Decision 08-08-019 August 21, 2008

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

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| In the Matter of the Application of TelCentris Communications, LLC for a Certificate of Public Convenience and Necessity to Provide Limited Facilities-Based and Resold Local Exchange, IntraLATA, and InterLATA Interexchange Telephone Service in all AT&T California, Verizon California, Citizens Telephone, and SureWest Telephone Local Exchange Areas. | Application 08-02-019 (Filed February 27, 2008) |

# DECISION GRANTING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY AND GRANTING MOTION OF COMMISSION DIVISION OF CONSUMER PROTECTION AND SAFETY TO WITHDRAW PROTEST

## 1. Summary

TeleCentris Communications, LLC, is granted a certificate of public convenience and necessity pursuant to Pub. Util. Code § 1001 to provide limited facilities-based and resold competitive local exchange and interexchange services, subject to the terms and conditions set forth below. We also grant the motion of the Commission Consumer Protection and Safety Division to withdraw a protest that it previously filed regarding this application.

This proceeding is closed.

## 2. Background

In prior decisions, we authorized the provision of competitive interexchange services by carriers meeting specified criteria. In addition, we authorized the provision of competitive local exchange service, by carriers

meeting specified criteria, within the service territories of Pacific Bell Telephone Company (Pacific), Verizon California Inc. (Verizon), SureWest Telephone (SureWest), and Citizens Telecommunications Company of California, Inc., dba Frontier Communications of California (CTC).

TelCentris Communications, LLC (Applicant) is a Nevada limited liability company, and its principal place of business is located in San Diego, California.

In this application, Applicant is requesting authority to provide limited facilities-based and resold local exchange and interexchange services statewide.

## 3. Financial Qualifications

To be granted a certificate of public convenience and necessity (CPCN), an applicant for authority to provide limited-facilities based and resold local exchange and interexchange services must demonstrate that it has a minimum of $100,000 cash or cash equivalent to meet the firm's start-up expenses.[1] An applicant must also demonstrate that it has sufficient additional resources to cover all deposits required by local exchange carriers (LECs) and/or interexchange carriers (IECs) in order to provide the proposed service.[2] Applicant provided financial documents, which demonstrate that it has sufficient resources to satisfy this financial requirement.

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[1] The financial requirement for competitive local carriers (CLCs) is contained in Decision (D.) 95-12-056, Appendix C. The financial requirement for Interexchange Carriers is contained in D.91-10-041.

[2] The 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 IECs, the requirement is found in D.93-05-010.

## 4. Technical Qualifications

Applicants for IEC and competitive local exchange carrier (CLEC) authority are required to make a reasonable showing of technical expertise in telecommunications or a related business. Applicant submitted biographical information on its officers that demonstrates that it possesses sufficient experience and knowledge to operate as a telecommunications provider.

Applicant represents 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 any telecommunication carrier that filed for bankruptcy, or was sanctioned by the Federal Communications Commission or any state regulatory agency for failure to comply with any regulatory statute, rule or order.

## 5. Protest Previously Filed and Withdrawn by Commission Consumer Protection and Safety Division (CPSD)

On February 4, 2008, CPSD filed a protest to this application, on the grounds that:

- Applicant had not provided sufficient evidence that it meets Commission financial requirements for the issuance of a CPCN;

- Applicant violated Rule 1.1[3] by misrepresenting in this application that its officers have never been sanctioned or found civilly liable for misrepresentations to consumers, by failing to disclose a civil proceeding, in which Bob Hertz, the Applicant's Chief Executive Officer and Bryan Hertz, the Applicant's Chief Information Officer, were found civilly liable for misrepresentations to consumers. According to CPSD's protest, in 1998, the California State Department of Corporations (DOC) upheld a desist and refrain order, which was previously issued against Brian and Bob Hertz, who were then operating a company called Internet & Web Services Corporation, based on both their sale of securities without obtaining proper qualification as required by law and their sale of "investment contracts" as securities to unsuspecting customers;
- In 2005, Microsoft Corporation (Microsoft) filed a proceeding in the United States District Court for the Western District of Washington, against Kevin Hertz and other parties, based on alleged unlawful spamming activity. CPSD alleged that counsel for Microsoft conducted depositions of Kevin Hertz, which showed that he was involved with illegal spamming activities through the actions of his marketing affiliates. However, Microsoft Corporation dismissed the case against Hertz.

On May 20, 2008, after discussions with CPSD, Applicants filed an amendment to the application which explained the financial documentation

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[3] All Rule citations are to the Commission Rules of Practice and Procedure, unless otherwise stated.

Rule 1.1 states:

> Any person who signs a pleading or brief, enters an appearance, offers testimony at a hearing, or transacts business with the Commission, by such act represents that he or she is authorized to do so and agrees to comply with the laws of this State; to maintain the respect due to the Commission, members of the Commission and its Administrative Law Judges; <u>and never to mislead the Commission or its staff by an artifice or false statement of fact or law</u>. (<u>Emphasis</u> <u>added</u>.)

provided in the application, provided required certifications, and explained the DOC cease and desist order issued against Brian and Kevin Hertz and the Microsoft lawsuit against Kevin Hertz's company, MyAuction.biz.

With regard to the DOC action, Applicants state that in 1997, the DOC found that a company started by Bryan Hertz, which was named Internet Web Services Corporation, was selling securities to the public over the internet without proper registration. Applicants state that although the DOC determined in 1997 that these offerings were security interests that must be registered under state blue sky law, this method of offering products for sale through e-commerce on the internet is now commonly used by many companies, including E-Bay and Amazon.com. According to Applicants, the DOC stated that no fraud had occurred in this case and that no inference of fraud should be made from the findings or determination of the DOC, and ordered Hertz to register the offerings as securities. As a result, Applicant did not believe that it was required to disclose the DOC action in its application.

Regarding the Microsoft litigation, Applicant states that several other companies were improperly using Hertz's business, MyAuction.biz, for spamming purposes, and that Hertz was a software developer, not a spammer. According to Applicants, Hertz cooperated with Microsoft and provided the names of individuals involved in the unlawful spamming. Microsoft subsequently dismissed the case against Hertz with prejudice because he had engaged in no wrongdoing or unlawful activity.

On May 21, 2008, CPSD filed a motion to withdraw its protest (Motion to Withdraw). In the Motion to Withdraw, CPSD stated that based on discovery and the additional information provided by TelCentris, CPSD no longer objects

to the application. However, as a condition of the withdrawal of the protest, Applicant has agreed to do the following:

- At the start of its business, Applicant will notify CPSD's Director in writing of its business start-up and will provide information regarding its business, including product and service offerings; and
- Six months after the start-up of the business, Applicant will provide CPSD's Director in writing with all complaints lodged by and received from customers.

Based on the above explanation of the issues raised in the protest, and CPSD's statement that it no longer objects to this application, we find it appropriate to grant CPSD's Motion to Withdraw. However, we will require Applicants to comply with the terms of its agreement with CPSD by providing the specified information to CPSD's Director at the time of the start-up of its operations and six months after its start-up.

## 6. Tariffs

Commission staff reviewed Applicant's draft tariffs for compliance with Commission rules and regulations. The deficiencies to be corrected by Applicant are set forth in Attachment A.

## 7. 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 has no plan for constructing facilities at this time. Applicant will provide its service through the use of existing facilities and network elements of other carriers and/or its own facilities installed in existing buildings and structures. Therefore, it can be seen with

certainty that there is no possibility that granting this application will have an adverse effect upon the environment. Applicant must file for additional authority, and submit to any required CEQA review, before it can construct facilities, other than installing switches in existing structures.

## 8. Conclusion

We conclude that the application conforms to our rules for authority to provide resold competitive local exchange and interexchange telecommunications services. Accordingly, we shall approve the application subject to the terms and conditions set forth herein. CPSD's motion to withdraw is granted. Applicant shall comply with its agreement with CPSD, as follows:

a. At the start of its business, Applicant will notify CPSD's Director in writing of its business start-up and will provide information regarding its business, including product and service offerings; and

b. Six months after the start-up of the business, Applicant will provide CPSD's Director in writing with all complaints lodged by and received from customers.

## 9. Categorization and Need for Hearing

In Resolution ALJ 176-3210, dated March 13, 2008, the Commission preliminarily categorized this application as Ratesetting, and preliminarily determined that hearings were not necessary. The protest previously filed by CPSD has been withdrawn. There is no apparent reason why the application should not be granted. Given these developments, a public hearing is not necessary, and it is not necessary to disturb the preliminary determinations.

## 10. Comments on Proposed Decision

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to § 311(g)(2) of the Pub. Util. Code and

Rule 14.6(c)(2) of the Commission's Rules of Practice and Procedure, the otherwise applicable 30-day period for public review and comment is waived.

## 11. Assignment of Proceeding

Rachelle B. Chong is the assigned Commissioner and Myra J. Prestidge is the assigned Administrative Law Judge in this proceeding.

## Findings of Fact

1. Notice of the application appeared on the Daily Calendar on March 5, 2008.

2. CPSD has filed a motion to withdraw its protest filed on April 4, 2008, and now has no objections to this application.

3. A hearing is not required.

4. In prior decisions, the Commission authorized competition in providing interexchange services for carriers meeting specific criteria.

5. In prior decisions, the Commission authorized competition, by carriers meeting specified criteria, in providing local exchange telecommunications services within the service territories of Pacific, Verizon, SureWest and CTC.

6. 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.

7. Applicant has sufficient additional cash or cash equivalent to cover any deposits that may be required by other telecommunications carriers in order to provide the proposed service.

8. Applicant possesses sufficient experience and knowledge to provide telecommunications services.

9. Based on Applicant's explanation and CPSD's motion to withdraw, the allegations stated in CPSD's protest are not grounds to deny Applicant a CPCN authorizing the provision of telecommunications services in this state.

10. As part of its application, Applicant submitted a draft of its initial tariff that contained the deficiencies listed in Attachment A to this decision. Except for these deficiencies, Applicant's draft tariff complies with the Commission's requirements.

11. Applicant will not be constructing facilities pursuant to this CPCN.

## Conclusions of Law

1. Applicant has the financial ability to provide the proposed service.

2. Applicant has sufficient technical expertise to operate as a telecommunications carrier.

3. Based on the circumstances of this case, it is appropriate to grant CPSD's motion to withdraw.

4. Public convenience and necessity require that Applicant's limited facilities-based and resold competitive local exchange and interexchange services be subject to the terms and conditions set forth herein.

5. Since Applicant will not be constructing any facilities, it can be seen with certainty that there will be no significant effect on the environment.

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

7. Applicant, once granted a CPCN, should be subject to the applicable Commission rules, decisions, General Orders, and statutes that pertain to California's public utilities.

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

9. 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 is granted to TelCentris Communications, LLC (Applicant) to operate as a limited facilities-based and resale provider of competitive local exchange services, and interexchange services, subject to the terms and conditions set forth below.

2. Applicant is authorized to provide local exchange service in the service territories of Pacific Bell Telephone Company, Verizon California Inc., SureWest Telephone, and Citizens Telecommunications Company of California, Inc., dba Frontier Communications of California and interexchange services statewide.

3. The motion of the Commission Consumer Protection and Safety Division (CPSD) to withdraw its protest to this application is granted.

4. As a condition of granting CPSD's motion to withdraw its protest, Applicant shall do the following:

   a. At the start of its business, Applicant will notify CPSD's Director in writing of its business start-up and will provide information regarding its business, including product and service offerings; and

   b. Six months after the start of its business, Applicant will provide CPSD's Director, in writing, all complaints lodged by and received from customers.

5. Applicant is authorized to file tariff schedules for the provision of competitive local exchange services and interexchange services with the deficiencies noted in Attachment A 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-B and the Telecommunications Industry Rules (D.07-09-019). Applicant shall comply with its tariffs.

6. 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.

7. The corporate identification number assigned to Applicant, U7097C, shall be included in the caption of all original filings with this Commission, and in the titles of other pleadings filed in existing cases.

8. Applicant shall comply with all applicable rules adopted in the Local Exchange proceeding (Rulemaking 95-04-043/Investigation 95-04-044), the Commission's rules and regulations for interexchange carriers set forth in Decision (D.) 93-05-010, D.90-08-032, as well as all other applicable Commission rules, decisions, GOs, and statutes that pertain to California public utilities, subject to the exemptions granted in this decision.

9. Applicant shall comply with the requirements applicable to competitive local exchange carriers and interexchange carriers included in Attachment B to this decision.

10. Applicant is not authorized to construct facilities other than equipment to be installed in existing building and structures.

11. Application 08-02-019 is closed.

This order is effective today.

Dated August 21, 2008, at San Francisco, California.

MICHAEL R. PEEVEY
President
DIAN M. GRUENEICH
JOHN A. BOHN
RACHELLE B. CHONG
TIMOTHY ALAN SIMON
Commissioners

**ATTACHMENT A**

List of deficiencies in draft tariff submitted by Telcentris Communications, LLC, in A.08-02-019 to be corrected in its initial tariff compliance filing:

1. Tariff Sheet Format: CPUC assigned utility ID number (U#) should be included on each sheet in the upper left header along with Company name and address. (General Order 96B, Section 8.4.1)

2. Tariff No. 1 Original Page 100, Universal Lifeline Telephone Service – Please revise income eligibility levels to be consistent with those at CPUC website http://www.cpuc.ca.gov/PUC/Telco/Public+Programs/ults.htm

**(END OF ATTACHMENT A)**

**ATTACHMENT B**

REQUIREMENTS APPLICABLE TO COMPETITIVE LOCAL EXCHANGE CARRIERS

1. Applicant shall file, in this docket, a written acceptance of the certificate granted in this proceeding within 30 days of the effective date of this order.

2. Applicant is subject to the following fee and surcharges that must be regularly remitted per the instructions in Appendix E to D.00-10-028. The Combined California PUC Telephone Surcharge Transmittal Form must be submitted even if the amount due is zero.

3. Revenues collected for the California Advanced Services Fund (CASF) at the surcharge rate of 0.25% shall be held by the carrier in a memorandum account tracking system and the account will accrue monthly interest on the accumulated balance at the short-term commercial paper rate. Carriers shall continue to hold custody of all the collected CASF surcharge revenues and accumulated interest *until* the Commission provides further direction on the disposition of these revenues.

   a. The current 1.15% 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 Trust Administrative Committee Fund (Pub. Util. Code § 879; Resolution T-17071, dated March 1, 2007, effective April 1, 2007);

   b. The current 0.20% 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-17127, dated December 20, 2007, effective January 1, 2008);

c. The user fee provided in Pub. Util. Code §§ 431-435, which is 0.18% of gross intrastate revenue (Resolution M-4819), dated June 7, 2007, effective July 1, 2007;

d. The current 0.13% 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 § 739.3; D.96-10-066, pp. 3-4, App. B, Rule 1.C; Resolution T-17128, dated December 20, 2007, effective January 1, 2008);

e. 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 High Cost Fund-B (D.96-10-066, p. 191, App. B, Rule 6.F., D.07-12-054);

f. 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 Advances Services Fund (D.07-12-054); and

g. The current 0.079% 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-17142, dated April 29, 2008, effective June 1, 2008).

Note: These fees change periodically. In compliance with Resolution T-16901, December 2, 2004, you should check the joint tariff for surcharges and fees filed by Pacific Bell (dba SBC California) and apply the current surcharge and fee amounts in that joint tariff on end-user bills until further revised.

4. Applicant is a competitive local exchange carrier (CLC). The effectiveness of its future tariffs is subject to the requirements of General Order 96-B and the Telecommunications Industry Rules (D.07-09-019).

5. Applicant is an interexchange carrier (IEC). The effectiveness of its future IEC tariffs is subject to the requirements of General Order 96-B and the Telecommunications Industry Rules (D.07-09-019).

6. Tariff filings shall reflect all fees and surcharges to which Applicant is subject, as reflected in 2 above.

7. Applicant shall file a service area map as part of its initial tariff.

8. Prior to initiating service, Applicant shall provide the Commission's Consumer Affairs Branch with the name and address of its designated contact person(s) for purposes of resolving consumer complaints. This information shall be updated if the name or telephone number changes, or at least annually.

9. Applicant shall notify the Director of the Communications Division in writing of the date that local exchange service is first rendered to the public, no later than five days after service first begins.

10. Applicant shall notify the Director of the Communications Division in writing of the date interLATA service is first rendered to the public within five days after service begins, and again within five days after intraLATA service begins.[1]

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

12. In the event Applicant's books and records are required for inspection by the Commission or its staff, it 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 its office.

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[1] California is divided into ten Local Access and Transport Areas (LATAs), each containing numerous local telephone exchanges. InterLATA describes services, revenues and functions relating to telecommunications originating within one LATA and terminating in another LATA. IntraLATA describes services, revenues and functions relating to telecommunications originating within a single LATA.

13. Applicant shall file an annual report with the Director of the Communications Division, in compliance with GO 104-A, on a calendar-year basis with the information contained in Attachment C to this decision.

14. Applicant shall file an affiliate transaction report with the Director of the Communications Division, in compliance with D.93-02-019, on a calendar year basis using the form contained in Attachment D.

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

16. 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 Communications Division in writing of its compliance.

17. If Applicant is 90 days or more late in filing an annual report, or in remitting the surcharges and fee listed in 2 above, the Communications Division shall prepare for Commission consideration a resolution that revokes Applicant's CPCN unless it has received written permission from the Communications Division to file or remit late.

18. Applicant is exempt from Commission Rules of Practice and Procedure 3.1(b).

19. Applicant is exempt from Pub. Util. Code §§ 816-830.

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

21. If Applicant decides to discontinue service or file for bankruptcy, it shall immediately notify the Communications Division's Bankruptcy Coordinator.

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

**(END OF ATTACHMENT B)**

# ATTACHMENT C

## ANNUAL REPORT

An original and a machine readable, copy using Microsoft Word or compatible format shall be filed with the California Public Utilities Commission, 505 Van Ness Avenue, Room 3107, San Francisco, CA 94102-3298, no later than March 31st of the year following the calendar year for which the annual report is submitted.

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

Required information:

1. Exact legal name and U # of the 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. Number and date of the Commission decision granting the Certificate of Public Convenience and Necessity.
7. Date operations were begun.
8. Description of other business activities in which the utility is engaged.
9. 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.

For answers to any questions concerning this report, call (415) 703-2883.

**(END OF ATTACHMENT C)**

**ATTACHMENT D**
**CALENDAR YEAR AFFILIATE TRANSACTION REPORT**

1. Each utility shall list and provide the following information for each affiliated entity and regulated subsidiary that the utility had during the period covered by the annual Affiliate Transaction report.

- Form of organization (*e.g.,* corporation, partnership, joint venture, strategic alliance, etc.);
- Brief description of business activities engaged in;
- Relationship to the utility (*e.g.,* controlling corporation, subsidiary, regulated subsidiary, affiliate);
- Ownership of the utility (including type and percent ownership)
- Voting rights held by the utility and percent; and
- Corporate officers.

2. The utility shall prepare and submit a corporate organization chart showing any and all corporate relationships between the utility and its affiliated entities and regulated subsidiaries in #1 above. The chart should have the controlling corporation (if any) at the top of the chart; the utility and any subsidiaries and/or affiliates of the controlling corporation in the middle levels of the chart and all secondary subsidiaries and affiliates (*e.g.,* a subsidiary that in turn is owned by another subsidiary and/or affiliate) in the lower levels. Any regulated subsidiary should be clearly noted.

3. For a utility that has individuals who are classified as "controlling corporations" of the competitive utility, the utility must only report under the requirements of #1 and #2 above any affiliated entity that either (a) is a public utility or (b) transacts any business with the utility filing the annual report excluding the provision of tariff services.

4. Each annual report must be signed by a corporate officer of the utility stating under penalty of perjury under the laws of the State of California (CCP 2015.5) that the annual report is complete and accurate with no material omissions.

5. Any required material that a utility is unable to provide must be reasonably described and the reasons the data cannot be obtained, as well as the efforts expended to obtain the information, must be set forth in the utility's annual Affiliate Transaction Report and verified in accordance with Section I-F of Decision 93-02-019.

6. Utilities that do no have affiliated entities must file, in lieu of the annual transaction report, an annual statement to the Commission stating that the utility had no affiliated entities during the report period. This statement must be signed by a corporate officer of the utility, stating under penalty of perjury under the laws of the State of California (CCP 2015.5) that the annual report is complete and accurate with no material omissions.

**(END OF ATTACHMENT D)**