copy of the exhibits to its application upon its competitors.

17. 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.)

18. 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 interLATA and intralATA services to be offered by applicant.
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-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) to the extent the Rule requires applicant to serve its application on cities and counties.

6. Applicant should be exempted from Rule 18(b) to the extent the Rule requires applicant to serve the exhibits to its application, including applicant's draft tariffs, upon its competitors.

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.

ORDER

IT IS ORDERED that:

1. A certificate of public convenience and necessity is granted to Meridian Telecom Corporation (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 five 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 to this Order.

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-5764-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 (Rule) to the extent that the Rule requires applicant to serve a copy of its application on the cities and counties in which it proposes to operate.

18. Applicant is exempted from Rule 18(b) to the extent that the Rule requires applicant to serve a copy of the exhibits to its application, including applicant's draft tariffs, upon its competitors.

19. 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.

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

21. Application 96-12-003 is closed.

This order is effective today.

Dated May 6, 1997, at San Francisco, California.

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

A.96-12-003 ALJ/TIM/sid

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)