

Decision 97-06-087 June 25, 1997

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of Ameritech Communications International, Inc. for a Certificate of Public Convenience and Necessity to Offer Local Telecommunications Services to the Public in the State of California.

Application 97-02-010
(Filed February 2, 1997)**ORIGINAL****O P I N I O N**

Ameritech Communications International, Inc. (applicant), a Delaware corporation authorized to do business in California, seeks a certificate of public convenience and necessity (CPCN) under Public Utilities (PU) Code § 1001 to permit it to resell local exchange service as a competitive local carrier¹ (CLC) within the prescribed service territories of Pacific Bell (Pacific) and GTE California (GTEC) subject to the rules adopted in Rulemaking (R.) 95-04-043.² Applicant previously received authority to resell inter-Local Access and Transport Area (LATA) and intraLATA services in Decision (D.) 96-10-014.

By D.95-07-054 in R.95-04-043, we established initial procedures for obtaining authority to offer competitive local exchange service within the service territories of Pacific and GTEC. Prospective CLCs that filed petitions by September 1, 1995, seeking CPCN authority to enter the local exchange market, and which otherwise met our eligibility requirements, were authorized to offer facilities-based local exchange service effective January 1, 1996. Otherwise-eligible CLCs that filed petitions by September 1,

¹ A competitive local carrier is a common carrier that is issued a certificate of public convenience and necessity to provide local exchange telecommunications service for a geographic area specified by such carrier.

² R.95-04-043 is combined with Investigation (I.) 95-04-044. Hereinafter, references to R.95-04-043 are to these combined dockets.

1995, were authorized to offer bundled, resold local exchange purchased from Pacific or GTEC effective March 31, 1996. All subsequent filings by CLCs for authority to offer local exchange services were to be treated as applications and processed in the normal course of the Commission's business.

We have reviewed applicant's filing and conclude that applicant—which is a wholly-owned subsidiary of Ameritech Communications, Inc., which is in turn a wholly-owned subsidiary of Ameritech Corporation, one of the Regional Bell Operating Companies—has met the financial requirements set forth in our adopted rules for CLC entry. Under Rule 4.B(2) of D.95-07-054, a CLC reseller must demonstrate that it has a minimum of \$25,000 in cash or cash equivalents, reasonably liquid and readily available to meet the firm's start-up expenses. CLCs must also conform to two additional financial requirements adopted in D.95-12-056. First, CLCs with no prior established credit record that order interconnection service from an incumbent local exchange carrier (LEC) must 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. Second, customer deposits collected by a CLC must be deposited in a protected, segregated interest-bearing escrow account subject to Commission oversight.

As part of its application, applicant has provided a copy of an irrevocable standby letter of credit, good until January 25, 1998, that is drawn on the account of Ameritech Corporation. This letter of credit satisfies our criteria that an applicant has \$25,000 in cash or cash equivalents, reasonably liquid and readily available to meet the applicant's needs.

CLC applicants must also submit proposed tariffs that conform to the consumer protection rules set forth in Appendix B of D.95-07-054. We have reviewed applicant's proposed tariff filing and conclude that, except for the deficiencies noted in Attachment B to this decision, applicant conforms to our adopted rules, including the Consumer Protection Rules set forth in Appendix B of D.95-07-054.

CLC applicants must also demonstrate that they have technical expertise in telecommunications or a related business. To meet this requirement, Ameritech has set

forth the experience of its corporate officers, who are the same officers described in D.96-10-014. As stated in that decision, these officers together have over 60 years of relevant experience in the telecommunications business.

Pursuant to General Order (GO) 66-C, Ameritech has filed a motion to place Exhibit C to its application under seal. This exhibit sets forth a forecast of the number of customers expected after applicant's first and fifth years of operations as a CLC. Ameritech states that Exhibit C contains commercially-sensitive and competitively-significant data, the disclosure of which would harm applicant because "competitors would find it of great economic value in determining their own business plans," and could use the information "to structure their plans in such a way [as] to undercut Ameritech's competitive position." No opposition to the motion has been filed, and other such motions by CLC applicants have been granted with respect to their customer projections. Accordingly, we will grant applicant's GO 66-C motion with respect to Exhibit C and direct that this exhibit remain under seal for a period of one year from the date of this decision. If applicant believes the projections should remain under seal after that time, it is free to renew its GO 66-C motion.

As noted above, we have concluded that, except for the deficiencies noted in Attachment B to this decision, Ameritech's filing conforms to our adopted rules for CLCs, including the Consumer Protection Rules set forth in Appendix B of D.95-07-054. Subject to correcting the deficiencies noted in Attachment B, the instant application is approved as set forth below.

Findings of Fact

1. On February 3, 1997, applicant filed its application for authority to resell local exchange services as a CLC in the service territories of Pacific and GTEC.
2. Applicant served a copy of the application on 74 companies certificated as CLCs in California.
3. Applicant was previously granted authority to provide interLATA and intraLATA services in D.96-10-014.

4. A notice of the filing of the application appeared in the Commission's Daily Calendar on February 13, 1997.

5. No protests have been filed.

6. A hearing is not required.

7. By prior Commission decisions, we authorized competition in providing local exchange telecommunications service within the service territories of Pacific and GTEC.

8. By D.95-07-054, D.95-12-056, D.96-02-072, and D.96-03-020, we authorized CLCs to offer facilities-based local exchange service effective January 1, 1996, and bundled, resold local exchange service purchased from Pacific or GTEC effective March 31, 1996.

9. Applicant has demonstrated that it has a minimum of \$25,000 in cash or cash equivalents reasonably liquid and readily available to meet its start-up expenses.

10. Applicant's technical expertise is demonstrated by the experience of its principal officers, as set forth in the application and in D.96-10-014.

11. Applicant has submitted with its application a draft of an initial tariff which, except for the deficiencies identified in Attachment B of this order, complies with the requirements established by the Commission.

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. Where no construction is involved, the Commission has routinely granted nondominant telecommunications carriers such as applicant an exemption from Rule 18(b), to the extent that the rule requires applicant to serve a copy of its application on all cities and counties in the proposed service area, and to the extent that it requires applicant to provide to potential competitors, a conformed copy of all exhibits attached to the filed application.

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.

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 Services and Communications 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 1997-1998 fiscal year (Resolution M-4786);
 - 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 all cities and counties in the proposed service area, and of the requirement that all exhibits attached to the application be served 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. Applicant's motion to file under seal, pursuant to G.O. 66-C, the customer projections as set forth in Exhibit C to the application, should be granted to the extent set forth below.
9. Any competitive local carrier that 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 certificate.
10. Because of the public interest in competitive local exchange services, the following order should be effective immediately.
11. The application should be granted to the extent set forth in the order below.

O R D E R

IT IS ORDERED that:

1. A certificate of public convenience and necessity is granted to Ameritech Communications International, Inc. (applicant) to operate as a reseller of 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, and must include a correction acceptable to the Commission's Telecommunications Division of each deficiency listed in Attachment B to this decision. The tariff shall be effective not less than one day after tariff approval by the Commission's 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, as follows:

"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 the 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 the purposes of resolving consumer complaints and the corresponding telephone number. This information shall be updated at least annually, and whenever the name or telephone number of the contact person(s) changes.

7. Within five days after applicant first renders local exchange service to the public, applicant shall notify this Commission of that fact in writing.

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's auditing and compliance 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 assigned to applicant for its competitive local exchange service is U-5688-C, which is the same number applicant was assigned for its inter- and intraLocal Access and Transport Area service previously authorized. That identification number shall be included in the caption of all original filings with this Commission, and in the titles of other pleadings filed in existing cases.

13. Within 60 days of the effective date of this order, applicant shall comply with PU Code § 708, Employee Identification Cards, and notify the Director of the Telecommunications Division in writing of its compliance.

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

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

16. Applicant is exempted from Rule 18(b) of the Commission's Rules of Practice and Procedure to the extent that the rule requires applicant to serve a copy of its application

on the cities and counties it proposes to operate 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 the 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 the Telecommunications Division to file or remit late.

18. Applicant shall comply with the customer notification and education rules adopted in D.96-04-049 regarding passage of calling party number.

19. Applicant's motion to place under seal, pursuant to GO 66-C, the customer projections set forth in Exhibit C to the application, is granted. Said exhibit shall remain under seal for a period of one year from the date of this decision.

20. The applicant is granted as set forth above.

21. Application 97-02-010 is closed.

This order is effective today.

Dated June 25, 1997, at San Francisco, California.

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

A.97-02-010 ALJ/MCK/wav

TO: ALL COMPETITIVE LOCAL CARRIERS

Article 5 of the Public Utilities Code grants authority to the California Public Utilities Commission to require all public utilities doing business in California to file reports as specified by the Commission on the utilities' California operations.

A specific annual report form has not yet been prescribed for the California competitive local carriers. 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.

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)

ATTACHMENT B
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List of Deficiencies in Tariffs Filed by Ameritech Communications International, Inc. in A. 97-02-010 to be corrected in Tariff Compliance Filing.

1. Title Sheet: indicate that the company intends to provide resale service.
2. Sheet 3-T: Service Area Map must be provided. [has been omitted.] Applicant must also include exchange maps or concur in the exchange maps of Pacific and/or GTEC.
3. Sheet 5-T: Preliminary statement should include symbols which conform with General Order (G.O.) 96-A.
4. Sheet 26-T: Define Private and Semi Private listing.
5. Sheet 31-T, Customer Application for Service: The tariff must state if the agreement is oral, the CLC will, within 10 days of initiating the service order, provide a confirmation letter setting forth a brief description of the services and itemizing all charges which will appear on the customer's bill.
6. Sheet 32-T, Rule 4: This must include all of the information set forth in Special Information Required on Forms, as shown in Rule 3 of Appendix B in D. 95-07-054. As to Rule 7 (Notices), the customer's verbal notice may be by telephone; under rule 6 of Appendix B of D. 95-07-054, it does not have to be in person at the company's business office. Further, under rule 6 of Appendix B, customers cannot be required to give written notice of cancellation of service.
7. Sheet 33-T: If the company wants to include an account set-up charge, the charge must be tariffed. In item 6 of Rule 8, the statement relating to recovery of costs must be replaced with the following language: "The nonprevailing party may be liable for reasonable court costs and attorney fees as determined by the CPUC or by the court."
8. Sheet 34-T, Rule 9, Disputed Bills: Applicant cannot limit customers to 30 days to report billing disputes, or to 60 days to initiate a billing dispute; the minimum is 2 years. Rule 10 must be amended to reflect the fact that customers cannot be required to give written notice to disconnect service. Further, the minimum service period provided for in Rule 10 violates customer's right to give notice of discontinuance on or before the date of disconnection.

ATTACHMENT B

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9. Sheet 35-T: Under the heading "Cancellation of Credit", use the same language that appears under this heading on Sheet 41-T.
10. Sheet 37-T, Rule 15: Liability and all other sections in the tariff relating to limitations of liability and claims must be replaced with the tariff language of Pacific Bell or GTEC, as found in Appendices B and C to D. 95-12-057.
11. Sheet 39-T, Rule 17(1): Customers cannot be required to complete a service application, because rule 2 of Appendix B of D. 95-07-054 provides that service may be initiated based on written or oral agreement between the CLC and the customer.
12. Per D. 95-12-057, the company's tariffs must be amended to state which provider the company will use to administer the Deaf and Disabled Program.
13. Include all sample forms in the company's compliance filing.
14. Include information on Change of Service Provider per Appendix B, Rule 11.

(END OF ATTACHMENT B)