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Decision 97-08-037 August 1, 1997

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Facilities)
 Communications International, Ltd.)
 (U-5471-C) For a Certificate of)
 Public Convenience and Necessity)
 Necessity to Provide Competitive)
 Local Exchange Service in)
 California.)

ORIGINAL

Application 97-05-038
(Filed May 8, 1997)

O P I N I O N

Request

Facilities Communications International, Ltd.

(applicant), a Florida limited partnership qualified to do business in California, seeks a certificate of public convenience and necessity (CPCN) under Public Utilities (PU) Code § 1001 to permit it to provide resold local exchange service as a competitive local exchange (CLC) resale carrier to the full extent allowed by the Commission in Decision (D.) 95-07-054. Applicant also seeks an exemption from Rule 18(b) of the Commission's Rules of Practice and Procedure to the extent that this rule requires service of the application on cities and counties in the proposed service area.

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 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 applications and processed in the normal course of the Commission's business.

Applicants who are granted authority to provide competitive local exchange service must comply with various rules established by the Commission, including (1) the consumer protection rules set forth in Appendix B of D.95-07-054; (2) the rules for local exchange competition set forth in Appendix E of D.96-02-072; and (3) the customer notification and education rules adopted in D.96-04-049.

Financial Requirement

A CLC reseller 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 4.B(2) 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.

Applicant is a limited partnership, consisting of U.S. Convention Corporation as a General Partner and Convention Communications Corporation as a Limited Partner. As part of its application, applicant provided a copy of its audited financial statement for the year ended December 31, 1995, including a balance sheet and income statement for the year ended to demonstrate that applicant has more than the minimal cash requirement readily available for its proposed operations. This satisfies our financial criteria for being reasonably liquid and readily available to meet applicant's needs as a CLC.

Technical Experience Requirement

Applicant must submit proposed tariffs which conform to the consumer protection rules set forth in Appendix B of D.95-07-054. Such tariffs are set forth in Exhibit G to the

application. We have reviewed applicant's proposed tariff 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 list of tariff deficiencies identified in Appendix B of this order. In its compliance tariff filing, applicant is directed to correct the identified deficiencies as a condition of our granting approval of the tariffs.

In addition, Applicant is required to make a reasonable showing of technical expertise in telecommunications or a related business. In this regard, applicant provided information on its six key personnel consisting of its General and Limited Partners, as detailed in the application. These key personnel from the General Partnership are Stephen Myers, Michael Anderson and James Pearson; and from the Limited Partnership are Martin Rubin, Ray LaBelle, and James Pearson. Applicant is certificated to provide resold interLocal Access and Transport Area (interLATA) and intraLocal Access and Transport Area (intraLATA) telephone services within California, pursuant to D.95-05-007. Thus, applicant has the technical expertise and qualifications to conduct its business.

Environmental Assessment

As 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 the grant of this application will have an adverse impact upon the environment. For this reason, applicant submits that its proposed services are exempt from the California Environmental Quality Act. In accordance with Rule 17.1, applicant attached its Proponent's Environment Assessment as Exhibit 2 to the application.

Findings of Fact

1. Applicant filed its application on May 8, 1997.
2. A notice of the filing of the application appeared in the Daily Calendar on May 21, 1997.

4. Applicant is certificated to provide resold interLATA and intraLATA telephone services within California.

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 Bell and GTEC.

8. 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.

9. 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.

10. Applicant's technical experience is demonstrated by the fact that its key personnel have telecommunications experience and it is currently authorized to provide interLATA and intraLATA telecommunications service within California.

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

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

14. Exemption from the provisions of Public Utilities (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 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, 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-15801, October 5, 1995);
 - 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 PU Code §§ 816-830.
6. 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. Applicant is exempt from Rule 18(b).
11. 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 Facilities Communications International, Ltd. (applicant) to provide resold 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 Appendix B in this decision. The tariff shall be effective not less than 1 day after tariff approval by 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:

"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 Service 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 of the company or its 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 5 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. 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 the Commission staff travel to applicants 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 Appendix 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 U-5471-C currently assigned to applicant 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. 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 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.

19. Applicant shall comply with the consumer information and consumer protection rules set forth in Appendix B of D.95-07-054.

20. Applicant shall comply with the Commission's rules for local exchange competition in California that are set forth in Appendix E of D.96-02-072, including the requirements that CLCs shall place customer deposits in a protected, segregated, interest-bearing escrow account subject to Commission oversight.

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

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

23. Application 97-05-038 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.

APPENDIX 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:
 - 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 APPENDIX A)

APPENDIX B

List of deficiencies in Tariffs filed by Facilities Communications International, Ltd. in A.97-05-038 to be corrected in Tariff Compliance Filing.

1. Title Sheet: Add resale local exchange service to the tariff schedule and delete reference to Intrastate IntraLATA, since you are not asking for that authority in this application.
2. On each tariff sheet, add and center the following words above the top horizontal line: "Competitive Local Carrier".
3. Include sample forms.
4. Sheet 4-T, Preliminary Statement should indicate the intent to provide local exchange service in Pacific Bell's and GTEC's service areas. Other areas of California are not yet open to competition.
5. Sheet 6-T: Service area map should show only the area where the company intends to provide service, e.g.; service territories of Pacific Bell and GTEC. The entire state is not opened for local exchange competition. Also, you must delete the reference to intralATA local exchange as indicated in the map since you are not asking for that authority in this application. If you intend to offer intralATA or interLATA service, you must amend the application to include that authority.
6. Sheet 7-T: Applicability needs to be more specific as to the types of services provided. From the tariff it appears that the company will be serving only business customers. If so, include a statement to the effect in the "Applicability" section.
7. Clarify if the rates apply in both Pacific Bell and GTEC's territory.
8. Sheet 9-T: Need to amend the tariff to add the following surcharges: CHCF-A: 0.0%; CHCF-B: 2.87%; and California Teleconnect Fund: 0.41% .
9. Sheet 16-T, 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 one month's usage.
10. Sheet 17-T: Conflicting language. Delete the statement "Cancellation of service must be by written notice." Customers cannot be required to give written notice to disconnect service.

11. Sheet 20-T: 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."
12. Sheet 21-T: Carrier cannot limit customers to 60 days to report billing disputes, the minimum is 2 years.
13. Sheet 25-T, Limitations of 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.
14. The company must include a demarcation tariff or concur in another carrier's demarcation tariff.
15. Per D.95-12-057, the tariffs must be revised to state which provider the company will use to administer the Deaf and Disabled Equipment Distribution Program.

(END OF APPENDIX B)