

Decision 00-02-014 February 3, 2000

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of DialTek, LLC,
for a Certificate of Public Convenience and
Necessity to Offer Local Exchange, Access, and
Interexchange Services.

Application 99-09-030
(Filed September 14, 1999)

O P I N I O N

I. Summary

DialTek, LLC, (applicant) seeks a certificate of public convenience and necessity (CPCN) under Pub. Util. Code § 1001 for authority to provide facilities-based and resold local exchange and interexchange telecommunications services. By this decision, we grant the authority requested subject to the terms and conditions set forth below.

II. Background

By Decision (D.) 84-01-037 (14 CPUC2d 317 (1984)) and later decisions, we authorized interLATA entry generally.¹ However, we limited the authority conferred to interLATA service; and we subjected the applicants to the condition that they not hold themselves out to the public as providing intraLATA service. Subsequently, by D.94-09-065, we authorized competitive intraLATA

¹ California is divided into 10 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.

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.

By D.97-09-115, we extended coverage of our adopted rules for local exchange competition to the service territories of Roseville Telephone Company (RTC) and Citizens Telecommunications Company of California, Inc. (CTC).

III. Overview of the Application

Applicant, a Washington limited liability company, filed Application (A.) 99-09-030 on September 14, 1999. There were no protests to the application. Applicant seeks authority to provide facilities-based and resold interexchange service as a nondominant interexchange carrier (NDIEC), and local exchange services as a competitive local carrier (CLC) throughout Pacific's, GTEC's, RTC's and CTC's service territories.

IV. Procedural Matters

In Resolution ALJ 176-3024, dated October 7, 1999, the Commission preliminarily categorized this application as ratesetting, and preliminarily determined that 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.

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Pub. Util. Code § 311(g)(2), the otherwise applicable 30-day period for public review and comment is being waived.

V. Financial Qualifications of Applicant

To be granted a CPCN, an applicant for authority to provide facilities-based local exchange and/or interexchange services must demonstrate that it has a minimum of \$100,000 of cash or cash equivalent to meet the firm's start-up expenses.² In addition, an applicant must also demonstrate that it has sufficient additional resources to cover all deposits that may be required by other carriers in order to provide the proposed services. Applicant provided a guarantee from one of the owners of applicant that demonstrates that it has sufficient cash to meet these requirements. Applicant also represented that no deposits have been required by other carriers in order to provide the proposed services.

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

VI. Technical Qualifications of Applicant

Applicants for NDIEC and CLC authority are required to make a reasonable showing of technical expertise in telecommunications or a related business. To meet this requirement, applicant submitted biographical information on its management. This biographical information demonstrated that applicant possesses sufficient experience and knowledge to operate as a telecommunications provider. 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

² The financial requirement for CLCs is contained in D.95-12-056, Appendix C.

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 and NDIEC provider.

VII. 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 represented that, with the exception of a switch installed in an existing structure, it will not be constructing any facilities for the purpose of providing interexchange or local exchange services. Therefore, it can be seen with certainty that there is no possibility that granting this application will have an adverse effect upon the environment.

By this decision, applicant is authorized to install switching and related equipment within existing structures. It is not authorized to construct other facilities. It must request additional authority in order to do so.

VIII. Request for Confidentiality

Applicant requested that the financial information and estimates of the number of customers for its first and fifth years, filed with this application, be filed under seal. It represented that the information is proprietary and sensitive. The information, if revealed, would place applicant at an unfair business disadvantage. We have granted similar requests in the past and will do so here.

IX. Conclusion

We conclude that the application conforms to our rules for certification to provide competitive local exchange and interexchange telecommunications

services. Accordingly, we shall approve the application subject to the terms and conditions set forth herein.

Findings of Fact

1. Applicant filed A.99-09-030 on September 14, 1999, for authority to provide telecommunications services as both a CLC and an NDIEC.
2. Notice of the application appeared in the Daily Calendar on September 17, 1999.
3. No protests have been filed.
4. A hearing is not required.
5. In prior Commission decisions, competition in providing interLATA telecommunications services was authorized, but those offering such services were generally barred from holding out to the public the provision of intraLATA service.
6. In D.94-09-065, the Commission authorized competitive intraLATA services effective January 1, 1995, for carriers meeting specified criteria.
7. In prior decisions the Commission authorized competition in providing local exchange telecommunications service within the service territories of Pacific, GTEC, RTC and CTC.
8. 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.
9. Applicant has a minimum of \$100,000 of cash or cash equivalent that is reasonably liquid and readily available to meet its start-up expenses.
10. Applicant is not required by other carriers to provide deposits in order to provide the proposed service.
11. Applicant possesses the requisite experience and knowledge to provide telecommunications services.

12. Applicant will not be constructing any facilities, other than switching and related equipment in existing structures, for the purposes of providing interexchange or local exchange service.

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

14. Exemption from the provisions of Pub. Util. 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.)

15. The transfer or encumbrance of property of nondominant carriers has been exempted from the requirements of Pub. Util. 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.)

16. 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 Rule 18(b) of the Commission's Rules of Practice and Procedure.

17. Applicant requested that the financial information and estimates of the number of customers for its first and fifth years, filed with the application, be kept under seal.

18. Public disclosure of the financial information and estimates of the number of customers for its first and fifth years, submitted with this application, would place applicant at an unfair business disadvantage.

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 and interexchange services to be provided by applicant, subject to the terms and conditions set forth herein.

4. Applicant is subject to:

- a. The current 0.50% 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 (Pub. Util. Code § 879; Resolution T-16366, December 2, 1999);
- 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 (Pub. Util. Code § 2881; D.98-12-073 and Resolution T-16234, December 17, 1998);
- c. The user fee provided in Pub. Util. Code §§ 431-435, which is 0.11% of gross intrastate revenue for the 1999-2000 fiscal year (Resolution M-4796);
- 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 (Pub. Util. Code § 739.30; D.96-10-066, pp. 3-4, App. B, Rule 1.C; set by Resolution T-16242 at 0.0% for 1999, December 3, 1998);
- e. The current 2.6% 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-16365 December 2, 1999); 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; set by Resolution T-16374, effective December 16, 1999).

5. Applicant should be exempted from Pub. Util. Code §§ 816-830.

6. Applicant should be exempted from Pub. Util. Code § 851 when the transfer or encumbrance serves to secure debt.

7. Since applicant will not be constructing any facilities, other than switching and related equipment within existing facilities, it can be seen with certainty that there will be no significant effect on the environment.

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

9. 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.

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

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. Applicant's request to file its financial information and estimates of the number of customers for its first and fifth years under seal should be granted for two years.

13. Because of the public interest in competitive local exchange and interexchange 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 (CPCN) is granted to DialTek, LLC (applicant) to operate as a facilities-based and resale provider of competitive local exchange and interexchange services, subject to the terms and conditions set forth below.

2. Applicant is authorized to provide local exchange service within the service territories of Pacific Bell, GTE California Incorporated, Roseville Telephone Company, and Citizens Telecommunications Company of California, Inc.

3. Applicant shall file a written acceptance of the certificate granted in this proceeding.

4. Applicant is authorized to file with this Commission tariff schedules for the provision of competitive local exchange and interexchange services with the deficiencies noted in Attachment B corrected. Applicant may not offer services until tariffs are on file. Applicant's initial filing shall be made in accordance with General Order (GO) 96-A, excluding Sections IV, V, and VI. The tariff shall be effective not less than one day after tariff approval by the Commission's Telecommunications Division. Applicant shall comply with the provisions in its tariffs.

5. Applicant is a competitive local carrier (CLC). The effectiveness of its future CLC tariffs is subject to the schedules set forth in Appendix C, Section 4.E of Decision (D.) 95-12-056:

"E. CLCs shall be subject to the following tariff and contract filing, revision and service pricing standards:

"(1) Uniform rate reductions for existing tariff services shall become effective on five (5) working days' notice to the Commission. Customer notification is not required for rate decreases.

"(2) Uniform major rate increases for existing tariff services shall become effective on thirty (30) days' notice to the Commission, and shall require bill inserts, or a message on the bill itself, or first class mail notice to customers at least 30 days in advance of the pending rate increase.

"(3) Uniform minor rate increases shall become effective on not less than five (5) working days' notice to the Commission.

Customer notification is not required for such minor rate increases.

"(4) Advice letter filing for new services and for all other types of tariff revisions, except changes in text not affecting rates or relocations of text in the tariff schedules, shall become effective on forty (40) days' notice to the Commission.

"(5) Advice letter filings revising the text or location of text material which do not result in an increase in any rate or charge shall become effective on not less than five (5) days' notice to the Commission.

"(6) Contracts shall be subject to GO 96-A rules for NDIECs, except interconnection contracts.

"(7) CLCs shall file tariffs in accordance with Pub. Util. Code Section 876."

6. Applicant is a nondominant interexchange carrier (NDIEC). The effectiveness of its future NDIEC tariffs is subject to the schedules set forth in Ordering Paragraph 5 of D.90-08-032 (37 CPUC2d 130 at 158), as modified by D.91-12-013 (42 CPUC2d 220 at 231) and D.92-06-034 (44 CPUC2d 617 at 618):

"5. All NDIECs are hereby placed on notice that their California tariff filings will be processed in accordance with the following effectiveness schedule:

- "a. Inclusion of FCC-approved rates for interstate services in California public utilities tariff schedules shall become effective on one (1) day's notice.
- "b. Uniform rate reductions for existing services shall become effective on five (5) days' notice.
- "c. Uniform rate increases, except for minor rate increases, for existing services shall become effective on thirty (30) days' notice, and shall require bill inserts, a message on the bill itself, or first class mail notice to customers of the pending increased rates.
- "d. Uniform minor rate increases, as defined in D.90-11-029, for existing services shall become effective on not less than five (5) working days' notice. Customer

notification is not required for such minor rate increases.

- "e. 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.
- "f. Advice letter filings merely revising the text or location of text material which do not cause an increase in any rate or charge shall become effective on not less than five (5) days' notice."

7. 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.

8. 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.

9. 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.

10. Applicant shall notify this Commission in writing of the date that local exchange service is first rendered to the public within five days after local exchange service begins.

11. Applicant shall notify this Commission in writing of the date interLATA service is first rendered to the public within five days after service begins and again within five days of when intraLATA service begins.

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

13. 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.

14. 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.

15. Applicant shall ensure that its employees comply with the provisions of Pub. Util. Code § 2889.5 regarding solicitation of customers.

16. 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.

17. The corporate identification number assigned to applicant is U-6298-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.

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

19. Applicant is exempted from the provisions of Pub. Util. Code §§ 816-830.

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

21. 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 CPCN, unless the applicant has received written permission from the Commission's Telecommunications Division to file or remit late.
22. Applicant shall comply with the consumer protection rules contained in Appendix B of D.95-07-054.
23. 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)).
24. Applicant shall comply with the Commission's rules and regulations for NDIECs set forth in D.93-05-010, D.90-08-032, and other Commission decisions.
25. Applicant shall comply with the customer notification and education rules adopted in D.96-04-049 regarding passage of calling party number.
26. Applicant is authorized to install switching and related equipment within existing structures.
27. Except as authorized above, applicant is not authorized to construct facilities, and must file an application to amend its CPCN in order to do so.
28. Applicant's request to have the financial information and estimates of the number of customers for its first and fifth years, filed with this application, kept under seal is granted for two years from the effective date of this decision. During that period the information shall not be made accessible or disclosed to anyone other than the Commission staff except on the further order or ruling of

the Commission, the Assigned Commissioner, the Assigned Administrative Law Judge (ALJ), or the ALJ then designated as Law and Motion Judge.

29. If the applicant believes that further protection of the information kept under seal is needed, it may file a motion stating the justification for further withholding of the information from public inspection, or for such other relief as the Commission rules may then provide. This motion shall be filed no later than one month before the expiration date.

30. Applicant shall send a copy of this decision to concerned local permitting agencies no later than 30 days from the date of this order.

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

32. This application is closed.

This order is effective today.

Dated February 3, 2000, at San Francisco, California.

RICHARD A. BILAS
President
HENRY M. DUQUE
JOSIAH L. NEEPER
CARL W. WOOD
LORETTA M. LYNCH
Commissioners

**INFORMATION REQUESTED OF COMPETITIVE LOCAL CARRIERS
AND INTEREXCHANGE CARRIERS**

TO: ALL COMPETITIVE LOCAL CARRIERS AND INTEREXCHANGE
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.

**INFORMATION REQUESTED OF COMPETITIVE LOCAL CARRIERS
AND INTEREXCHANGE CARRIERS**

ATTACHMENT A

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

The following is the list of deficiencies in tariffs filed by DialTek, LLC in A.99-09-030. These should be corrected in the Tariff Compliance filing.

1. There must be a provision in the tariff offering non-published service to any customer who requests it.
2. The limitations of liability provisions must conform to Pacific Bell's (PacBell Rule 13).
3. Sample forms must be included.
4. The Commission's current surcharges and their rates must be itemized in the tariff. This list will appear in the decision granting the CPCN.
5. Since residential service is offered, Universal Lifeline Telephone Service (ULTS) must also be offered. (See PacBell tariff or the sample available from Telecom Div. for the appropriate and contact TD for the income limitations.)
6. Separate schedules must be used for local and intraLATA toll/interLATA. Each should separately state the service area, with a map in the latter. Local authority is granted only in GTE, PacBell, Citizens, and Roseville territories.
7. Inside Wire services should not be tariffed. The demarcation point stipulations should be stated in the tariff, as shown in PacBell Rule 20.

(END OF ATTACHMENT B)