

Decision 97-12-073 December 16, 1997

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the matter of the Application of EZ Phone, Inc. for a Certificate of Public Convenience and Necessity to Offer Resold Local and Interexchange Telecommunications Services to the Public in the State of California.

Application 97-08-038
(Filed August 20, 1997)
(Supplemented August 29, 1997)

ORIGINAL

O P I N I O N

I. Summary

EZ Phone, Inc. (applicant) seeks a certificate of public convenience and necessity (CPCN) under Public Utilities (PU) Code § 1001 for authority to provide resold local exchange and interexchange telecommunications services. By this decision, we grant authority to operate as a reseller of local exchange telecommunications services subject to the terms and conditions set forth below.

II. Background

By Decision (D.) 84-01-037 (14 CPUC2d 317 (1984)) and later decisions, we authorized interLATA entry generally.¹ 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.

¹ 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.

In D.95-07-054 and D.95-12-056, we authorized the filing of applications for authority to offer competitive local exchange service within the territories of Pacific Bell (Pacific) and GTE California Incorporated (GTEC). Applicants that are granted authority to provide competitive local exchange service must comply with various rules, 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 C of D.95-12-056; and (3) the customer notification and education rules adopted in D.96-04-049.

III. Overview of the Application

Applicant, an Ohio corporation, filed Application (A.) 97-08-038 on August 20, 1997. There were no protests to the application. Applicant seeks authority to provide resold local exchange services as a competitive local carrier (CLC), as well as resold interexchange services as a nondominant interexchange carrier (NDIEC), throughout Pacific's and GTEC's service territories.

Applicant also filed A.97-08-024 to obtain a CPCN as an interexchange carrier (IEC). That application was granted by D.97-09-090 on September 22, 1997.

Applicant served a copy of its application along with a Notice of Availability of the exhibits to its application upon Pacific, GTEC, and its potential CLC and IEC competitors.

IV. Financial Qualifications of Applicant

To be granted a CPCN, an applicant for authority to provide nonfacilities-based local exchange and/or interexchange services must demonstrate that it has a minimum of \$25,000 of cash or cash equivalent to meet the firm's start-up expenses.² To meet this requirement, applicant provided a balance sheet and a bank statement which demonstrated that it has sufficient cash to satisfy this requirement.

² The \$25,000 requirement for CLCs is contained in D.95-12-056, Appendix C. The \$25,000 requirement for NDIECs is contained in D.91-10-041.

An applicant seeking authority to provide local exchange or interexchange services must also demonstrate that it has sufficient additional resources to cover all deposits required by local exchange carriers (LECS) and/or IECs.³ Applicant represents that it has not been required by any IEC or LEC to submit a deposit.

We find that applicant has met our requirement that it possess sufficient financial resources to fund its operations.

V. Technical Qualifications of Applicant

Applicants for NDIEC and CLC authority are required to make a reasonable showing of technical expertise in telecommunications or a related business. To meet this requirement, applicant submitted biographical information on its key employees. This biographical information demonstrates that applicant's employees possess sufficient experience and knowledge with regard to the operations and management of telecommunications networks. Applicant represents that no one associated with or employed by applicant as an affiliate, officer, director, partner, or owner of more than 10% of applicant was previously associated with an NDIEC that filed for bankruptcy or went out of business, or was sanctioned by the Federal Communications Commission or any state regulatory agency for failure to comply with any regulatory statute, rule or order.

We find that applicant is technically qualified to operate as a public utility.

VI. California Environmental Quality Act (CEQA)

CEQA 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 will not be constructing any facilities for the purpose of providing interexchange or local exchange services. It can be seen

³The requirement for CLC applicants to demonstrate that they have additional financial resources to meet any deposits required by underlying LECs and/or IECs is set forth in D.95-12-056, Appendix C. For NDIECs, the requirement is found in D.93-05-010.

with certainty that there is no possibility that granting this application will have an adverse effect upon the environment.

VII. Conclusion

We conclude that the application conforms to our rules for certification to provide competitive local exchange services. Accordingly, we shall approve the application subject to the terms and conditions set forth herein.

Findings of Fact

1. Applicant filed A.97-08-038 on August 20, 1997, for authority to provide telecommunications services as both a CLC and an IEC.
2. Applicant served its application and a Notice of Availability of the exhibits to its application on all telephone corporations with which applicant is likely to compete.
3. Notice of A.97-08-038 appeared in the Daily Calendar on August 22, 1997.
4. No protests have been filed.
5. A hearing is not required.
6. By D.97-09-090, applicant received a CPCN to operate as an IEC with corporate identification number U-5867-C.
7. In prior Commission decisions, 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.
8. In D.94-09-065, the Commission authorized competitive intraLATA services effective January 1, 1995, for carriers meeting specified criteria.
9. In prior decisions the Commission authorized competition in providing local exchange telecommunications service within the service territories of Pacific and GTEC.
10. In D.95-07-054, D.95-12-056, D.95-12-057, and D.96-02-072, the Commission authorized CLCs meeting specified criteria to offer facilities-based services effective January 1, 1996, and resale services effective March 31, 1996.
11. Applicant has demonstrated that it has a minimum of \$25,000 of cash or cash equivalent that is reasonably liquid and readily available to meet its start-up expenses.

12. Applicant has represented that no deposits are required by LECs or IECs in order to provide the proposed service.

13. Applicant possesses the requisite experience and knowledge to manage a telephone utility.

14. Applicant represented that no one associated with or employed by applicant as an affiliate, officer, director, partner, or owner of more than 10% of applicant was previously associated with an NDIEC that filed for bankruptcy or went out of business, or was sanctioned by the Federal Communications Commission or any state regulatory agency for failure to comply with any regulatory statute, rule, or order.

15. Applicant represents that it will not be constructing any facilities for the purpose of providing interexchange or local exchange service.

16. As part of its application, applicant submitted a draft of its initial tariff which contained the deficiencies identified in Attachment B to this decision. Except for those deficiencies, applicant's draft tariffs complied with the requirements established by the Commission.

17. Exemption from the provisions of PU Code §§ 816-830 has been granted to other NDIECs and CLCs. (See, e.g., D.86-10-007, D.88-12-076, and D.96-05-060.)

18. 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 and D.96-05-060, Ordering Paragraph 15.)

19. By D.97-06-107, all IECs and CLCs are no longer required to comply with General Order 96-A, subsections III.G(1) and (2), and Commission Rule of Practice and Procedure 18(b).

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 competitive local exchange 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 § 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 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.

7. The portion of this application requesting a CPCN to operate as an IEC is moot.

8. Since applicant will not be constructing any facilities, it can be seen with certainty that there will be no significant impact on the environment.

9. The application should be granted to the extent set forth below.

10. Applicant, once granted a certificate of public convenience and necessity 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.

11. Applicant's initial tariff filing should correct the deficiencies in its draft tariffs as indicated in Attachment B to this decision.

12. Any CLC which does not comply with our rules for local exchange competition adopted in Rulemaking (R.) 95-04-043 shall be subject to sanctions including, but not limited to, revocation of its CLC certificate.

13. 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 EZ Phone, Inc. (U-5867-C) (applicant) to operate as a nonfacilities-based 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 with the deficiencies noted in Attachment B corrected. Applicant may not offer 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 1 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 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 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 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 filing 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."

5. Applicant may deviate from the following provisions of GO 96-A: (a) paragraph II.C.(l)(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.

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 within 5 days after local exchange 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 § 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. 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 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.

18. The corporate identification number assigned to applicant for its competitive local exchange service is U-5867-C, which is the same number applicant was assigned for its inter- and intraLocal Access and Transport Area service previously authorized. That identification number shall be included in the caption of all original filings with this Commission, and in the titles of other pleadings filed in existing cases.

19. Applicant shall comply with the consumer protection rules contained in Appendix B of D.95-07-054.

20. Applicant shall comply with the Commission's rules and regulations for local exchange competition contained in D.95-07-054, D.95-12-056, and other Commission decisions, including the requirement that CLCs shall place customer deposits in a protected, segregated, interest-bearing escrow account subject to Commission oversight (D.95-12-056, Appendix C).

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

22. Applicant shall send a copy of this decision to concerned local permitting agencies not later than 30 days from the date of this order.

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

24. Application 97-08-038 is closed.

This order is effective today.

Dated December 16, 1997, at San Francisco, California.

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

**ATTACHMENT 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 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.

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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 ATTACHMENT A)

ATTACHMENT B
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Following is a list of deficiencies in EZ Phone, Inc.'s tariff filing:

1. In addition to a horizontal line on top and on the bottom of each tariff sheet, add a vertical line on both the left and right margin of each sheet.
2. Cal. PUC Sheet No. 3-T, Preliminary Statement. Indicate the intent to provide prepaid local exchange service in Pacific Bell's and GTEC's service areas.
3. Cal. PUC Sheet No. 4-T, Service Area Map. The map is missing. Map should show the exchange boundaries for Pacific Bell and GTEC.
4. Cal. PUC Sheet No. 6-T, Rates and Charges. Although the tariff language indicates that the proposed rates apply to both Pacific Bell and GTEC service areas, it is not indicated whether the rates are business or residential rates, and whether the rates are flat or measured. A competitive local exchange carrier does not have to offer residential service. But if it chooses to do so, the competitive local exchange carrier must: (1) offer universal lifeline telephone service (ULTS), (e.g., if a residential flat service is offered then a ULTS flat service should also be offered, if both residential flat and measured services are offered then ULTS flat and measured services should also be offered); and (2) include in the tariff the income limitation requirement applicable to ULTS (see Resolution T-16010). As indicated on top of the tariff page, this tariff page pertains only to competitive local carrier. Delete any reference to long distance service.
5. Cal. PUC Sheet No. 8-T, Rule 1, Definitions. Since a major rate increase is discussed in Rule 8 (Notices) but not defined, include a "major rate increase" in the list of definitions. Also, define "prepaid."
6. Cal. PUC Sheet No. 9-T, Rule 2, Description of Service. The tariff language includes the following: "...Local service does not include the following types of calls, which are blocked by Carrier: direct dial long distance, collect calls, operator-assisted calls, third-number billed calls, 900 and 976 calls, and directory assistance calls." Indicate the reason(s) why EZ Phone, Inc. proposes to block the above mentioned services and how customers will be assisted to avail of the services that the reseller proposes not to offer, (e.g., directory assistance calls). Comply with Rule 15 of D.95-07-054 concerning blocking access to 900 and 976 information services. And as explained above, delete reference to long distance service. Also, include GTEC as one of the companies that will administer the distribution of equipment for individuals who are deaf and disabled
7. Cal. PUC Sheet No. 10-T, Rule 3, Customer Application for Service. Clarify under what circumstances will the company reject an order. Comply with Rule 2 of D.95-

ATTACHMENT B
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- 07-054 concerning denial of service. Under Rule 4 (Contracts or Agreements), change "Not Applicable" to "Reserved."
8. Cal. PUC Sheet No. 11-T, Rule 5, Special Information Required on Forms. Revise tariff accordingly to include the complaint filing process with the California Public Utilities Commission as detailed in Rule 3(A) of D.95-07-054. Also, revise Rule 8 (Notices) to comply with D.95-07-054 that a: (1) notice of cancellation by a customer may be either verbal or written [Rule 6 (B)], and (2) written notice for a major rate increase to customers shall be at least 30 days prior to the effective date of the change [Rule 6 (B)].
 9. Cal. PUC Sheet No.12-T, Rule 9, Rendering and Payment of Bills. Mention that bills are to be prepaid each month. Revise the tariff language of Rule 10 (Disputed Bills), to include a: (1) definition or examples of situations that constitute extraordinary circumstances, and (2) reference to the number of days the customers must deposit the amount in dispute with the CPUC to avoid disconnection [see Rule 8(C), Disputed Bills of D.95-07-054].
 10. Cal. PUC Sheet No. 13-T, Rule 10, Disputed Bills (Continuation). The current presentation of the address and telephone numbers of the Consumers Affairs Branch offices is confusing. Revise tariff to show in one column the complete address and telephone numbers for the San Francisco Office and show in another column the complete address and telephone numbers for the Los Angeles Office. Revise Rule 11 (Discontinuance and Restoration of Service) to comply with Rule 6(B) (1) of D.95-07-054, which does not include any provision that a customer must provide a 30 day's notice to cancel or terminate service.
 11. Cal. PUC Sheet No. 14-T, Rule 11(d.). Note that special contracts are subject to G.O. 96-A. There is no blanket authority for special contracts. For item #2. Cancellation of Service by Carrier (a)(i.), comply with Rule 6(B)(2) of D.95-07-054 and include all the information--detailed in the decision--on each notice for discontinuance of service. Also, for item #2(d), include 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." Revise Item #3. "Cancellation of Credit" to read: "Prorating of Bills."
 12. Cal. PUC Sheet No. 15-T, Rule 12, Information to be provided to the Public. Note that tariffs must be available for inspection at a California office. Rule 13, Temporary Service, should be revised to include explanation on what constitutes "temporary service" and "service to speculative projects."

ATTACHMENT B
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13. Cal. PUC Sheet No. 16-T, Limitation of Liability. Comply with D.95-12-057 and concur with the limitations of liability tariffs of either Pacific Bell or GTEC, which are appended to the decision.

14. Provide sample forms.

(END OF ATTACHMENT B)