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Decision 98-01-002 January 7, 1998

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Application of Momentum Telecom, Inc.,  
(U-5722-C) for Authority to Provide  
Competitive Local Exchange Services as a  
Reseller.

Application 97-10-023  
(Filed October 3, 1997;  
supplemented October 30, 1997)

**ORIGINAL**

**O P I N I O N**

**I. Summary**

Momentum Telecom, Inc. (applicant), a California corporation, seeks a certificate of public convenience and necessity (CPCN) under Public Utilities (PU) Code § 1001 for authority to provide resold local exchange telecommunications services as a competitive local carrier (CLC).<sup>1</sup> By this decision, we grant the authority requested by applicant.

**II. Regulatory Background**

In Decision (D.) 95-07-054, D.95-12-056, and D.97-06-107, we established procedures to govern applications for authority to offer competitive local exchange service within the service territories of Pacific Bell (Pacific) and GTE California Incorporated (GTEC).<sup>2</sup> Applicants that 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 C of D.95-12-056; and (3) the customer notification and education rules adopted in D.96-04-049.

<sup>1</sup> A CLC is a common carrier that is issued a CPCN to provide local exchange telecommunications service for a geographic area specified by such carrier.

<sup>2</sup> D.97-09-115 established procedures to govern applications for authority to provide competitive local exchange service within the territories of Roseville Telephone Company (RTC) and Citizens Telephone Company (CTC).

**III. Procedural Background and Summary of Application**

Application (A.) 97-10-023 was filed on October 3, 1997. Notice of A.97-10-023 appeared in the Commission's Daily Calendar on October 17, 1997. Applicant submitted supplemental information on October 30, 1997, pursuant to the instructions of assigned Administrative Law Judge (ALJ) Kenney. There were no protests to the application. Applicant was previously authorized by D.96-12-053 to provide interexchange services in California as a switchless reseller.

In A.97-10-023 applicant requests authority to provide local exchange services within the service territories of Pacific and GTEC.<sup>3</sup> Applicant states that it does not own switches or transmission equipment, and that it plans to operate by reselling the services of other carriers. Applicant further states that it will not construct any facilities in order to provide the services for which authority is sought in A.97-10-023.

**IV. Financial Qualifications of Applicant**

To be granted a CPCN for authority to resell local exchange service, an applicant must demonstrate that it has \$25,000 of cash or cash equivalent to meet the firm's start-up expenses. The applicant must also demonstrate that it has sufficient additional resources to cover all deposits required by local exchange carriers (LECs) and/or interexchange carriers (IECs).<sup>4</sup>

To demonstrate that it is financially qualified to be granted a CPCN, applicant provided a letter from a bank dated September 30, 1997, stating that applicant has maintained a savings account with the bank since October 18, 1996, with an average balance in excess of \$25,000. Applicant also provided a balance sheet dated July 31,

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<sup>3</sup> Contel of California was granted final approval to merge with GTEC in D.96-04-053. We assume that applicant's request to provide service within the territory of GTEC includes the territory GTEC acquired from Contel of California.

<sup>4</sup> The financial standards for certification to operate as a CLC are set forth in D.95-12-056, Appendix C, Rule 4.B.

1997, which showed cash in excess of \$25,000.<sup>5</sup> In addition, applicant represented that it does not have to post a deposit with any other telecommunications carrier in order to provide local exchange service.

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

#### **V. Technical Qualifications of Applicant**

To be granted a CPCN for authority to resell local exchange service, an applicant must demonstrate that it possesses the managerial and technical competence needed to provide local exchange telecommunications services.<sup>6</sup> To meet this requirement, applicant stated that its proposed CLC operations will be directed by Bob Emrich who is currently managing applicant's intrastate long-distance operations. Applicant states that Emrich has 12 years of telecommunications experience, including experience with Public Branch Exchange systems, data networks, and private lines. To further demonstrate its technical expertise and fitness to serve, applicant represented no one associated with or employed by applicant was previously associated with a nondominant interexchange carrier (NDIEC) that filed for bankruptcy or went out of business.

We find that applicant has met our requirement that it possess adequate managerial and technical competence to operate as a CLC.

Commission staff also reviewed applicant's draft tariffs for compliance with Commission rules and regulations. This review identified several deficiencies which are listed in Attachment B of this decision. We shall approve the application on the condition that the deficiencies identified by our staff are corrected by applicant in its initial tariff filing ordered herein.

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<sup>5</sup> Applicant's motion to place under seal the letter from its bank and its balance sheet was granted in a ruling issued by the Law and Motion Judge on November 7, 1997.

<sup>6</sup> *Ibid.*, Rule 4.A.

## VI. Conclusion

We conclude that the application conforms to our rules for certification as a CLC. Accordingly, we shall grant applicant a CPCN to resell local exchange service in the service territories of Pacific and GTEC, including the service territory of Contel which was merged into GTEC's service territory. In exercising the authority granted herein, applicant shall at all times comply with the terms and conditions set forth in the order that follows.

### Findings of Fact

1. A.97-10-023 was filed on October 3, 1997.
2. Notice of the filing of A.97-10-023 appeared in the Commission's Daily Calendar on October 17, 1997.
3. Pursuant to D.97-06-107, applicants for non-dominant CLC authority are exempt from Rule 18(b) of the Commission's Rules of Practice and Procedure (Rule 18(b)).
4. There were no protests to A.97-10-023.
5. Applicant provided supplemental information on October 30, 1997, pursuant to the instructions of the ALJ.
6. By 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 provide facilities-based local exchange services within the service territories of Pacific and GTEC beginning January 1, 1996, and resold local exchange services within the service territories of Pacific and GTEC beginning March 31, 1996.
7. A hearing is not required.
8. In D.96-12-053 applicant was granted a CPCN to provide resold interexchange service in California.
9. Applicant represented 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.
10. Applicant represented that no deposits are required by LECs or IECs in order for applicant to provide the proposed services.

11. Applicant represented that no one associated with or employed by applicant was previously associated with or employed by an NDIEC that filed for bankruptcy or went out of business.

12. Applicant demonstrated that it possesses the requisite managerial and technical competence needed to provide resold local exchange services to the public.

13. 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 these deficiencies, applicant's draft tariffs complied with the requirements established by the Commission.

14. Since applicant does not propose to construct any facilities in order to provide resold local exchange services, it can be seen with certainty that granting applicant authority to provide resold local exchange services will not have a significant adverse effect upon the environment.

15. CLCs have been exempted from PU Code §§ 816-830 pursuant to D.97-01-015.

16. The transfer or encumbrance of the property by CLCs has been exempted from the requirements of PU Code § 851 whenever such transfer or encumbrance serves to secure debt. (See D.97-01-015.)

17. D.97-09-115 established the procedures to be used for obtaining authority to provide competitive local exchange services within the service territories of RTC and CTC.

#### **Conclusions of Law**

1. Applicant has the financial ability to provide the proposed service.
2. Applicant has made a reasonable showing of managerial and technical competence in the provision of telecommunications services to the public.
3. Public convenience and necessity require the competitive local exchange services to be offered by applicant, subject to the terms and conditions set forth herein.
4. Applicant is subject to:
  - a. The current 2.4% 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-16098, December 16, 1997);
- b. The current 0.25% 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-16090, December 16, 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) pursuant to D.97-06-107.
  6. Applicant is exempt from PU Code §§ 816-830 pursuant to D.97-01-015.
  7. Pursuant to D.97-01-015, the transfer or encumbrance of applicant's property is exempt from PU Code § 851 when the transfer or encumbrance serves to secure debt.
  8. Applicant's initial tariff should correct the deficiencies identified in Attachment B to this order.
  9. The application should be granted to the extent set forth below.
  10. 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.

11. Any CLC which does not comply with our 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.

12. To obtain authority to provide competitive local exchange services within the service territories of RTC or CTC, applicant must follow the procedures specified in D.97-09-115.

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 Momentum Telecom, 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. 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 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.
- "(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 § 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) 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. Applicant's initial tariff shall correct the deficiencies identified in Attachment B to this order.

8. 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.

9. 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.

10. 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.

11. 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.

12. 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.

13. Applicant shall ensure that its employees comply with the provisions of Public Utilities (PU) Code § 2889.5 regarding solicitation of customers.

14. 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.

15. The corporate identification number assigned to applicant by D.96-12-053 is U-5722-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.

16. 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.

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

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

19. 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.

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

21. Applicant shall comply with the Commission's rules for local exchange competition in California 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.

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

23. This order does not grant authority to provide competitive local exchange services within the service territories of Roseville Telephone Company (RTC) or Citizens Telephone Company (CTC). To obtain authority to provide competitive local exchange services within the service territories of RTC or CTC, applicant must follow the procedures specified in D.97-09-115.

24. The application is granted, as set forth above.
25. This proceeding is closed.

This order is effective today.

Dated January 7, 1998, at San Francisco, California.

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

**ATTACHMENT A**

**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 California Competitive Local Carriers. However, you are hereby directed to submit an original and two copies of the information requested in Attachment A no later than March 31<sup>st</sup> of the year following the calendar year for which the annual report is submitted.

Address your report to:

California Public Utilities Commission  
Financial Reports, 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 Interexchange Telephone Utilities and 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 ATTACHMENT A)**

**ATTACHMENT B**

Deficiencies

1. Rule 8 Section D should be amplified to conform with D.97-06-096. That decision states that customers must be notified of customer transfers 30 days prior to their consummation.
2. Rule 5 should include the following: "In addition to the above, each bill shall include the following statement: 'This bill is now due and payable; it becomes subject to a late payment charge if not paid within 15 [or greater] calendar days of presentation date. Should you question this bill, please request an explanation from Momentum Telecom, Inc.'"

(END OF ATTACHMENT B)