

Decision **PROPOSED DECISION OF ALJ PRESTIDGE** (Mailed 1/16/2007)

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

Application of Telecom House Incorporated  
(U-5675-C) for a Certificate of Public Convenience  
and Necessity to Provide Resold Local Exchange  
Service in California.

Application 05-09-018  
(Filed September 12, 2005)

**OPINION DENYING APPLICATION FOR  
CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY**

**Summary**

Telecom House Incorporated (Applicant) seeks a certificate of public convenience and necessity (CPCN) under Pub. Util. Code § 1001 for authority to provide resold local exchange telecommunications services in the State of California. Applicant currently holds a CPCN which authorizes the provision of resold interexchange services in this state.<sup>1</sup>

By this decision, we deny the application based on Applicant's failure to respond in writing to a request by the Commission Telecommunications Division (TD) for clarification of revenue reporting discrepancies between Applicant's annual financial reports and user fee and public program surcharge reports for the years 2003 through 2005 and for payment of any additional fees and

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<sup>1</sup> See D.96-09-067, which granted Applicant CPCN #U-5675-C. At that time, Applicant was operating under the name of Sterling Communications, Inc.

surcharges due to the Commission, as well as Applicant's past failure to timely file reports with the Commission as required by the terms of its existing CPCN.

We take no action in this decision regarding Applicant's existing CPCN authorizing the provision of resold interexchange services (#U-5675-C). However, if Applicant fails to provide adequate written clarification of these discrepancies to TD or to correct its reports and pay any additional fees and surcharges owed to the Commission within 45 days of the effective date of this order, we shall take the requisite steps to revoke Applicant's existing CPCN.

### **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 Company (SureWest), previously named Roseville Telephone Company, and Citizens Telecommunications Company of California, Inc. (CTC).

Applicant, a California corporation, seeks authority to provide resold local exchange services within the service territories of Pacific and Verizon.

Applicant's principal place of business is located at Beverly Hills, California.

### **Financial Qualifications**

To be granted a CPCN, an applicant for authority to provide resold 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.<sup>2</sup> 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.<sup>3</sup>

Applicant has provided financial documentation that demonstrates that it has sufficient cash to satisfy the financial requirement plus any required deposits.

### **Technical and Managerial Qualifications/Violations of Legal and Regulatory Requirements**

Applicants for IEC and CLC authority are required to make a reasonable showing of technical expertise in telecommunications or a related business.

Applicant submitted biographical information on its management which demonstrates their technical qualifications to operate as a telecommunications provider.

The Commission may also deny a CPCN application in order to protect the public interest if the applicant fails to demonstrate that its management is qualified to operate as a telecommunications provider in a manner that complies with applicable laws and regulatory requirements and adequately serves the public.<sup>4</sup>

On September 13, 2005, the FCC issued the FCC Forfeiture Order, which found Applicant to be in apparent violation of the following laws and FCC rules:

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<sup>2</sup> The financial requirement for competitive local carriers (CLCs) is contained in Decision (D.) 95-12-056, Appendix C. The financial requirement for IECs is contained in D.91-10-041.

<sup>3</sup> 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 NDIECs, the requirement is found in D.93-05-010.

<sup>4</sup> See D.04-05-033.

- Section 64.1195 of the FCC rules by willfully and repeatedly failing to register with the FCC as telecommunications provider until 2004, when Applicant had been operating as a telecommunications provider since 2000;
- Sections 54.1711(a) and 64.604(c)(5)(iii)(B) of the FCC rules by failing to submit required Telecommunications Reporting Worksheets from 2001 to 2005;
- Section 254(d) of the Communications Act of 1934, as amended, and Sections 54.706(a) and 64.604(c)(5)(iii)(A) of the FCC Rules by willfully and repeatedly failing to contribute to the Universal Service Fund and the Telecommunications Relay Service Fund on a timely basis.<sup>5</sup>

The FCC found that Applicant was apparently liable for a forfeiture of \$529,300 based on the above violations. The FCC Forfeiture Order directed Applicant to either pay the forfeiture or file a written response seeking reduction or cancellation of the forfeiture within 30 days and to file a report, supported by a sworn statement or declaration under penalty of perjury by a corporate officer, stating Applicant's plan to come into compliance with the payment and reporting requirements described in the FCC Forfeiture Order.

In response to inquiries by the assigned Administrative Law Judge (ALJ), Applicant made two supplemental filings, dated December 22, 2005 and July 21, 2006, with the Commission to explain the FCC Forfeiture Order. Applicant responded that the FCC Forfeiture Order contains factual inaccuracies regarding certain alleged violations.

In both supplemental filings, Applicant stated that it has come into compliance with FCC requirements and that the company was negotiating a

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<sup>5</sup> See 2005 FCC Lexis 5114.

consent decree with the FCC that would involve Applicant's filing of a more detailed compliance plan and payment of a smaller, voluntary contribution to the U. S. Treasury over time, in lieu of the forfeiture.

On September 14, 2006, the FCC adopted a consent decree with Applicant (FCC Consent Decree)<sup>6</sup>, which terminated the investigation and enforcement proceeding against Applicant, as described in the FCC Forfeiture Order. By its own terms, the FCC Consent Decree does not constitute an adjudication on the merits or a factual or legal finding as to Applicant's past compliance or non-compliance with the Telecommunications Act of 1934, as amended (the Act), or FCC rules and orders, and Applicant has not admitted or denied liability for violation of any statute, regulation, or administrative rule. Applicant has agreed to make a voluntary contribution to the U. S. Treasury in the amount of \$170,000 and to develop and maintain a program to promote its future compliance with FCC and legal requirements. The FCC Consent Decree also provides that the FCC will not use the facts developed in the enforcement proceeding against Applicant in any new proceeding against the Applicant or take any action on its own motion against Applicant with respect to Applicant's basic qualifications, including character qualifications, to be an FCC licensee or licensed common carrier, based on facts developed in the enforcement proceeding. However, the FCC may adjudicate complaints against Applicant for alleged violations of the Act or other types of alleged misconduct regardless of when the misconduct occurred, and may investigate new evidence that Applicant has violated the Act, FCC rules or orders, or the FCC Consent Decree.

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<sup>6</sup> 2006 FCC LEXIS 5060.

In addition to questions regarding Applicant's previous compliance with FCC requirements, Applicant has also previously failed to comply with Commission regulatory requirements.

On July 17, 2006, the Director of TD notified Applicant by letter that Applicant had failed to file reports required under the terms of its existing CPCN as follows:

- User Fee Reports – No reports at all
- Public Program Surcharge payments – No reports since October 2004
- Annual Reports – No reports since 2003

TD's letter warned that if Applicant did not file all missing reports within 30 days, TD would initiate action to cancel Applicant's existing CPCN.

Applicant subsequently filed the missing reports with TD.

On September 21, 2006, the Director of TD wrote to Applicant noting serious discrepancies between Applicant's revenues as stated in its annual reports for 2003, 2004 and 2005 and its user fee reports and public program reports for these years. According to TD's letter, Applicant's annual reports stated the company's total income as follows:

- 2003 - \$1,685,469
- 2004 - \$2,756,506
- 2005 - \$2,635,714

However, the user fee reports stated that the company had no revenue for the years 2003 through 2005 and the public program reports stated that Applicant had only \$32,603 in customer billings for that period. The Director of TD ordered Applicant to submit a written explanation that clarified these discrepancies or to correct its statements and report all revenues and customer billings for 2003 through 2005, and to pay all appropriate fees and surcharges to the Commission

by no later than October 23, 2006. Despite requests by TD, Applicant has to date not filed a written explanation of these discrepancies or corrected its reports and paid additional fees and surcharges.

### **Conclusion**

In view of questions regarding Applicant's past failure to timely file required reports with the Commission and Applicant's failure to respond in writing to TD's order to clarify the discrepancies between its annual reports and its user fee reports and public program reports and to pay any additional fees or surcharges due to the Commission, we find that it would not serve the public interest to expand Applicant's existing CPCN authority in this state at this time, because Applicant has failed to demonstrate that it will operate the company in a manner that complies with legal and regulatory requirements.

We take no action regarding Applicant's existing CPCN #U-5675-C in this decision. However, if Applicant does not file written clarification of the discrepancies between its 2003, 2004, and 2005 annual reports and its user fee reports and public program reports for these years with TD and pay any additional fees or surcharges due to the Commission within 45 days of the effective date of this order, we shall take the requisite steps to revoke Applicant's existing CPCN.

### **Motion to File Confidential Documents Under Seal**

Applicant has filed two motions for leave to file confidential materials, including financial documents and a non-public version of its response to the FCC Forfeiture Order, under seal. We have granted similar motions in other cases, and we grant Applicant's motions, dated September 15, 2005 and December 22, 2005, here.

**Comments on Proposed Decision**

The proposed decision of the administrative law judge (ALJ) in this matter was mailed to the parties in accordance with Pub. Util. Code § 311 and Rule 14.2 of the Rules of Practice and Procedure.

Comments were received from Applicant on \_\_\_\_\_.

**Categorization and Need for Hearings**

In Resolution ALJ 176-3159 dated September 22, 2005, the Commission preliminarily categorized this application as ratesetting and preliminarily determined that hearings were not necessary. No protests have been received. The applicant has been given an opportunity to provide additional information regarding the FCC Forfeiture Order and its qualifications to operate as a telecommunications provider in writing. Given these developments, a public hearing is not necessary, and it is not necessary to disturb the preliminary determinations.

**Assignment of Proceeding**

Michael R. Peevey is the Assigned Commissioner and Myra J. Prestidge is the assigned ALJ in this proceeding.

**Findings of Fact**

1. Notice of the application appeared in the Daily Calendar on September 23, 2005.
2. No protests have been filed.
3. A hearing is not required.
4. In prior decisions, the Commission authorized competition in providing interexchange services for carriers meeting specified 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 currently holds a CPCN (#U-5675-C) which authorizes the provision of resold interexchange services in California.

7. 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.

8. 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.

9. Applicant's management has sufficient technical expertise to operate the company.

10. On September 13, 2005, the FCC has issued a Notice of Apparent Liability for Forfeiture and Order (FCC Forfeiture Order), which found that Applicant appeared to have engaged in the following violations of law and FCC Rules:

- a. Section 64.1195 of the FCC rules by willfully and repeatedly failing to register with the FCC as a telecommunications provider until 2004, when Applicant had been operating as a telecommunications provider since 2000;
- b. Sections 54.1711(a) and 64.604(c)(5)(iii)(B) of the FCC rules by failing to submit required Telecommunications Reporting Worksheets from 2001 to 2005; and
- c. Section 254(d) of the Communications Act of 1934, as amended, and Sections 54.706(a) and 64.604(c)(5)(iii)(A) of the FCC Rules by willfully and repeatedly failing to contribute to the Universal Service Fund and the Telecommunications Relay Service Fund on a timely basis.

11. The FCC Forfeiture Order directed Applicant to file a compliance plan and all required reports and either pay a forfeiture in the amount of \$529,300 or file a response that seeks a reduction in the amount to be paid.

12. In response to inquiries from the assigned ALJ, Applicant filed two supplemental filings in this proceeding, dated December 22, 2005 and July 21, 2006, regarding the FCC Forfeiture Order.

13. In the supplemental filings, Applicant stated that the FCC Forfeiture Order contains factual inaccuracies.

14. On September 21, 2006, the FCC approved a Consent Decree with Applicant, which terminated the investigation and enforcement proceeding that were the basis for the FCC Forfeiture Order.

15. Under the terms of the Consent Decree, Applicant neither admitted nor denied violations of the Act and FCC rules and orders.

16. The Consent Decree requires Applicant to make a voluntary contribution of \$170,000 to the United States Treasury and to develop and maintain a compliance program to promote Applicant's future compliance with legal and FCC requirements.

17. Under the terms of the Consent Decree, the FCC agreed not to take any action on its own motion against Applicant based on facts developed in the investigation that led up to the FCC Forfeiture Order, or to take any action on its own motion against Applicant with respect to Applicant's basic qualifications, including character, to be a Commission licensee or a common carrier.

18. On July 17, 2006, TD issued a letter to Applicant regarding Applicant's failure to file required reports with the Commission as required by the terms of its existing CPCN, as follows:

- a. User Fee Payments – no reports at all

- b. Public Program Surcharge payments – No reports since October 2004
- c. Annual reports – No reports since 2003.

19. In its July 17, 2006 letter to Applicant, TD directed Applicant to file all required reports within 30 days.

20. Although Applicant subsequently filed the missing reports with TD, there were serious discrepancies between Applicant's income as stated in its annual reports for 2003, 2004, and 2005 and Applicant's user fee reports and public program reports for this period.

21. On September 21, 2006, the Director of TD ordered Applicant by letter to submit a written explanation of these discrepancies to TD and/or to correct its reports and pay all appropriate surcharges and fees owed to the Commission by no later than October 23, 2006.

22. To date, Applicant has not filed a written explanation of the discrepancies between its annual reports and its user fee reports and public program reports as directed by TD and has not submitted corrected reports and paid any additional fees and surcharges to the Commission.

### **Conclusions of Law**

1. Applicant has the financial ability and technical expertise to provide the proposed service.
2. In view of Applicant's history of failing to timely file reports as required by the terms of its existing CPCN and failing to clarify the discrepancies between its annual reports and user fee reports and public program reports for 2003 through 2005, Applicant has not demonstrated sufficient managerial expertise to lawfully operate as a telecommunications carrier at this time.

3. It is appropriate to grant Applicant's motions to file confidential materials under seal, dated September 12, 2005 and December 22, 2005, based on the circumstances of this case.

4. In view of Applicant's history of violations of regulatory requirements, granting Applicant's application for expanded CPCN authority at this time would not serve the public interest.

## O R D E R

### IT IS ORDERED that:

1. The application is denied.
2. If Telecom House Incorporated (Applicant) does not provide adequate written clarification to the Commission Telecommunications Division (TD) of the discrepancies between its annual reports for 2003, 2004, and 2005 and its user fee reports and public program reports for this period, or file corrected reports and pay any additional fees due to the Commission, as specified September 21, 2006 letter from the Director of TD to Applicant, within 45 days of the effective date of this order, TD shall take the requisite steps to revoke Applicant's current CPCN (#U-5678-C).
3. Applicant's motions to file confidential materials under seal, dated September 12, 2005 and December 22, 2005, are granted.
4. The confidential documents of Applicant, which have been filed under seal as an attachment to the motions for leave to file confidential materials under seal dated September 12, 2005 and December 22, 2005, shall remain under seal for a period of two years from the date of this decision, and during that period, the information shall not be made accessible or disclosed to anyone other than Commission staff except on the further order or ruling of the Commission, the

Assigned Commissioner, the Chief Administrative Law Judge (ALJ), the assigned ALJ, or the ALJ then designated as Law and Motion Judge. If Applicant believes that further protection of this information is needed after two years, Applicant may file a motion stating the justification for further withholding the information from public inspection, or for such other relief as the Commission Rules may then provide. This motion must be filed no later than 30 days before the expiration of this protective order.

5. Application 05-09-018 is closed.

This order is effective today.

Dated \_\_\_\_\_, at San Francisco, California.