

SEP 3 1997

Decision 97-09-029 September 3, 1997

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Tie Communications, Inc. for a
Certificate of Convenience and Necessity to Provide
Resold Competitive Local Carrier Service in
California

Application 97-06-015
(Filed June 4, 1997)

ORIGINAL

O P I N I O N

On June 4, 1997, Tie Communications, Inc. (Tie or applicant) filed an application for a certificate of public convenience and necessity (CPCN) seeking authority to provide competitive local exchange services in the state of California. Tie 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.

Background

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

Overview of Application

Tie is a Delaware corporation, qualified to do business in California. It seeks authorization to provide resold competitive local carrier service within the service areas of Pacific and GTEC. Applicant initially plans to offer two categories of local exchange services on a resale basis to California customers: (1) exchange access services and optional features; and (2) exchange usage services including Centrex, operator, directory assistance, and busy line verification/interrupt services.

Tie 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.

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, Tie attached a consolidated balance sheet, statement of cash flow, and statements of changes in shareholder's equity statement from December 31, 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.

Tie demonstrated its technical expertise to provide the services for which authority is requested by attaching Exhibit 6, 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. 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, Tie has provided information on its key management personnel indicating their education and experience. It can be summarized as follows:

- a. Tie's chief executive officer since October 1995, Charles B. McNamee, has had over 15 years of senior management experience with two telecommunications firms. He is a certified public accountant who graduated with a Bachelor of Arts degree in Economics from the University of Michigan. Mr. McNamee also holds a Masters of Business Administration in accounting and finance from Michigan State University.
- b. Tie's president and chief operating officer, Michael R. Dozier, has 20 years experience in the telecommunications industry in numerous management positions. He holds a Bachelor of Science (BS) degree in business management from the University of Houston.
- c. Tie's chief financial officer, Craig J. Huffaker, has also held a number of senior posts in several other companies, including 14 years with Digital Communications Associates. He holds a

law degree from John Marshall Law School and a BS in accounting from Tennessee Technological 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 June 4, 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 June 13, 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 three managers with a combined experience of over 20 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. By D.97-06-107, applicants for CLC authority are exempt from Rule 18(b).

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 services 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-4782);
 - 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 is exempt from Rule 18(b) pursuant to D.97-06-107.
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. Applicant, once granted a CPCN to operate as a CLC, should be subject to the Commission's rules and regulations regarding the operations of CLCs as set forth in D.95-07-054, D.95-12-056, and other Commission decisions.
10. Any CLC which does not comply with the rules for local exchange competition adopted in Rulemaking 95-04-043 shall be subject to sanctions including, but not limited to, revocation of its CLC certificate.
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 Tie Communication (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. 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 §§ IV, V, and VI. 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.
4. Applicant is a competitive local exchange carrier (CLC). The effectiveness of its future CLC tariffs is subject to the schedules set forth in Appendix C, Section 4.E of Decision (D.) 95-12-056:

"E. CLCs shall be subject to the following tariff and contract filing, revision and service pricing standards:

"(1) Uniform rate reductions for existing tariff services shall become effective on five (5) working days' notice. 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 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.90-11-029, shall become effective on not less than (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.

"(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.

"(6) Contracts shall be subject to GO 96-A rules for NDIECs, except interconnection contracts.

"(7) CLCs shall file tariffs in accordance with PU [Public Utilities] Code § 876."

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) and 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 local exchange service is first rendered to the public. This notice shall be provided no later than five days after local exchange service first 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 PU Code § 2889.5 regarding solicitation of customers.

13. The certificate granted and the authority to render service under the rates, charges, and rules authorized herein 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-5836-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 § 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 §§ 816-830.

17. Applicant is exempted from PU Code § 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 consumer protection 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 C of D.95-12-056, including the requirement 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 the passage of calling party number.

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

A.97-06-015 ALJ/JAR/gab

23. Application 97-06-015 is closed.

This order is effective today.

Dated September 3, 1997, at San Francisco, California.

P. GREGORY CONLON
President

JESSIE J. KNIGHT, JR.

HENRY M. DUQUE

JOSIAH L. NEEPER

RICHARD A. BILAS

Commissioners

A.97-06-015 ALJ/JAR/gab

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 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 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 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 tariffs filed by Tie Communications, Inc. in A.97-06-015 to be corrected in tariff compliance filing.

1. Title sheet: indicate that the company intends to provide resale service.
2. Sample forms must be included.
3. Add and center "Competitive Local Carrier" on each tariff sheet above the horizontal line.
4. Sheet 5-T, Preliminary Statement should indicate the intent to provide local exchange service in Pacific Bell and GTEC's service areas. Other areas of California are not yet open to Competition.
5. Sheet 6-T: A Service Area Map was omitted. Also, the first paragraph must be amended to reflect that Tie is offering local service, not message telephone service within the same LATA.
6. Sheet 7-T: Why did you include a calculation of usage rates based on seconds and minutes when the only usage rate in the tariff is on a per call basis? see Sheet 26-T.
7. Sheet 10-T, Blocking Service: You cannot block access to other telephone companies 900/976 service, and allow access to those services provided by the company. Need to revise the proposed tariff to reflect the requirements of Appendix B, Rule 15 which addresses customers requests for blocking access to 900 and 976 information services.
8. Sheet 27-T: Term plans cannot be automatically renewed.
9. Sheet 13-T & following: does the company intend to charge the same rates in Pacific Bell and GTEC's service territories? Also need to clarify if the company intends to offer business or residential service or both. If you intend to offer residential service then you must provide ULTS service. The ULTS service must be tarified.

ATTACHMENT B
Page 2

10. Sheet 28-T, Promotional Offerings: There is no blanket authority for promotional offerings. Each promotional offering must be submitted by an Advice Letter filing. Such filings will be effective in five days.
11. Sheet 29-T: Individual Case Basis (ICB) Arrangements must be submitted by Advice Letter on a case by case basis. Again, there is no blanket authority for ICB arrangements.
12. Sheet 32-T, Rules 2, 3, 5 & 6: Information specified in Rules 1, 2, 3 & 4 of Appendix B of D.95-07-054, concerning information to be provided to each applicant or customer must be included in the company's tariff. Also delete 800 service from the tariff, since this is not part of a local exchange tariff.
13. Sheet 33-T, Deposits: Does this mean you can deny service to customers who fail your credit check but are willing to pay a deposit? Per Rule 4 in Appendix B you cannot deny service to customers who are willing to pay a deposit. Deposit rules must conform to Rule 5 in Appendix B. Also clarify that customers can give verbal notice of intent to discontinue service by telephone.
14. Sheet 34-T: Rendering and Payment of Bills: Statement relating to recovery of 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 courts".
15. Sheet 35-T: Disputed Bills must include all the provisions of Rule 8 of Appendix B of D.95-07-054. Also the addresses for both the CAB offices are incomplete. You need to show Consumer Affairs Branch name and room number in the address. Rule 12, 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. Also, modify your Rule 11 on Discontinuance and Restoration of Service to clarify that seven days written notice will be given prior to disconnection for non-payment of bills.

ATTACHMENT B
Page 3

16. Sheet 36-T, Liability of the Company: 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.
17. Information specified in Rule 11, Change of Service Provider, Appendix B of D.95-07-054 must be included in the tariff.
18. You must include a demarcation tariff or concur in another carrier's demarcation tariff.
19. 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.
20. The following items are missing from the tariff and must be included.

-----Include Statement on customer privacy per Appendix B, Rule 14.

-----The Commission's procedures for prorating bills as described in Rule 7 of Appendix B.

-----Provisions for customers to subscribe to nonpublished service.

(END OF ATTACHMENT B)