

MAR 12 1998

Decision 98-03-027 March 12, 1998

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

In the Matter of the Application of LDM Systems, Inc. (U-5348-C) for authority to provide resold local exchange services in California.

Application 97-07-051  
(Filed July 31, 1997)

**ORIGINAL**

**O P I N I O N**

**I. Summary**

LDM Systems, Inc. (U-5348-C) (LDM or applicant), 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 applicant authority to operate as a nonfacilities based reseller of local exchange services in the service territories of Pacific Bell (Pacific) and GTE California Incorporated (GTEC).

**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 and GTEC. Applicants who are granted authority to provide competitive local exchange service must comply with various rules established by the Commission, including: (1) the consumer protection rules set forth in Appendix B of D.95-07-054; (2) the rules for local exchange competition set forth in Appendix C of D.95-12-056; and (3) the customer notification and education rules adopted in D.96-04-049.

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<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.

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

Applicant, a New York corporation qualified to transact business in California, filed its application on July 31, 1997. Applicant was previously authorized by D.95-02-092 to provide interexchange service in California.

In its application, applicant requests authority to operate as a nonfacilities based reseller of local exchange services within Pacific's and GTEC's service territories.

**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 other telecommunications carriers in order to provide service in California.<sup>2</sup> Applicant provided an audited balance sheet as of December 31, 1996, which demonstrates that it has more than the required cash available. Applicant also represented that it will not be required to make deposits with other telecommunications carriers in order to provide the proposed 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 make a reasonable showing of technical expertise in telecommunications or a related business. In D.95-02-092, we granted applicant a CPCN as an interexchange carrier (IEC). The corporate officers referred to in this application are the same as in D.95-02-092. Therefore, we conclude that applicant has sufficient expertise in telecommunications to operate as a CLC.

Commission staff also reviewed applicant's draft tariffs for compliance with Commission rules and regulations. The deficiencies are noted in Attachment B of this

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<sup>2</sup> The financial standards for certification to operate as a CLC are set forth in D.95-12-056, Appendix C, Rule 4.B.

decision. In its compliance tariff filing, applicant is directed to correct these deficiencies as a condition of our granting approval of the tariffs.

#### VI. Customer Service History

In order to receive the requested authority, an applicant is required to satisfy certain financial, technical, and environmental criteria. In addition, the Commission routinely checks applicants' regulatory background. In this case, we have found that applicant's record is not unblemished.

Applicant currently operates in California and other states as an interexchange carrier. We have found that applicant has had customer service problems in California and two other states as follows:

*Florida:* On March 28, 1997, the Florida Public Service Commission (FPSC) issued Order No. PSC-97-0352-AS-TI in Docket No. 960841-TI. The order approved a settlement offer by applicant of 163 slamming (unauthorized carrier changes) complaints which occurred between January 1, 1995, and June 21, 1996. (97 FPSC 3:508.)

*New York:* On June 12, 1997, the New York Public Service Commission (NYPSC), in Case 97-C-0938, issued an order to show cause why action should not be taken against applicant for slamming. This order concerned 29 slamming complaints filed between April 1, 1996, and March 31, 1997. (1997 N.Y. PUC LEXIS 390.) On November 21, 1997, the NYPSC issued an order that among other things approved LDM's plan, with modifications, to reduce and eliminate the slamming complaints. (1997 N.Y. PUC LEXIS 672.)

*California:* As of October 28, 1997, the Commission's Consumer Services Division (CSD) records indicate that CSD staff have been contacted 73 times regarding applicant, in most cases regarding slamming, since December 1995. These contacts include 18 written complaints of slamming.

In response to the Administrative Law Judge's inquiries, applicant provided an explanation of the actions it has taken to correct the slamming problem. LDM has ceased using the independent marketing firm that was involved in most of the complaints. It is now switching customers only through written authorization. We believe that LDM is taking reasonable steps to eliminate slamming. We have reviewed the plan instituted under the NYPSC order and are satisfied it will provide protection to

consumers. Our CSD will also exercise oversight to ensure LDM continues to take steps to eliminate slamming.

**VII. California Environmental Quality Act**

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 seek construction, extension, or expansion authority from the Commission at this time. 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.

**VIII. 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, subject to compliance with the terms and conditions set forth herein.

**Findings of Fact**

1. Application (A.) 97-05-051 was filed on July 31, 1997.
2. A notice of the filing of the application appeared in the Daily Calendar on August 12, 1997.
3. By D.97-06-107, all interexchange carriers 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).
4. 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 beginning January 1, 1996, and resold local exchange services beginning March 31, 1996.
5. There were no protests to this application.

6. A hearing is not required.
7. In prior decisions, the Commission authorized competition in providing local exchange telecommunications services within the service territories of Pacific and GTEC.
8. 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.
9. Applicant represented that it will not be required to make deposits with any telecommunications carrier in order to provide the proposed services.
10. Applicant demonstrated that its management possesses the requisite technical expertise to provide resold local exchange services to the public.
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 or was sanctioned by the FCC or any state regulatory agency for failure to comply with any regulatory statute, rule, or order, except as discussed above.
12. 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.
13. 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.
14. By D.95-12-057, as modified by D.97-01-015, CLCs are exempt from PU Code §§ 816-830.
15. By D.95-12-057, as modified by D.97-01-015, the transfer or encumbrance of property by CLCs has been exempted from the requirements of PU Code § 851 whenever such transfer or encumbrance serves to secure debt.
16. On March 28, 1997, the FPSC issued Order No. PSC-97-0352-AS-TI in Docket No. 960841-T, approving applicant's settlement offer regarding 163 slamming complaints.

17. On June 12, 1997, the NYPSC issued a show cause order against applicant regarding 29 slamming complaints.

18. On November 21, 1997, the NYPSC issued an order accepting, with modification, LDM's plan to reduce and eliminate slamming complaints.

19. As of October 28, 1997, the CSD has been contacted 73 times regarding, in most cases, slamming by applicant.

20. LDM has taken reasonable steps to reduce and eliminate its slamming complaints. CSD will exercise oversight to ensure LDM continues along this course.

### **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 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. The application should be granted to the extent set forth below.
6. 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.
7. Any CLC which does not comply with the 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.
8. 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 LDM Systems, 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 and shall correct the deficiencies noted in Attachment B. 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 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.

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 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 is U-5348-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. 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. Applicant shall comply with the consumer protection rules 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 the passage of calling party number.

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

22. This proceeding is closed.

This order is effective today.

Dated March 12, 1998, at San Francisco, California.

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

**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**

**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.

4. Exact legal name and U # of reporting utility.
5. Address.
6. Name, title, address, and telephone number of the person to be contacted concerning the reported information.
7. 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.
8. 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**

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List of deficiencies in tariffs filed by LDM Systems Inc., in A.97-07-051 to be corrected in Tariff Compliance Filing.

1. Include sample forms.
2. On each tariff sheet, add and center the following words above the horizontal line: "Competitive Local Carrier". On each tariff sheet the lower left should show Advice Letter No., not Advice No.
3. The tariff sheets used in the tariff schedules should be ruled showing a rectangular space. Please see exhibits A-1 to 4 in General Order (GO) 96-A.
4. Sheet 3-T, Table of Contents: Some page numbers do not correspond to those provided in the Table of Contents.
5. Sheet 4-T: Preliminary statement should indicate the intent to provide local exchange service in Pacific Bell and GTEC's service areas. Also the symbols used do not conform with GO 96-A.
6. Sheet 5-T: the Service Area Map should show only the area where the company intends to provide service, e.g.; service territories of Pacific Bell and GTEC. The entire state is not opened for local exchange competition.
7. Sheet 6-T and following, Rate Schedule: You must indicate if the company intends to offer residential or business service or both and clarify if the proposed rates apply in both Pacific and GTEC's territories. If you intend to offer residential service then you must provide ULTS service. The ULTS service must be tariffed.
8. Sheets 10-T and 14-T: How do the services differ in Schedules A & C? LDM asked only for resale authority. How does the company intend to offer the services in Schedule A?
9. Sheet 20-T, rule 2.1.4: The 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". Also modify rule 2.1.5 to clarify that 7 days written notice will be given by the company prior to disconnection. Also, service cannot be disconnected for violation of the tariff.

**ATTACHMENT B**

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10. Sheet 30-T: Individual Case Basis (ICB) Arrangements must be submitted by Advice Letter on a case by case basis. There is no blanket authority for ICB arrangements.
11. Sheet 31-T, rule 2.6.2: Each promotional offering must be tariffed before it is offered to customers. Also rule 3 states that customers wishing to obtain service may be required to enter into written service orders. Company cannot require a written service order because Rule 2 of Appendix B of D.95-07-054 provides that service may be initiated based on written or oral agreement between the CLC and the customer. Also customers who wish to disconnect service cannot be required to give written notice, per Rule 6.B.1 of Appendix B of D.95-07-054.
12. Sheet 32-T, rule 5: This must include all of the information set forth in Special Information Required on Forms as shown in rule 3 of Appendix B in D.95-07-054.
13. Sheet 34-T, rule 7.2.3 must be changed to reflect that the deposit balance must be returned within 30 days after discontinuance of service or after 12 months of service, whichever comes first. However, no interest shall be given if the customer has received a minimum of two notices of disconnection in a 12-month period. Timely payment of charges is not a requirement for having the deposit returned after 12 months of service.
14. Sheet 35-T, Notices: Need to add that notice of intent to discontinue service from the customer to the company may be verbal.
15. Sheet 36-T: Rule 9.2.7 : You cannot limit customers to 90 days to initiate a billing dispute, the minimum is 2 years.
16. Sheet 37-T, Rule 10 : CPUC addresses are incomplete. See rule 3 in Appendix B for complete address. Again customers cannot be required to give 30 days written notice of intent to terminate service per rule 6 of Appendix B. Notice of intent to discontinue service from the customer to the company may be verbal. Also rule 11.1.1 indicates applications for service are noncancellable unless the company otherwise agrees. This violates rule 6.B.1 of Appendix B which allows a customer to provide verbal or written notice of service termination.
17. Sheet 39-T, Discontinuance and Restoration of Service: Customers desiring to discontinue service cannot be required to give 30 days written notice, per Rule 6.B.1 of Appendix B of D.95-07-054. Modify rule 11.3.1 to clarify that 7 days written notice will be given by the company prior to disconnection. Also to discontinue or suspend service due to customers insolvency is discriminatory and violates the company's

**ATTACHMENT B**

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obligation to serve. This clause may be replaced with a requirement for, or an increase in deposit in the case of a customer's filing of bankruptcy. Also delete rule 11.3.7 the company cannot require payment of future charges when it discontinues service to the customer.

18. Sheet 40-T, Optional Rates: 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.
19. Sheet 41-44-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&C respectively.
20. Sheet 50-T: An interruption period begins once the company is aware of the interruption, not when the customer reports it.
21. The company must include a demarcation tariff or concur in another carrier's tariff.
22. Tariff must provide customers with the option of blocking 900/976 numbers per Appendix B, Rule 15.
23. Per D.95-12-057, the tariff must be revised to state which provider the company will use to administer the Deaf and Disabled Equipment Distribution Program.
24. Include statement on customer privacy per Appendix B, rule 14.
25. Include statement on change of service provider per Appendix B, rule 11.

**(END OF ATTACHMENT B)**