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Decision 97-08-030 August 1, 1997

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

In the Matter of International Telecom Ltd. d/b/a Independent Telecom Ltd. for a Certificate of Public Convenience and Necessity to Provide InterLATA and IntraLATA Telecommunications Services within the State of California.

**ORIGINAL**

Application 97-05-039  
(Filed May 19, 1997)

**O P I N I O N**

International Telecom Ltd. d/b/a Independent Telecom Ltd. (applicant), a Delaware corporation qualified to transact business in California, seeks a certificate of public convenience and necessity (CPCN) under Public Utilities (PU) Code § 1001 for authority to operate as a switch-based reseller of intrastate toll service. Applicant states that it will not construct any facilities in order to provide the requested service.

By Decision (D.) 84-01-037 (14 CPUC2d 317 (1984)) and later decisions, we authorized interLATA entry generally.<sup>1</sup> 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 as providing intraLATA service. Subsequently, by D.94-09-065, we authorized competitive intraLATA interexchange 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 to resellers of interexchange telecommunications services. First, an applicant who is a switched-based reseller must demonstrate that it has a minimum of \$100,000 of cash or cash equivalent that is reasonably liquid and readily

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<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.

available to meet the firm's start-up expenses. Such applicants must also demonstrate that they have sufficient additional resources to cover any deposits required by local exchange carriers (LECs) and/or interexchange carriers (IECs).<sup>2</sup>

To demonstrate its compliance with the first criterion, applicant submitted unaudited financial statements which showed that applicant possessed more than \$100,000 in cash as of March 31, 1997.<sup>3</sup> Applicant also represented that it is not required to post a deposit with any underlying carrier in order to provide the requested services. Applicant has thus satisfied our criterion that it possess sufficient financial resources that are reasonably liquid and readily available to meet the applicant's needs.

The second major criterion for determining whether a CPCN should be granted is whether the applicant has made a reasonable showing of technical expertise in telecommunications or a related business. To satisfy this criterion, applicant provided information regarding the work experience and education of 11 of its key employees. As further evidence of its technical qualifications, applicant stated that it has been providing telecommunications services in the State of Washington since 1993, and that it currently has authority to provide telecommunication services in 29 other states. In addition, applicant represented that no one associated with the applicant has any prior association with an NDIEC that went out of business or filed for bankruptcy.

As an additional check on the applicant's technical qualifications, the names of the applicant and each of its 11 key employees were searched in the ALLPUC file of the

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<sup>2</sup> The \$100,000 requirement for switched-based NDIECs resellers was established by D.93-05-010, 49 CPUC2d 197 at 203-205 (1993); and the means of meeting the \$100,000 requirement are described in D.91-10-041, 41 CPUC2d 505 at 513-515 (1991). The requirement for NDIECs to demonstrate that they have additional financial resources to meet any deposits required by underlying LECs and/or IECs is found in D.93-05-010, 49 CPUC2d 197 at 208 (1993).

<sup>3</sup> Although applicant's current liabilities exceed its current assets, applicant has a positive net worth and a profitable business. The Commission has routinely allowed applicants to provide unaudited financial statements to demonstrate their compliance with the Commission's criterion that they possess the required amount of cash or cash equivalent (see, for example, D.97-06-032, D.96-04-042, D.96-01-020, and D.95-10-007).

STATES library and in the FCC file of the FEDCOM library of the Lexis database. No information was uncovered that would indicate that the applicant is unfit to provide public utility service.

We find that applicant has satisfied our criterion that it possess sufficient technical expertise in telecommunications or a related business. We will authorize the interLATA and intraLATA interexchange services that applicant seeks to provide.

**Findings of Fact**

1. Application (A.) 97-05-039 was filed on May 19, 1997.
2. Notice of the filing of the application appeared in the Commission's Daily Calendar on May 21, 1997.
3. By D.97-06-107, applicants for non-dominant interexchange authority are exempt from Rule 18(b).
4. No protests have been filed.
5. A hearing is not required.
6. Prior Commission decisions authorized competition in providing interLATA telecommunications services was authorized, but those offering such services were generally barred from holding out to the public the provision of intraLATA service.
7. In D.94-09-065 the Commission authorized competitive intraLATA services effective January 1, 1995, for carriers meeting specified criteria.
8. Applicant has represented that it has a minimum of \$100,000 of cash or cash equivalent that is reasonably liquid and readily available to meet its start-up expenses.
9. Applicant represented that no deposits are required by LECs or IECs in order for applicant to provide the proposed services.
10. Applicant demonstrated that its management possesses the requisite technical expertise to provide switched-based, resold interexchange services to the public.
11. Applicant represented that no one associated with the applicant was previously employed an NDIEC that filed for bankruptcy or went out of business.
12. Applicant submitted a draft of its initial tariff which complied with the Commission's prohibitions on unreasonable deposit requirements.

13. A search of the ALLPUC file of the STATES library and the FCC file of the FEDCOM library of the Lexis database did not reveal anything to indicate the applicant is unfit to provide public utility service.

14. Since applicant does not propose to construct any facilities, it can be seen with certainty that the proposed operation will not have a significant adverse effect upon the environment.

15. Exemptions from the provisions of PU Code Sections 816-830 have been granted to other NDIECs (e.g., D.86-10-007 and D.88-12-076, and D.96-05-060).

16. The transfer or encumbrance of the property of nondominant carriers has been exempted from the requirements of PU Code Section 851 whenever such transfer or encumbrance serves to secure debt. (See D.85-11-044 and D.96-05-060, Ordering Paragraph 15.)

#### **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 that interexchange services to be offered by applicant, subject to the terms and conditions set forth herein.
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 Section 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 Section 2881; Resolution T-16017, April 9, 1997);
  - c. The user fee provided in PU Code Sections 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 Section 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 is exempt from Rule 18(b) pursuant to D.97-06-107.

6. Applicant should be exempted from PU Code Sections 816-830.

7. Applicant should be exempted from PU Code Section 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 interexchange 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 is granted to International Telecom Ltd. d/b/a Independent Telecom Ltd. (applicant) to operate as a switched-based reseller of interexchange telecommunications 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. Applicant is authorized to file with this Commission tariff schedules for the provision of interexchange 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. The tariff shall be effective not less than one day after filing. Applicant shall comply with the provisions in its tariffs.

4. Applicant is a nondominant interexchange carrier (NDIEC). The effectiveness of its future NDIEC 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):

"5. All NDIECs are hereby placed on notice that their California tariff filings will be processed in accordance with the following effectiveness schedule:

"a. Inclusion of FCC-approved rates for interstate services in California public utilities tariff schedules shall become effective on one (1) day's notice.

"b. Uniform rate reductions for existing services shall become effective on five (5) days' notice.

"c. Uniform rate increases, except for minor rate increases, for existing services shall become effective on thirty (30) days' notice, and shall require bill inserts, a message on the bill itself, or first class mail notice to customers of the pending increased rates.

"d. Uniform minor rate increases, as defined in D.90-11-029, for existing services shall become effective on not less than 5 working days' notice. Customer notification is not required for such minor rate increases.

"e. Advice letter filings for new services and for all other types of tariff revisions, except changes in text not affecting rates or relocations of text in the tariff schedules, shall become effective on forty (40) days' notice.

"f. Advice letter filings merely revising the text or location of text material which do not cause an increase in any rate or charge shall become effective on not less than five (5) days' notice."

5. 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. Applicant is also exempt from GO 96-A,

paragraph III.G.(1) and (2) which requires service of advice letters on competing and adjacent utilities, unless such utilities have specifically requested such service.

6. 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.

7. 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.

8. Applicant shall notify this Commission in writing of the date that interexchange service is first rendered to the public within five days after interLATA service begins.

9. 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.

10. 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.

11. Applicant shall file an annual report, in compliance with GO 104-A, on a calendar-year basis using the information request form developed by Commission staff contained in Attachment A to this decision.

12. Applicant shall ensure that its employees comply with the provisions of Public Utilities (PU) Code Section 2889.5 regarding solicitation of customers.

13. 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.

14. The corporate identification number assigned to applicant is U-5820-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.

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

16. Applicant is exempted from the provisions of PU Code Sections 816-830.

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

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, the Commission's 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 Commission's Telecommunications Division to file or remit late.

19. Applicant shall comply with the Commission's rules and regulation for NDIECs set forth in D.93-05-010, D.90-08-032, and other Commission decisions, including the requirement contained in D.90-08-032 (37 CPUC2d at 145-146) that customer deposits related to interexchange service that are held for more than one month must bear the Commission-required rate of interest currently set at 7% simple interest. This rate of interest shall continue to apply unless and until it is reset by subsequent Commission action or superseded by the rate of interest set forth in D.96-09-098, Appendix A, Rule 4.B. Applicant shall also comply with the requirement contained in D.97-06-107 that any advances or deposits collected from customers shall be held in escrow or trust for those customers.

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



21. Application 97-05-039 is closed.

This order is effective today.

Dated August 1, 1997, at San Francisco, California.

P. GREGORY CONLON  
President

JESSIE J. KNIGHT, JR.

HENRY M. DUQUE

JOSIAH L. NEEPER

RICHARD A. BILAS

Commissioners

A.97-05-039 ALJ/TIM/bwg

**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.

**ATTACHMENT A**

**Information Requested of California Interexchange Telephone Utilities.**

To be filed with the California Public Utilities Commission, 505 Van Ness Avenue, Room 3251, San Francisco, CA 94102-3298, no later than March 31st of the year following the calendar year for which the annual report is submitted.

1. Exact legal name and U # of reporting utility.
2. Address.
3. Name, title, address, and telephone number of the person to be contacted concerning the reported information.
4. Name and title of the officer having custody of the general books of account and the address of the office where such books are kept.
5. Type of organization (e.g., corporation, partnership, sole proprietorship, etc.).  
If incorporated, specify:
  - a. Date of filing articles of incorporation with the Secretary of State.
  - b. State in which incorporated.
6. Commission decision number granting operating authority and the date of that decision.
7. Date operations were begun.
8. Description of other business activities in which the utility is engaged.
9. A list of all affiliated companies and their relationship to the utility. State if affiliate is a:
  - a. Regulated public utility.
  - b. Publicly held corporation.
10. Balance sheet as of December 31st of the year for which information is submitted.
11. Income statement for California operations for the calendar year for which information is submitted.

**(END OF ATTACHMENT A)**