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ORIGINAL

Decision 97-05-082 May 21, 1997

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)	
CITIZENS TELECOMMUNICATIONS COMPANY)	
dba CITIZENS LONG DISTANCE COMPANY)	Application 96-10-021
(U 5429 C) for Expansion of its)	(Filed October 9, 1996)
Current Authority to Provide)	
Competitive Local Exchange Services.)	

O P I N I O N

On October 9, 1996, Citizens Telecommunications Company (U 5429 C) (CTC), doing business as Citizens Long Distance Company, filed an application for expansion of its current certificate of public convenience and necessity (CPCN) seeking authority to provide competitive local exchange services in the state of California. CTC is currently authorized to provide intrastate interLATA and intraLATA services in California.¹ CTC seeks authority to resell the services of other local exchange carriers (LECs) and to provide facilities-based competitive local exchange services in the future, to the full extent authorized in Rulemaking (R.) 95-04-043/Investigation (I.) 95-04-044.

By this decision, we grant the authority requested.

II. Background

By D.95-07-054 (R.95-04-043/I.95-04-044), we established initial procedures for the filing for CPCN authority to offer competitive local exchange service within the service territories

¹ In Decision (D.) 94-11-070, CTC was granted a CPCN to provide statewide interLATA services. D.95-09-001 expanded CTC's authority to provide intraLATA services.

of Pacific Bell (Pacific) and GTE California Incorporated (GTEC). Prospective competitive local carriers (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 and GTEC was authorized effective March 31, 1996. Any filings for CLC CPCN authority made after September 1, 1995, were to be treated as routine applications for certification authority and processed individually.

III. Overview of Application

CTC is a Delaware corporation with its principal office at Stamford, Connecticut, and an operating office at Elk Grove, California. CTC is a wholly owned subsidiary of Citizens Utilities Company, a Delaware corporation with its principal office in Stamford, Connecticut. Citizens Utilities Company is comprised of approximately 40 divisions and subsidiaries providing electric, gas, water and wastewater, and telecommunications services throughout the United States. Citizens Utilities Company, through its various telecommunications subsidiaries, provides local exchange services in 13 states, long distance services in over 40 states, and competitive local services in four states.

CTC seeks authority to provide both resale and facilities-based local exchange services in California. CTC will only provide resale service when first entering the local exchange market in California. However, CTC also plans to build facilities in the future and, therefore, additionally seeks authority from this Commission to provide facilities-based local exchange services.

As a reseller of competitive local exchange services, CTC intends to initially offer local exchange service in the Pacific and GTEC exchange areas as provided in D.95-07-054. Among the services CTC intends to offer on a resale basis are: business measured rate service (local area and private branch exchange (PBX) services); local usage (local and Zone Use Measurement (ZUM));² extended area service (EAS);³ custom calling features (including call forwarding, call waiting, speed calling, busy number redial, information services (900 number) blocking, and Caller ID (with selective blocking))⁴ Centrex; private line services; operator services; customer-owned pay telephone; directory assistance; and Integrated Services Digital Network (ISDN). In addition, CTC will offer customers various combinations or packages of these services.

IV. California Environmental Quality Act (CEQA) Review

We have reviewed the CTC application for compliance with CEQA. CEQA requires the Commission as the designated lead agency to assess the potential environmental impact of a project in order that adverse 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

² ZUM will be offered only where offered by the underlying carrier.

³ EAS will be offered only where offered by the underlying carrier.

⁴ CTC will provide customer notification and education regarding the privacy concerns with Caller ID pursuant to the Competitive Local Carrier Customer Notification and Education Rules adopted by this Commission in D.96-04-049.

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.

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 petitioner-filed PEAs, the Commission's Staff prepared a draft Negative Declaration and Initial Study generally describing the facilities-based petitioners' projects and their potential environmental effects. The Negative Declaration prepared by the Commission's Staff was considered a Mitigated Negative Declaration (MND). 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 environmental effects. Accordingly, we approved the MND, including the Commission's Staff's proposed Mitigation Monitoring Plan, in D.95-12-057.

Following the adoption of D.95-12-057, the Commission processed subsequent MNDs for additional applications for facilities-based services. CTC argued that the Commission should approve its application without requiring any additional environmental assessment beyond that already conducted by the Commission in conjunction with the adoption of the MND in D.95-12-057. CTC, therefore, requested Commission approval of its

application subject only to CTC's compliance with the provisions of the MND adopted in D.95-12-057. Prior to the time that CTC would commence construction of its own facilities in California, CTC offered to notify the Commission of its intent and agrees to comply fully with the mitigation measures in the MND adopted by D.95-12-057.

We deny CTC's request. Consistent with our treatment of past facilities-based CLC applicants, we conclude that a separate MND must be adopted for CTC to comply with CEQA. We affirm the Commission's staff's decision to therefore consolidate a total of nine applicants for CLC facilities-based authority, including CTC, and prepare a single MND covering all nine applicants. This MND was the fourth in the series of CLC CPCNs which began with D.95-12-057. The MND was finalized on February 18, 1997. This MND was previously approved by the Commission in D.97-04-011 in connection with granting of CPCN authority to Covad Communications Company. A copy of the approved MND shall be mailed to the applicant along with this decision. With the incorporation of the specific mitigation measures required in the MND, CTC's proposed project will not have potentially significant adverse environmental impacts.

V. Financial and Technical Entry Requirements

The Commission adopted minimum financial requirements for competitive CLCs in D.95-07-054 (Rule 4.B(2)). This decision requires demonstration of a minimum \$25,000 financial requirement for applicants seeking CPCNs for resale-based authority and \$100,000 for facilities-based authority as CLCs.

As a demonstration of its possession of and/or its access to funds meeting the \$100,000 minimum financial requirement, CTC attached the most recent Annual Report of its parent company, Citizens Utilities Company, and Forms 10K and 10Q. As can be seen

from its financial statements (Exhibit G), CTC possesses the Commission-adopted minimum financial requirement of \$100,000 for facilities-based CLC CPCN applicants.

Applicant considers its estimated results of operations and projected customer base to be confidential and proprietary. Applicant therefore filed, concurrently with its application, a motion for limited protective order with respect to Exhibits F and J, and submitted these exhibits to the Commission under seal. A ruling granting this motion was issued November 13, 1996.

CLCs must also conform to the following financial requirements adopted in D.95-12-056. CLCs with no prior established credit record that order interconnection service from an incumbent LEC must also pay a deposit equal to an estimated two months of recurring flat-rated or usage-based interconnection charges based on the number and type of interconnection facilities ordered from the LEC. Customer deposits collected by a CLC must be deposited in a protected, segregated interest-bearing escrow account subject to Commission oversight.

CTC demonstrated its technical expertise to provide the services for which authority is requested by attaching Exhibit B, a sample tariff applicable to its proposed competitive local services.

On November 18, 1996, the Commission staff notified applicant regarding deficiencies in its filed tariffs. Applicant subsequently submitted tariff corrections in response to the deficiency letter. While applicant's corrections resolve most of the deficiencies, certain tariff deficiencies still remain as identified in Attachment B of this order. We shall therefore grant conditional approval of the application contingent on the filing of compliance tariffs which correct the deficiencies identified in Attachment B.

As further evidence of technical expertise, CTC attached summary biographies of its key management personnel (Exhibit C)

describing their respective backgrounds and expertise in the telecommunications industry.

We have reviewed applicant's proposed filing and conclude that, subject to correction of deficiencies identified in Attachment B, the filing conforms to the adopted Commission rules including the Consumer Protection Rules set forth in Appendix B of D.95-07-054. We conclude the applicant satisfies the Commission's requirements for certification as a reseller and facilities-based CLC subject to the terms and conditions set forth in the order below. Accordingly, we shall grant the application, as ordered below.

Findings of Fact

1. Applicant filed its application on October 9, 1996.
2. Applicant served a Notice of Availability in lieu of its application on entities with which it is likely to compete, 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 October 17, 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, and D.96-02-072 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 Exhibit C which provides summary biographies of its key management personnel.

10. Applicant has submitted with its application a complete draft of applicant's initial tariff which generally complies with the requirements established by the Commission, subject to correction of deficiencies identified in Attachment B.

11. 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.

12. 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.

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% 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. CTC must agree to, and is required to carry out, the specific mitigation measures outlined in the Negative Declaration in Attachment C to be in compliance with CEQA.

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

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

11. 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.

12. Because of the public interest in competitive local exchange services, the following order should be effective immediately.

ORDER

IT IS ORDERED that:

1. Authority is granted to Citizens Telecommunications Company (applicant) for an expansion of its current certificate of public convenience and necessity to permit it to operate as a reseller and as a facilities-based provider of competitive local exchange telecommunications services.

2. Applicant shall file a written acceptance of the certificate authority granted in this proceeding.

3. a. Applicant is authorized to file with this Commission a tariff schedule for the provision of competitive local exchange services. Applicant may not offer such 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 shall be effective not less than 1 day after approval by the Telecommunications Division. Applicant shall comply with the provisions in its tariffs. Applicant's filed tariffs shall correct the deficiencies set forth in Attachment B.

b. Applicant is a competitive local carrier (CLC) and nondominant interexchange carrier (NDIEC). The effectiveness of its future tariffs is subject to the schedules set forth in Ordering Paragraph 5 of Decision (D.) 90-08-032 (37 CPUC2d 130 at 158), as modified by D.91-12-013 (42 CPUC2d 220 at 231), D.92-06-034 (44 CPUC2d 617 at 618), and D.95-07-054:

"5. All NDIECs and CLCs 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. Customer notification is not required for CLC rate decreases.
- "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 local exchange resale service is first rendered to the public within five days after service begins, and again within five days of when facilities-based 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 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 corporate identification number previously assigned to applicant is U-5429-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, reflecting its expanded authority, 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 in and to the extent that the rule requires applicant to serve a copy of all exhibits attached to its application on potential competitors.

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, 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 Telecommunications Division to file or remit late.

18. The Final Negative Declaration including the Mitigation Monitoring Plan, previously approved in D.97-04-011, is hereby incorporated by reference and adopted with respect to CTC. A copy shall be mailed to applicant along with this decision.

19. CTC shall comply with the conditions and carry out the mitigation measures outlined in the Negative Declaration.

20. CTC shall provide the Director of the Commission's Energy Division with reports on compliance with the conditions and implementation of mitigation measures under the schedule as outlined in the Negative Declaration.

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

22. Application 96-10-021 is closed.

This order is effective today.

Dated May 21, 1997, at Sacramento, California.

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

A.96-10-021 ALJ/TRP/bwg

TO: ALL COMPETITIVE LOCAL CARRIERS AND 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 Competitive Local Carriers and 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. 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)

ATTACHMENT B

List of remaining deficiencies in Citizens Telecommunications Company's corrected tariff filing in A.96-10-021.

1. Sheet numbering system used in tariff. Corrections made to the draft tariff are reflected by revised tariff sheet canceling the Original sheet. Need to change all revised tariff sheet numbers back to Original sheet numbers in the company's Compliance Tariff filing.
2. A review of your tariff indicates concurrence to Pacific Bell's terms and conditions for particular services and the company shows only the actual rates. The company cannot just concur in Pacific Bell's terms and conditions. Those terms and conditions must be described in Citizens' tariff.
3. Sheet No. 2: Individual Case Basis: Individual Case Basis (ICB) Arrangements must be submitted by Advice Letter on a case by case basis. There is no blanket authority for ICB arrangements. Similarly contracts are subject to G.O. 96-A rules and must also be approved by Advice Letter filing.
3. Need to add definition of NRC under Abbreviations listed on sheet 4.
4. Sheet 201 is missing from the filing.
5. Sheet 223, Rule 6.A(2a) regarding credit establishment does not accurately reflect D.95-07-054, Appendix B, Rule 4(C) which states that a CLC cannot refuse a deposit to establish credit for service. Also the paragraph is not consistent with Rule 5, in Appendix B, which states that in the event the customer fails to establish satisfactory credit history, the company may require deposits as a form of security to ensure payment of bills.
6. Sheet 282, Rule 33: individual promotions must be tariffed.
7. Sheet 282.1, Rule 33.B(A): Need to specify if there is a time limit for the 5.0% discounted service offering for monthly long distance bill.
8. Sheet 284: Sample form on Deposit Request needs to accurately reflect D.95-07-054, Appendix B, Rule 5. The company does not have the authority to collect additional deposits from a customer who has unpaid bill with another company.

(END OF ATTACHMENT B)