

ALJ/JPO/jva

Decision 99-02-029 February 4, 1999

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ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Total Media Technologies, Inc. for a Certificate of Public Convenience and Necessity to Offer Local Exchange, Access and Interexchange Services.

Application 98-11-030
(Filed November 18, 1998)

O P I N I O N

I. Summary

Total Media Technologies, Inc. (applicant) seeks a certificate of public convenience and necessity (CPCN) under Public Utilities (PU) Code § 1001 for authority to provide nonfacilities-based resold local exchange, access and interexchange telecommunications services. By this decision, we grant authority to operate as a reseller of local exchange service. Applicant received authority to operate as an interexchange reseller by Decision (D.) 98-09-053 in Application (A.) 98-08-010.

II. Background

By 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.

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.

Subsequently, by D.94-09-065, we authorized competitive intraLATA interexchange services effective January 1, 1995, for carriers meeting specified criteria.

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 who 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.

In Resolution ALJ 176-3006, dated December 17, 1998, the Commission preliminarily categorized this application as ratesetting, and preliminarily determined hearings were not necessary. No protests have been received. Given this status, a public hearing is not necessary, and it is not necessary to alter the preliminary determinations made in Resolution ALJ 176-3006.

This is an uncontested matter in which the decision grants the relief requested, to the extent that it has not been previously granted. Accordingly, pursuant to PU Code Section 311(g)(2), the otherwise applicable 30-day period for public review and comment is being waived.

III. Overview of the Application

Applicant, a California corporation, filed A.98-11-030 on November 18, 1998. There were no protests to the application. Applicant sought authority to provide nonfacilities-based resold interexchange service as a nondominant interexchange carrier (NDIEC), and local exchange service as a competitive local carrier (CLC) throughout Pacific's and GTEC's service territories.

By D.98-09-053, in A.98-08-010, applicant was authorized to operate as an NDIEC. Therefore, that portion of this application is moot.

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 letter from its bank that demonstrated that it has sufficient cash to meet this requirement.

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 interexchange carriers (IECs).³ Applicant represented that no telecommunications carrier has required it to make a deposit before service can be initiated.

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

V. Technical Qualifications of Applicant

Applicants for 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 to operate as a telecommunications reseller.

²The \$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.

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.

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.

We find that applicant is technically qualified to operate as a CLC reseller.

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 declared that it will not be constructing any facilities for the purpose of providing interexchange or local exchange services. It can be seen 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 telecommunications service. Accordingly, we shall approve the application subject to the terms and conditions set forth herein.

Findings of Fact

1. Applicant filed A.98-11-030 on November 18, 1998, for authority to provide telecommunications services as both a CLC and an IEC.
2. Notice of A.98-11-030 appeared in the Daily Calendar on December 16, 1998.
3. By D.98-09-053 in A.98-08-010 applicant was granted authority to operate as an NDIEC.

4. No protests have been filed.
5. A hearing is not required.
6. In prior decisions the Commission authorized competition in providing local exchange telecommunications service within the service territories of Pacific and GTEC.
7. 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.
8. Applicant 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. No deposits were required by LECs or IECs in order to provide the proposed service.
10. Applicant possesses the requisite experience and knowledge to manage a telephone utility.
11. Applicant will not be constructing any facilities for the purposes of providing local exchange service.
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 those deficiencies, applicant's draft tariffs complied with the requirements established by the Commission.
13. 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, D.97-01-015, and D.96-05-060.)
14. 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, D.97-01-015, and D.96-05-060.)

15. 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 Rules 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 applicant's competitive local exchange service be subject to the terms and conditions set forth herein.
4. Applicant is subject to:
 - a. The current 0.0% 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-16245, December 3, 1998);
 - b. The current 0.192% 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; D.98-12-073 and Resolution T-16234, December 17, 1998);
 - c. The user fee provided in PU Code §§ 431-435, which is 0.11% of gross intrastate revenue for the 1998-1999 fiscal year (Resolution M-4789);
 - 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 at 0.0% for 1999, by Resolution T-16242, December 3, 1998);
 - e. The current 3.8% 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., Resolution T-16244, December 3, 1998); and

- f. The current 0.05% 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, Resolution T-16165, August 1, 1998).
5. Applicant should be exempted from PU Code §§ 816-830.
6. Applicant should be exempted from PU Code § 851 for the transfer or encumbrance of property whenever the transfer or encumbrance serves to secure debt.
7. Since applicant will not be constructing any facilities, it can be seen with certainty that there will be no significant effect on the environment.
8. Applicant's was previously granted.
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 service, 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 Total Media Technologies, Inc. (applicant) to operate as a nonfacilities-based reseller of competitive local exchange service, 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 service 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:

a. "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."

6. 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.

7. 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.

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 or if the name or telephone number changes.

9. 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.

10. Applicant shall keep its books and records in accordance with the Generally Accepted Accounting Principles.

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 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-6054-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 written permission from the Commission's Telecommunications Division to file or remit late.

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

21. 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, Section 4.F.(15)).

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

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

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

25. Application 98-11-030 is closed.

This order is effective today.

Dated February 4, 1999, San Francisco, California.

RICHARD A. BILAS
President
HENRY M. DUQUE
JOSIAH L. NEEPER
Commissioners

A.98-11-030 ALJ/JPO/jva

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.

ATTACHMENT A

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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The following is a list of deficiencies in Total Media Technologies, Inc.'s tariff filing:

1. On each tariff sheet, the following must be shown at the bottom margin: Advice Letter No. and Decision No. on the bottom left-hand corner; Date Filed, Effective Date and Resolution No. on the right-hand corner. Check with the Tariff Section of the Telecommunications Division for the format.
2. On each tariff sheet, show the complete name of the company: Total Media Technologies, Inc.
3. Sheet 7, Preliminary Statement. Include language to indicate that company proposes to provide only "resale" competitive local exchange service. Include "Inc." where the name of the company shows.
4. Sheet 9, Service Area Map. This page is missing.
5. Sheet 27, Switched DS1 Service. Clearly indicate that the company is only reselling the services of another service provider.
6. Sheet 28, Standard Features. Briefly describe each feature.
7. Sheet 30, Centrex Service. Delete this service. Include in the tariffs only those services that the company will be providing.
8. Sheets 40, Blocking Service 3.(B) and 46, Recurring and Nonrecurring Charges. Include language to indicate that individual case basis arrangements are subject to the provisions of General Service 96-A.
9. Sheets 41 through 44, Message Toll Service. Delete these tariff sheets which are appropriate for an interexchange service provider.
10. Sheet 53, Description of Service. On the third paragraph, clearly indicate that the company proposes to offer only resale local service only, and delete reference to long distance calling. Also, delete the last paragraph which is appropriate for a facilities-based service provider.
11. Sheet 59, Special Information Required on Forms. Show the appropriate company name in (A) and (B).
12. Sheet 60, Advance Payments. Clearly indicate that the advance payment shall be credited on the customer's first bill.

ATTACHMENT B

Page 2

13. Sheet 61, Deposits (B)5. Prompt and timely payment of all charges is not a requirement for refund of deposits. See Appendix B, Rule 5 of Decision 95-07-054.
14. Sheet 68, Rendering and Payment of Bills. Update the applicable California surcharges. Delete the last sentence of Paragraph (H).
15. Sheet 89, Use and Ownership of Equipment. Delete this section which is appropriate for a facilities-based service provider.
16. Sheet 92, Special Construction. Note that special constructions are subject to the provisions of General Order 96-A.
17. Sheet 100, Change of Service Providers. Include language on the applicable penalty for each violation of the rule.
18. Include sample forms.

(END OF ATTACHMENT B)