

Decision 97-10-004 October 9, 1997

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
 ActiveTel L.D., Inc. for a)
 Certificate of Public Convenience and)
 Necessity to Operate as a reseller of)
 Local Exchange Telecommunications)
 Services within the State of)
 California.)

Application 97-05-051
 (Filed May 29, 1997;
 Amended June 30, 1997)

ORIGINAL

O P I N I O N

Request

ActiveTel L.D., Inc. (applicant), a Delaware corporation 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 operate as a reseller of competitive local exchange services to the full extent allowed by the Commission in Decision (D.) 95-07-054 and D.96-02-072.

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. However, an individual exemption is not necessary because we exempted all nondominant interexchange carriers (NDIECs) and competitive local carriers (CLCs) from complying with the requirements of Rule 18(b) pursuant to D.97-06-107.

Protective Order

Concurrent with the filing of its application, applicant filed a motion for a limited protective order for authority to file financial information under seal. Subsequently, on June 30, 1997, applicant amended its motion to demonstrate that there was good cause to place applicant's financial information under seal. No opposition to the motion or amended motion was received. Accordingly, the motion to place applicant's financial information under seal should be granted. Such data should remain under seal

for one year from today unless applicant makes a timely request for an extension of confidential treatment with good cause shown.

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.

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.

Included in Exhibit F is a copy of applicant's parent company's, ICS Communications, Inc., recent financial statements. ICS Communications, Inc. also provides applicant an irrevocable guarantee of \$25,000 cash or cash equivalent to meet its start-up expenses in providing local exchange carrier services in California. The guarantee is for a period of 12 months beyond the

date applicant receives a CLC certificate. Thus, it is clear that applicant is capable of financing and operating its proposed operations.

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 three key officers indicating their more than 80 years of combined technical experience in the telecommunications field, as set forth in Exhibit H to the application. These key officers are Director of Telecom Engineering Gerald S. Hunter, Manager of Facilities Judy K. Thomas, and Vice President of Sales and Marketing Richard C. Snyder. 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 C to the application.

Findings of Fact

1. Applicant filed its application and amended application on May 29, 1997 and June 30, 1997, respectively.
2. A notice of the filing of the application and amended application appeared in the Daily Calendar on June 4, 1997 and July 7, 1997, respectively.
3. Applicant filed a motion and amended motion for authority to file its financial data under seal with good cause shown.
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 service territories of Pacific Bell and GTEC.
7. 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.
8. 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.
9. Applicant's technical experience is demonstrated by the fact that its key officers have more than 80 years combined experience in the telecommunications area.
10. Applicant has submitted with its application a complete draft of applicant's initial tariff which complies with the requirements established by the Commission, except for the deficiencies identified in Appendix 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 applicant is exempt from Rule 18(b). (See D.97-06 107.)

13. Exemption from the provisions of PU Code §§ 816-830 has been granted to other resellers. (See, e.g., D.86-10-007 and D.88-12-076.)

13. 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-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% 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. Applicant's motion and amended motion to place financial data under seal should be granted.
 9. The application should be granted to the extent set forth below.
 10. 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.
 11. Because of the public interest in competitive local exchange services, the following order should be effective immediately.

ORDER

IT IS ORDERED that:

1. A certificate of public convenience and necessity is granted to ActiveTel L.D., 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 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 one 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 which 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."
- "(6) Contracts shall be subject to GO 96-A rules for NDIECs, except interconnection contracts.
- "(7) CLCs shall file tariffs in accordance with PU Code Section 876.

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-A Section II.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 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. 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 assigned to applicant is U-5855-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. 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.

18. Applicant shall comply with the consumer protections set forth in Appendix B of D.95-07-054.

19. 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.

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

21. Applicant's financial data shall be placed under seal for good cause shown and shall remain under seal for one year from today unless applicant makes a timely request for an extension of confidential treatment with good cause shown.

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

23. Application 97-05-051 is closed.

This order is effective today.

Dated October 9, 1997, at San Francisco, California.

P. GREGORY CONLON
President
JESSIE J. KNIGHT, JR.
HENRY M. DUQUE
JOSIAH L. NEEPER
RICHARD A. BILAS
Commissioners

APPENDIX A
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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
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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 APPENDIX A)

APPENDIX B

Following is a list of deficiencies in ActiveTel L.D. Inc's tariff filing:

1. On each tariff sheet, add and center the following words above the top horizontal line: "Competitive Local Carrier Tariff".
2. Schedule 1-T, Sheet No. 3. Preliminary Statement. Clarify tariff to indicate that resale competitive local service is limited to Pacific Bell's and GTEC's service territories.
3. Schedule 1-T, Sheet No. 4. Service Area Map. Indicate that ActiveTel only provides "resale" local exchange service.
4. Schedule 1-T, Sheet No. 15. Include language on how customers' name and telephone number can be deleted not only from ActiveTel's directory assistance database but also from Pacific Bell's and GTEC's published directories (non-published service).
5. Schedule 1-T, Sheet No. 17. Delete reference to measured rate ULTS service. Since ActiveTel does not intend to offer measured rate service to non-ULTS residential customers, it cannot offer the service to ULTS customers. Also, delete footnote 3 which refers to measured rate ULTS service.
6. Schedule 1-T, Sheet No. 18. Delete tariff language and rate on usage calls which are over the 60 call monthly allowance since this refers to measured service to ULTS customers.
7. Schedule 1-T, Sheet No. 22. Define "standard repair calls not subject to a service call charge."
8. Schedule 1-T, Sheet No. 27 (A & C). Customers cannot be required to sign completed service order.
9. Schedule 1-T, Sheet No. 29. Contracts are subject to G.O. 96-A. rules and an advice letter must be filed for each contract. There is no blanket authority for contract arrangements.

APPENDIX B

10. Schedule 1-T, Sheet No. 33, Deposits (C.). A one-year prompt payment record is not a requirement in D.95-07-054 for refund of deposits.
11. Schedule 1-T, Sheet No. 35, Notices. Revise tariff language to indicate that local service may not be discontinued for nonpayment of "Category III" and unregulated competitive services.
12. Schedule 1-T, Sheet No. 36. Change tariff language on liability for legal fees to: "The nonprevailing party may be liable for reasonable court costs and attorney fees as determined by the CPUC or by the court."
13. Schedule 1-T, Sheet No. 37. Change CPUC Reimbursement Fee to "0.11%".
14. Schedule 1-T, Sheet Nos. 47 & 48. Replace No. 16 (Liability) provisions with either Pacific Bell's or GTEC's limitation of liability tariff language, which are appended to D. 95-12-057.

Also, ActiveTel's tariff must include provisions for the following:

- Prorating of bills (Rule 7 of Appendix B, D.95-07-054)
- Privacy (Rule 14 of Appendix B, D. 95-07-054)
- Sample forms

(END OF APPENDIX B)