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Decision 97-05-026 May 6, 1997

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

In the Matter of the Application of DeltaCom, Inc. d/b/a DeltaCom Long Distance Services for a certificate of public convenience and necessity to operate as a reseller of long distance telecommunications services within the State of California.

**ORIGINAL**  
Application 97-02-001  
(Filed February 3, 1997)

**O P I N I O N**

DeltaCom, Inc. (applicant), an Alabama corporation qualified to do business in California as DeltaCom Long Distance Services, seeks a certificate of public convenience and necessity (CPCN) under Public Utilities (PU) Code § 1001 to permit it to resell interLATA and intraLATA telephone service in California.<sup>1</sup>

By Decision (D.) 84-01-037 (14 CPUC2d 317 (1984)) and later decisions, we authorized interLATA entry generally. However, we limited the authority conferred to interLATA service; and we subjected the applicants to the condition that they not hold themselves out to the public to provide intraLATA service. Subsequently, by D.94-09-065, we 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. An applicant who is a switchless reseller<sup>2</sup> must demonstrate

<sup>1</sup> 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 a single LATA.

<sup>2</sup> D.93-05-010 defines a switchless reseller as a nondominant interexchange carrier (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 a local exchange carrier

*Footnote continued on next page*

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)), reasonably liquid and readily available to meet the firm's start-up expenses. Such applicants shall also document any deposits required by LECs or interexchange carriers (IECs) and demonstrate that they have additional resources to cover all such deposits. (D.93-05-010, 49 CPUC2d 197 at 208 (1993).) In addition, an applicant is required to make a reasonable showing of technical expertise in telecommunications or a related business.

Applicant filed a motion for a limited protective order for its financial statement, consisting of a balance sheet and income statement, citing that it contains confidential information and would do harm to applicant if revealed. No opposition to the motion has been filed. This motion was subsequently granted on March 7, 1997, pursuant to an Administrative Law Judge's (ALJ) ruling.

Applicant's balance sheet and income statement demonstrates that applicant has more than the \$25,000 minimal cash requirement readily available for its proposed operations. This satisfies our financial criteria for being reasonably liquid and readily available to meet applicant's needs as a switchless reseller.

Applicant has provided information on its four key officers indicating their technical experience in the telecommunications field, as detailed in Exhibit E to the application. These key officers are President and Director Foster O. McDonald, Secretary and General Counsel Tom Mullis, Vice President of Network Operations David L. Hill, and Chief Financial Officer Sara Plunkett.

Applicant possesses the necessary financial and technical expertise to operate as a switchless nondominant telecommunications carrier. We will authorize the interLATA and intraLATA telecommunications services that applicant seeks to provide.

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(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. The decision also notes 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.

**Findings of Fact**

1. Applicant served a copy of the application upon 330 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 February 4, 1997.
3. No protests have been filed.
4. Since there was no opposition to applicant's motion for confidentiality of its financial documents, the motion was granted, pursuant to a March 7, 1997 ALJ's ruling
5. A hearing is not required.
6. By prior Commission decisions, we authorized competition in providing interLATA telecommunications service but generally barred offering such service from holding out to the public the provision of intraLATA service.
7. By D.94-09-065, we authorized competitive intraLATA services effective January 1, 1995, for carriers meeting specified criteria.
8. Applicant has demonstrated that it has a minimum of \$25,000 of cash reasonably liquid and readily available to meet its start-up expenses.
9. Applicant's technical experience consists of four key officers with a combined experience of over 28 years in the telecommunications field.
10. Applicant has represented that it is not required to post any deposit with the underlying carriers it will use to provide its proposed switchless reseller telecommunications services.
11. Applicant has 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.
12. Since no facilities are to be constructed, it can be seen with certainty that the proposed operation will not have a significant effect upon the environment.
13. The Commission has routinely granted NDIECs, 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. 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.)

15. 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 business.
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)'s requirement of service of the application on cities and counties in the proposed service area and service of all exhibits attached to this application on potential competitors.
6. Applicant should be exempted from PU Code §§ 816-830.
7. Applicant should be exempted from PU Code § 851 when the transfer or encumbrance serves to secure debt.
8. The application should be granted to the extent set forth below.
9. 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 (CPCN) is granted to DeltaCom, 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. Applicant shall be subject to the fees and surcharges set forth in Conclusion of Law 4.
4. 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.

5. Applicant shall notify this Commission in writing of the date interLATA service is first rendered to the public within five days after service begins and again within five days of when intraLATA service begins.

6. 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.

7. 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.

8. Applicant shall file an annual report, in compliance with GO 104-A, on a calendar-year basis using the information request form developed by the Commission Staff and contained in Appendix A.

9. Applicant shall ensure that its employees comply with the provisions of PU Code § 2889.5 regarding solicitation of customers.

10. The certificate granted and the authority to render service will expire if not exercised within 12 months after the effective date of this order.

11. The corporate identification number assigned to applicant is U-5760-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.

12. 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.

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

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

15. If applicant is 90 days or more late in filing an annual report or in remitting the fees listed in Conclusion of Law 4, 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.

16. Applicant's financial documents placed under seal pursuant to a March 7, 1997, Administrative Law Judge's ruling shall remain under seal for one year from today unless applicant makes a timely request for extension of confidential treatment with good cause shown.

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

18. Application 97-02-001 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

**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 31<sup>st</sup> 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.



**APPENDIX 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 APPENDIX A)**