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Decision 97-06-099 June 25, 1997

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

In the Matter of the Application of Empire One Telecommunications, Inc. for a Certificate of Public Convenience and Necessity to Provide Competitive Local Exchange Service Within the State of California.

Application 97-03-055  
(Filed March 28, 1997)

**ORIGINAL**

**O P I N I O N**

**I. Background**

On March 28, 1997, Empire One Telecommunications, Inc. (U 5725 C) (Empire or applicant) 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. Empire is currently authorized to provide intrastate interLATA and intraLATA services within the state.<sup>1</sup> Empire seeks authority to resell the services of other local exchange carriers (LECs), to the full extent authorized in Rulemaking (R.) 95-04-043/Investigation (I.) 95-04-044. By this decision, we grant the authority requested

By D.95-07-054 (R.95-04-043/I.95-04-044), we established initial procedures for filing for CPCN authority to offer competitive local exchange within the service territories of Pacific Bell (Pacific) and GTE California Incorporated (GTEC). Prospective competitive local carriers (CLCs) who filed petitions by September 1, 1995, for authority to enter the local exchange market and otherwise met eligibility requirements were permitted 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

<sup>1</sup> Empire was granted the CPCN in Decision (D.) 97-02-031 (February 19, 1997).

September 1, 1995, were to be treated as routine applications for certification authority and processed individually.

## **II. Overview of Application**

Empire is a New York corporation, qualified to do business in California. It seeks to operate in California as a local service provider that can also provide intrastate long distance calling to business and residential customers. Applicant's service will include residential and business "plain old telephone service," private branch exchange trunks, Centrex and ancillary services. While its marketing is focused primarily on business customers, applicant will offer its services 24 hours per day, seven days a week to all classes of customers.

Empire also seeks partial exemption from Rule 18(b) of the Commission's Rules of Practice and Procedure to the extent that this rule requires the service of this application on cities and counties in the proposed service area.

The California Environmental Quality Act 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. Applicant declares that it does not have any plans to construct telecommunications routes in California. Since applicant will not be constructing any facilities for the purpose of providing local exchange services, it can be seen with certainty that there is no possibility that grant of this application will have an adverse impact upon the environment.

## **III. 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 of \$25,000 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 \$25,000 minimum financial requirement, Empire attached an unaudited profit and loss statement from January through August 1996 and an unaudited balance sheet as of

July 19, 1996. This indicates that applicant has more than \$25,000 in satisfaction of our financial requirement for resale providers of competitive local exchange service.

CLCs must also conform to the following financial requirements adopted in D.95-12-056. CLCs without a 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 contingent 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.

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

We have reviewed applicant's proposed CLC filing 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, except for the deficiencies noted in Attachment B of this decision. On April 30, 1997, the Commission staff notified applicant regarding these deficiencies in its filed tariffs. In its compliance tariff filing, applicant is directed to correct the identified deficiencies as a condition of our granting approval of the tariffs.

As further evidence of technical expertise, Empire has provided information on its key management personnel indicating their education and experience. It can be summarized as follows:

- a. Empire's president and director, Paul A. Butler, joined Metromedia Communications in 1990, and rose to the level of senior account executive within nine months. He concentrated solely on the long distance market and was inducted into Metromedia's President's Sales Club for his accomplishments. He then moved to U.S. Fibercom and became one of the company's highest volume sales representatives. Mr. Butler received a Bachelor of Arts (BA) degree in political science from the State University of New York at Albany.
- b. Empire's chairman of the board and chief executive officer, John K. Friedman, is a former associate director of the Columbia Institute for Tele-Information at Columbia University's Graduate School of

Business. In addition, he served as chief operating and chief financial officer of the Institute. He was also an active researcher at the Institute, concentrating on wireless systems, electronic banking, digital commerce and the economics of global telecommunications deregulation. He holds a BA degree in political science from the State University of New York at Albany and a Juris Doctor degree from the Cardozo School of Law of Yeshiva University. He is admitted to the New York State Bar.

- c. Empire's executive vice president and director, Bradley D. Lewis, has experience in sales, yield assessment analysis, tactical account strategies and international trade issues. He graduated from the University of Rochester with a degree in psychology and a certificate in personnel management from the William B. Simon Graduate School of Business Administration, with a concentration in finance, from Fordham University.

We conclude the applicant satisfies the Commission's requirements for certification as a reseller CLC subject to the terms and conditions set forth in the order below. Accordingly, we shall grant the application.

#### **Findings of Fact**

1. Applicant filed its application on March 28, 1997.
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 April 4, 1997.
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 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 \$25,000 of cash, reasonably liquid and readily available to meet its start-up expenses.

9. Applicant's technical experience consists of 3 managers with a combined experience of over 10 years in the telecommunications industry.

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 the deficiencies identified in Attachment B.

11. 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.

12. The Commission has routinely granted nondominant telecommunication 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.

13. The transfer or encumbrance of property of nondominant carriers has been exempted from the requirements of Public Utilities (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 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% 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, pp. 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. Any CLC 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 CLC certificate.
  10. 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. Authority is granted to Empire One Telecommunications, Inc. (applicant) for an expansion of its current certificate of public convenience and necessity (CPCN) to permit it to operate as a reseller of competitive local exchange telecommunications services.

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

3. 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 one 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) and 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 five (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.

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 and contained in Attachment A.



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 previously assigned to applicant is U-5725-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. In response to the applicant's request for waiver, 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, Telecommunications Division shall prepare for Commission consideration a resolution that revokes the applicant's CPCN, unless the applicant has received the written permission of Telecommunications Division to file or remit late.

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

A.97-03-055 ALJ/JAR/wav

20. Application 97-03-055 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

**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 California's competitive local carriers or 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  
Financial Reports Section, 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:
    - 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

Page 1

List of deficiencies in Empire One Telecommunications, Inc.'s tariff filing.

G.O. 96-A Compliance (GO 96-A deficiencies do not need to be corrected by May 30, 1997, but must be corrected in the compliance filing following certification by the Commission.

1. Sample forms must be included with the tariffs.
2. Add "Competitive Local Carrier" on each tariff sheet above the horizontal line.

Tariffs: Corrected tariff sheets with sidebars indicating changes must be provided for the following items:

1. 2-T, Sheet 1, Table of Contents: Page numbers do not correspond to those provided in the Table of Contents.
2. 2-T, Sheet 3: Service Area Map should show only the area where the company intends to provide service, e.g., San Diego LATA, or concur in the exchange maps of Pacific and GTEC's territories.
3. 2-T, Sheet 4: Local calling areas must reflect California's local calling areas not New York's.
4. All Rate Schedules: Need to clarify if rates apply in both Pacific Bell and GTEC's territory. Also, since Empire is offering residential service, it must offer Universal Lifeline Telephone services (ULTS). Empire must inform its customers of the availability of this service at the time service is ordered, and add a complete ULTS tariff.
5. 2-T, Sheet 15: We note that the company was granted intraLATA and interLATA authority in D. 97-02-031. Is the company going to use the 1-T schedule for intraLATA service?
6. 2-T, Sheet 6: Add a definition for legal holidays listing specific holidays in the definition section.
7. 2-T, Sheet 27 & 31 : Reduced rates on a promotional basis must be tariffed. There is no blanket authority for promotions.
8. 2-T, Sheet 43, Rule 3.A: Application for Service, states that customers wishing to obtain service are required to complete a service application. Company cannot require a written Service Order 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. Also Rule 3.C, written notice cannot be required of customers who wish to disconnect service per D. 95-07-054, Appendix B, Rule 6.

ATTACHMENT B

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9. 2-T, Sheet 45, Contracts: Contracts are subject to G.O. 96-A rules and must be submitted by Advice Letter on a case by case basis. There is no blanket authority for ICB arrangements.

10. 2-T, Sheet 46, Rule 5, Special Information Required On Forms: All of the information in Rule 3 of Appendix B must be included on customer's bills. Also, Rule 6, Establishment and Re-establishment of Credit, states that "Empire may deny service to customers who do not provide the requested information or who fail to meet Empire's financial criteria". See Rule 4.C of Appendix B of D. 95-07-054. Credit cannot be denied for failure to provide social security number. Nor can a CLC refuse a deposit to establish credit for service. Modify or delete this sentence to conform with Rule 4.

11. 2-T, Sheet 47, Deposits: Modify the language in the proposed tariff to fully comply with Rule 5 in Appendix B of D. 95-07-054. Deposits are based on twice the average monthly bill for the class of service requested, not on an estimate of two months service. Rule 7.B must be changed to reflect that the deposit balance must be returned within 30 days after discontinuance of service or after 12 months of good payment history. Company cannot credit deposit against unpaid bills. Also Rule 7.D need to be changed to add "However deposits may not receive interest if the customer has received a minimum of two notices of discontinuance of service for non-payment of bills in a 12 month period. (Rule 3.B of Appendix B of D. 95-07-054). Also the interest on deposits is to be set at the 3-month commercial paper rate published by the Federal Reserve Board under Rule 5 of Appendix B.

12. 2-T, Sheet 49, Rule 9.A: You cannot limit customers to 6 months to report billing disputes; the minimum is 2 years. Also Rule 9.B statement relating to costs must be replaced with the following language " The non prevailing party may be liable for reasonable court costs and attorney fees as determined by the CPUC or by the court."

13. 2-T, Sheet 50: Delete references to Federal Excise Tax and 911 Emergency Surcharge . These are not CPUC mandated surcharges and should not be included in the tariffs. Also need to update the tariff to show surcharges as follows:

CPUC Reimbursement Fee.....	0.11%
California High Cost Fund-A.....	0.0%
California High Cost Fund-B.....	2.87%
Universal Lifeline Surcharge.....	3.2%
California Teleconnect Fund.....	0.41%
California Relay Service and Communications Device Fund.....	0.36%

ATTACHMENT B  
Page 3

14. 2-T, Sheet 51: Disputed Bills must include all of the provisions of Rule 8 of Appendix B of D. 95-07-054. Also the CPUC addresses are incomplete. Need to show Consumer Affairs Branch name in the address. Again you cannot limit customers to 60 days to report billing disputes, the minimum is 2 years.

15. 2-T, Sheet 52: Rule 11.A needs to be deleted. Customers cannot be required to give 30 days written notice, per Rule 6.B.1 of Appendix B of D. 95-07-054. Also modify rule 11.B to clarify that 7 days written notice will be given by the company prior to disconnection, not just 5 days.

16. 2-T, Sheet 54, Optional Rates: New and Optional Rates must be submitted to the Commission by Advice Letter on a case by case basis. There is no blanket authority for new rate plans.

17. 2-T, Sheet 58-59, Liability : Per D. 95-12-057, you must concur in the limitations of liability tariffs of either Pacific Bell or GTEC as appended to the decision in appendices B and C respectively.

18. 2-T, Sheet 66: individual promotions must be tariffed.

19. State that 9-1-1 service is available at no charge even if residential customer is disconnected for non-payment as stated in Appendix B, Rule 10.C

20. Per D. 95-12-057, the tariff must be revised to state which provider the company will use to administer the Deaf and Disabled Distribution Program.

21. Tariffs must include information on the provisions of directories to customers.

22. The following items are missing from the tariff and must be included.

- You must include a demarcation tariff or concur in another carrier's demarcation tariff.
- The Commission's procedures for prorating bills as described in Rule 7 of Appendix B.
- Tariff must provide blocking of 900/976 numbers per Appendix B, Rule 15.
- Provisions for customers to subscribe to non-published service.
- Include statement on customer privacy per Appendix B, Rule 14.
- Include information on Change of Service Provider per Appendix B, Rule 11.