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Decision 97-08-031 August 1, 1997

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Excel
Telecommunications, Inc. (U-5196-C)
to provide resold competitive local
carrier service in California.

Application 97-04-058
(Filed April 25, 1997)

ORIGINAL

O P I N I O N

Excel Communications Company, LLC. (applicant) seeks a certificate of public convenience and necessity (CPCN) for authority to operate as a competitive local exchange resale carrier to the full extent allowed by the Commission in Decision (D.) 95-07-054. Applicant already offers long distance services to business and residential customers in California.

By this decision, we grant the authority requested subject to the terms and conditions set forth below.

Background

By D.95-07-054 (Rulemaking (R.) 95-04-043/Investigation (I.) 95-04-044), we established initial procedures for the filing for CPCN authority to offer competitive local exchange service within the service territories of Pacific Bell (Pacific) and GTE California Incorporated (GTEC). Prospective competitive local carriers (CLC) 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 applications and processed in the normal course of the Commission's business.

Summary of Application

Applicant seeks authority to provide resale local exchange services throughout the State of California as authorized by this Commission. Applicant will not offer such service except as authorized by D.95-07-054 and subsequent decisions issued in R.95-04-043 and I.95-04-044. Applicant will provide its service primarily by reselling calls routed over facilities owned by other certificated carriers.

We have reviewed the applicant's CPCN filing and concluded that it qualifies as a CLC and meets the financial requirements set forth in our adopted rules for CLCs. A reseller CLC must demonstrate that it has a minimum of \$25,000 of cash or cash equivalent, reasonably liquid and readily available to meet the firm's start-up expenses as prescribed in Rule 17 of D.95-07-054. CLCs must also conform to the following financial requirement adopted in D.95-12-056: customer deposits collected by a CLC must be deposited in a protected, segregated interest-bearing escrow account subject to Commission oversight.

Included in the application is an annual report which includes an audited financial statement showing that applicant has sufficient funds to cover projected expenses as a reseller. Thus, it is clear that applicant is capable of financing and operating its proposed operations.

Applicant must also submit proposed tariffs which conform to the consumer protection rules set forth in Appendix B of D.95-07-054. Applicant's proposed schedule of rates is set forth in its application, which contains applicant's proposed tariff. The tariffs are deficient in several minor aspects as set forth in Attachment B of this order. Applicant must correct the deficiencies prior to offering service.

In addition, applicant is required to make a reasonable showing of technical expertise in telecommunications or a related business. Applicant provides background on all of its officers who

together have extensive experience in telecommunications businesses, law, accounting, network engineering, and other related fields.

California Environmental Quality Act (CEQA) Review

We have also reviewed the application for compliance with CEQA. CEQA requires the Commission 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 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 (EIR).

Applicant filed a PEA with the application stating that no adverse impacts will result from the activities it would conduct pursuant to resale operations. Because applicant does not seek authority to operate as a facilities-based carrier, it will not construct new facilities. It will, therefore, create no adverse impacts on the environment.

Change of Ownership

On June 20, 1997, applicant filed an amendment to this application to inform the Commission that its parent company, Excel Communications, Inc. was merging with Telco Communications Group, Inc. (Telco) and both will become subsidiaries of a new holding company, New RES, Inc. Excel would survive as a wholly-owned subsidiary of Excel Communications, Inc. and the new holding company. The merger is subject to approval by the Federal Communication Commission and various state authorities, including

this Commission. The parties have filed with the Commission for approval of the merger in A.97-06-029.

We approve Excel's request for authority to operate as a CLC notwithstanding its merger proposal because the merger does not appear to present any change to Excel's operations that would negatively affect finances or operational ability. The Commission will review the merger in A.97-06-029.

Findings of Fact

1. Applicant filed its application on April 25, 1997, for authority to resell local exchange telecommunications services.
2. No protests have been filed.
3. By prior Commission decisions, we authorized competition in providing local exchange telecommunications service within the service territories of Pacific and GTEC.
4. By D.95-07-054, D.95-12-056, D.96-02-072, and D.96-03-020, we authorized facilities-based CLC services effective January 1, 1996, and CLC resale services effective March 31, 1996, for carriers meeting specified criteria.
5. Applicant has demonstrated that it has a minimum of \$25,000 of cash or cash equivalent reasonably liquid and readily available to meet its start-up expenses.
6. Applicant's technical experience is demonstrated by the fact that its operations are managed by individuals with extensive experience in the telecommunications and other industries.
7. Applicant has submitted with its application a complete draft of applicant's initial tariff. The tariffs are deficient in several aspects listed in Attachment B to this order.
8. CEQA requires the Commission to assess the potential environmental impact of a project. Because applicant will construct no new facilities, its operations authorized herein will result in no significant impact on the environment.
9. 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.)

10. Applicant is exempt from Rule 18(b). (See D.97-06-107.)

11. Applicant proposes to merge with Telco in A.97-06-029. The merger would not appear at this time to negatively affect finances or operations of Excel.

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 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, p. 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).
 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 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.
 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. A certificate of public convenience and necessity is granted to Excel Telecommunications, 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 III.G.(1) and (2), IV, V, and VI, and must include a satisfactory correction of each deficiency listed in Attachment B in this decision. The tariff shall be effective not less than one day after tariff approval by the 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:

"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 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.

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 service is first rendered to the public within five days after 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. Within 60 days of the effective date of this order, applicant shall comply with PU Code § 708, Employee Identification Cards, and notify the Director of the Telecommunications Division in writing of its compliance.

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

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

15. Applicant is exempt from Rule 18(b).

16. If applicant is 90 days or more late in filing an annual report or in remitting the fees listed in Conclusion of Law 4, Telecommunications Division shall prepare for Commission consideration a resolution that revokes the applicant's certificate of public convenience and necessity, unless the applicant has received the written permission of Telecommunications Division to file or remit late.

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

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

19. Application 97-04-058 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

INFORMATION REQUESTED OF COMPETITIVE LOCAL CARRIERS

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 Competitive Local Carriers in California. 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 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. 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
Deficiencies List
Excel Communication

1. Sheet 6-T Service area map omitted.
2. Sheet 8-T Corrections should be made to current surcharges:
 - California High Cost Fund A -- 0.0%
 - California High Cost Fund B -- 2.87%
 - Teleconnect Fund -- 0.41%
3. Sheet 10-T Should clearly state whether Excel intends to charge the same rates in PacBell and GTEC service territories.
4. Sheet 15-T Rule 5 second to last line states that late payment charges on overdue bills begin after 15 days; however, in Rule 9 Section A(iii), this occurs after 30 days. These rules should be amended to be consistent.
5. Sheet 16-T Rule 7 Paragraph 2 last line should be expanded to state that the 2 notices received by customer in the last 12 months are for pending disconnection of service for nonpayment of bill. In Paragraph 3 last line, the word "current" should be changed to "first."
6. Sheet 20-T Excel cannot limit its liability as a CLC beyond that which is granted to PacBell and GTEC. The Rule 18 language must be changed to those LECs' liability limitations.
7. Sheet 23-T If Excel will impose a charge to deactivate blocking, it must state that charge here in its tariff.
8. Items missing from the tariff:
 - a. Excel must either provide its own Demarcation Tariff or concur with that of another carrier.
 - b. Excel must state that it will provide telephone directories to its customers.
 - c. Since Excel will serve residential customers, it must include a Universal Lifeline Telephone Service (ULTS) tariff.
 - d. Excel must add an option for customers to amortize unpaid bills.
9. Other issues:
 - a. The sheet-numbering system in Excel's CLC tariff must conform to that in its NDIEC tariff.
 - b. Excel should be advised that when it files its initial CLC tariff filing, that is not Advice Letter No. 1. Rather, it is the next sequential advice letter for U-5196-C.

(END OF ATTACHMENT B)