

Decision 98-04-017 April 9, 1998

APR 9 1998

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of International
Telcom, Ltd. for a Certificate of Public
Convenience and Necessity to Operate As a
Reseller of Local Exchange Telecommunications
Services Within California.

ORIGINAL

Application 97-10-058
(Filed October 20, 1997)

OPINION

By this decision, we grant the application of International Telcom, Ltd. (applicant) for a certificate of public convenience and necessity (CPCN) to operate as a reseller of competitive local exchange service pursuant to the Commission's rules adopted in Decision (D.) 95-07-054 and subsequent decisions in Rulemaking (R.) 95-04-043/Investigation (I.) 95-04-044.

Applicant is incorporated in the State of Delaware. In addition, the company is authorized to do business as a foreign corporation in the State of California.

Review of Application

Applicant seeks authority to provide local exchange resale services throughout the State of California as authorized by this Commission in D.95-07-054.

We established rules for resale and facilities-based competitive local carriers (CLC) to be granted CPCNs in D.95-07-054. Under those procedures, we processed a group of CLC candidates that filed petitions for CPCN approval by September 1, 1995, and granted authority effective January 1, 1996, for qualifying CLCs to provide facilities-based competitive local exchange service within the territories of incumbents Pacific Bell (Pacific) and GTE California Incorporated

(GTEC). Since January 1, 1996, we have continued to review and approve individual CPCN applications and petitions for a number of CLCs seeking authority to offer facilities- or resale-based local exchange service within the service territories of Pacific and GTEC. Pursuant to this procedure, applicant filed its request for CPCN authority.

Applicant states that it will be switch-based, but will provide its service by reselling calls routed solely over facilities leased from other certified carriers. Applicant contemplates no proposed construction or extension of facilities as a result of this application.

For this reason, applicant argues that its proposed services are exempt from CEQA, and that there is no possibility that the grant of this application may have an adverse impact upon the environment. In accordance with Rule 17.1, applicant has attached its Proponent's Environmental Statement (PEA) as Exhibit 2.

A draft of applicant's proposed tariff describing its services, rates, terms, and conditions is attached as Exhibit 7 of the application. Applicant proposes to offer its services at rates that are competitive with the rates of the incumbent local exchange carriers. Applicant's final rates, however, will in large part depend upon Pacific's and GTEC's wholesale local exchange rates, pursuant to consummation of appropriate resale/interconnection agreements. Applicant proposes to submit a final tariff upon the Commission's granting of the authority it seeks herein and finalization of appropriate resale/interconnection agreements.

Review of Application

The application has been reviewed for compliance with the certification-and-entry rules (Rules) adopted in Appendices A and B of D.95-07-054 and subsequent decisions in R.95-04-043/I.95-04-044. The rules are intended to protect the public against unqualified or unscrupulous carriers, while also

encouraging and easing the entry of CLC providers to promote the rapid growth of competition.

Pursuant to these rules, applicant had to demonstrate that it possessed the requisite managerial qualifications, technical competence, and financial resources to provide local exchange service. Applicant was also required to submit proposed tariffs which conform to the consumer protection rules set forth in Appendix B of D.95-07-054.

To demonstrate its technical and managerial competence, applicant submitted biographical summaries of its corporate chairman and senior corporate officers.

Applicant provided a copy of its balance sheet and income statement for the year ended December 31, 1996 in order to demonstrate that applicant has a minimum of \$25,000 of cash or cash equivalent reasonably liquid and readily available to meet expenses. Under our rules, the \$25,000 requirement applies only to CLCs that do not own any facilities used in the provision of service. Although applicant intends to offer service on a resale basis, applicant will still own its own switch. Technically speaking, the switch constitutes a facility under our definitions. As such, we shall apply the financial test applicable to facilities-based CLCs, which requires a showing that applicant possesses at least \$100,000 in cash or cash equivalents. We conclude that applicant satisfies the \$100,000 cash requirement based on review of its financial statements.

Based upon our review, we conclude that applicant has satisfactorily complied with our certification requirements for entry, including the consumer protection rules set forth in D.95-07-054, subject to satisfying the tariff deficiencies described in Appendix C. Accordingly, we grant applicant authority to offer local exchange resale service pursuant to the terms and conditions set forth in the order below.

Findings of Fact

1. Applicant filed requests for competitive local exchange CPCN resale authority.
2. No protests have been filed.
3. A hearing is not required.
4. By prior Commission decisions, we authorized competition in providing local exchange telecommunications service within the service territories of Pacific and GTEC for carriers meeting specified criteria.
5. Applicant has demonstrated that it has a minimum of \$100,000 in cash or cash equivalent reasonably liquid and readily available to meet their start-up expenses.
6. Applicant's technical experience is demonstrated by supporting documentation which provides summary biographies of its key management personnel.
7. Applicant has submitted a draft of its initial tariff which complies with the requirements established by the Commission, including prohibitions on unreasonable deposit requirements, subject to the correction of deficiencies identified in Appendix C.
8. By D.97-06-107, applicants for CLC authority are exempt from Rule 18(b).
9. Exemption from the provisions of PU Code §§ 816-830 has been granted to other non-dominant carriers. (See, e.g., D.86-10-007 and D.88-12-076.)
10. 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 services, and has made a reasonable showing of technical expertise in telecommunications.

2. Public convenience and necessity require the competitive local exchange services to be offered by applicant.

3. 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; Resolution T-16117 at 0.0% for 1997, effective February 19, 1998);
- 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.).

4. Applicant is exempt from Rule 18(b).

5. Applicant is exempt from PU Code §§ 816-830.

6. Applicant is exempt from PU Code § 851 when the transfer or encumbrance serves to secure debt.

7. Since the applicant does not intend to engage in construction of facilities but will merely be a switch-based reseller, the granting of the CPCN request will not have potentially significant adverse environmental impacts.

8. Applicant should be granted CPCNs to the extent set forth in the order below.

9. 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.

10. 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 shall be granted to International Telecom, Ltd. to permit it to operate as a switch-based reseller of competitive local exchange telecommunications services, within the service territories of Pacific Bell and GTE California Incorporated, contingent on compliance with the terms of this order.

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 and may not offer these 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 shall be effective not less than one day after approval by the Telecommunications Division. Applicant's filed tariffs shall correct the deficiencies set forth in Appendix C.

b. Applicant is a competitive local carrier (CLC). The effectiveness of each of its future tariffs is subject to the schedules set forth in D.95-07-054, Appendix A, § 4E:

"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, as 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 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."

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 Petitioners are subject, as described in Conclusion of

Law 3. Applicant is also exempt from GO 96-A Section II.G.(1) and (2) which require 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 tariffs, 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 Services Division with applicant's designated contact persons for purposes of resolving consumer complaints and the corresponding telephone numbers. This information shall be updated if the names or telephone numbers change 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 service begins. The same procedure shall be followed for the authorized intraLATA and interLATA services, where applicable.

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. 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.

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

11. 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.

12. The corporate identification number assigned to applicant is U-5964-C, and shall be included in the caption of all original filings with this Commission, and in the titles of other pleadings filed in existing cases.

13. Within 60 days of the effective date of this order, applicant shall comply with PU Code § 708, Employee Identification Cards, reflecting its authority, and notify the Director of the Telecommunications Division in writing of its compliance.

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

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

16. If applicant is 90 days or more late in filing an annual report or in remitting the fees listed in Conclusion of Law 4, Telecommunications Division shall prepare for Commission consideration a resolution that revokes applicant's CPCN, unless applicant has received written permission from Telecommunications Division to file or remit late.

17. Applicant's motion for protective order for its financial data is granted, and the confidential data covered by the protective order shall remain under seal for one year from the date of this decision.

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 only as set forth above.

A.97-10-058 ALJ/TRP/bwg

22. Application 97-10-058 is closed.

This order is effective today.

Dated April 9, 1998, at San Francisco, California.

RICHARD A. BILAS

President

P. GREGORY CONLON

JESSIE J. KNIGHT, JR.

HENRY M. DUQUE

JOSIAH L. NEPPER

Commissioners

APPENDIX A
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**TO: ALL COMPETITIVE LOCAL CARRIERS AND INTEREXCHANGE
TELEPHONE UTILITIES**

Article 5 of the Public Utilities Code grants authority to the California Public Utilities Commission to require all public utilities doing business in California to file reports as specified by the Commission on the utilities' California operations.

A specific annual report form has not yet been prescribed for the California interexchange telephone utilities. However, you are hereby directed to submit an original and two copies of the information requested in Attachment A no later than March 31st of the year following the calendar year for which the annual report is submitted.

Address your report to:

California Public Utilities Commission
Auditing and Compliance Branch, Room 3251
505 Van Ness Avenue
San Francisco, CA 94102-3298

Failure to file this information on time may result in a penalty as provided for in §§ 2107 and 2108 of the Public Utilities Code.

If you have any question concerning this matter, please call (415) 703-1961.

APPENDIX A

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Information Requested of California Competitive Local Carriers and Interexchange Telephone Utilities.

To be filed with the California Public Utilities Commission, 505 Van Ness Avenue, Room 3251, San Francisco, CA 94102-3298, no later than March 31st of the year following the calendar year for which the annual report is submitted.

1. Exact legal name and U # of reporting utility.
2. Address.
3. Name, title, address, and telephone number of the person to be contacted concerning the reported information.
4. Name and title of the officer having custody of the general books of account and the address of the office where such books are kept.
5. Type of organization (e.g., corporation, partnership, sole proprietorship, etc.).
If incorporated, specify:
 - a. Date of filing articles of incorporation with the Secretary of State.
 - b. State in which incorporated.
6. Commission decision number granting operating authority and the date of that decision.
7. Date operations were begun.
8. Description of other business activities in which the utility is engaged.
9. A list of all affiliated companies and their relationship to the utility. State if affiliate is a:
 - a. Regulated public utility.
 - b. Publicly held corporation.
10. Balance sheet as of December 31st of the year for which information is submitted.
11. Income statement for California operations for the calendar year for which information is submitted.

(END OF APPENDIX A)

APPENDIX B

List of deficiencies in tariffs filed by International Telecom, Ltd. in A.97-10-058 to be corrected in Tariff Compliance Filing.

1. Include sample forms.
2. 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 96-A.
3. Sheet No. viii : Need to include a service area map showing Pacific Bell and GTEC's service territories for local exchange service.
4. Sheet No. 22 & 27: ULTS Income Limitations: Need to update the limits to reflect those adopted by Resolution T-16010, on June 11, 1997.
5. Sheet No. 5 : Need to delete Rule 4. Commission authorized changes in tariff rates are not automatically reflected in contracts, unless specifically directed by the Commission.

(END OF APPENDIX B)