

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of MCI Communications Services, Inc. (U-5378-C); Teleconnect Long Distance Services & Systems Company d/b/a Telecom*USA (U-5152-C); and TTI National, Inc. (U-5403-C) for Modification of Decision 99-02-038 To Exempt NDIECs from the Obligation to Keep Books and Records in Accordance with USOA.

Application 06-12-008
(Filed December 12, 2006)

OPINION MODIFYING DECISION 99-02-038**Summary**

This decision modifies Decision (D.) 99-02-038 to exempt purely non-dominant interexchange carriers (NDIECs) from keeping their books of account in accordance with the Uniform System of Accounts (USOA), as discussed below.

Discussion

On June 6, 2006, MCI Communications Services, Inc. (U-5378-C); Teleconnect Long Distance Services & Systems Company d/b/a Telecom*USA, (U-5152-C), and TTI National, Inc. (U-5403-C) (Applicants), filed for exemption from the requirement that their books and records be kept in accordance with the USOA set forth in Title 47, Code of Federal Regulations, Part 32. The USOA was developed by the Federal Communications Commission more than 70 years ago to standardize accounting procedures and reporting requirements for traditional franchised, and at the time, monopoly, telephone companies. It was intended to facilitate the calculation of rate base and rate of return for regulated monopoly

operations. California adopted a version of the FCC's USOA in Order Instituting Investigation 87-02-023 and that version of the USOA is the subject of this application. All future references to the USOA in this document refer to the California-adopted USOA requirements.

The relief sought by Applicants was previously granted to a sub-group of non-dominant interexchange carriers, among others, in D.99-02-038. In that decision we granted competitive local carriers (CLCs) providing both local and interexchange service an exemption from USOA requirements as they do not provide monopoly services. We did not extend the exemption to include all competitive carriers, such as pure NDIECs who provide only interexchange service, because the long distance services provided by them were outside the scope of the Local Competition Docket in which D.99-02-038 was entered. The decision did not preclude the issue from being considered in another docket, but no entities filed an application until now.

Subsequent to Applicants' June 2006, filing, the Administrative Law Judge Division (ALJ) asked the Applicants to refile their request as a new application to modify D.99-02-038.¹ Any relief granted will be made available to all similarly-situated NDIECs. There were no protests of this Application.

Argument

Applicants point out that more than 20 years ago, in D.84-06-113, the Commission found economic regulation of competitive carriers unnecessary, since they were in no position to extract monopoly profits or to maintain predatory prices. Accordingly, NDIECs were given substantial pricing freedom

¹ Generally, a new application is the preferred method to modify a decision that is more than one year old. (See Rule 16.4 of the Commission's Rule of Practice and Procedure.)

and the Commission relied on the competitive character of NDIECs as the basis for modifying and streamlining regulatory procedures related to other elements of their business. With the start of local exchange competition, the Commission found that CLCs were not monopoly service providers and in D.98-07-094, determined that the rationale for simplifying regulation of NDIECs was equally applicable to CLCs since they did not have the power to engage in anticompetitive pricing. At that time the Commission also found that imposing certain reporting requirements was an unnecessary constraint on the competitive marketplace.

Applicants note that in D.99-02-038, consistent with its established policy of not imposing cost of service/rate of return regulation on competitive carriers, numerous competitive service providers were exempted from the requirements of keeping their books and accounts in accordance with the USOA. In that decision, the Commission relieved CLCs that are not part of an incumbent local exchange carrier corporate entity of complying with USOA requirements.² The exemption applied to both operations of carriers offering local and interexchange services.

Applicants also point out that exempting NDIECs from the USOA requirements will not hinder the Commission's enforcement responsibilities. When the Commission exempted CLCs, it also required carriers to maintain their books in accordance with Generally Accepted Accounting Principles (GAAP) and reminded them that they must continue to make their accounting records

² In D.99-02-038, AT&T was excluded from the USOA exemption with respect to its interexchange operations because of unique reporting requirements imposed by D.97-08-060.

available to the Commission upon demand, pursuant to Section 581 of the Public Utilities Code. The same conditions apply to NDIECs and the Commission will have access to their financial records if necessary.

Applicants argue that in D.99-02-038, the Commission admits that in the past it has been inconsistent in its application of the USOA requirements to NDIECs. In some certification decisions the subject NDIEC is held to the USOA reporting requirements while other NDIECs' certification orders do not include the USOA requirements. The result is that whether or not an individual NDIEC is subject to the USOA requirements is determined by the language in the decision granting its certification.

Discussion

We find Applicants' arguments persuasive. In D.99-02-038, we found that while the USOA was an appropriate accounting and reporting system in the context of our then-present regulation of ILECs, it does not provide essential information necessary for the Commission's limited regulation of CLCs. Because they lack significant market power, we do not impose traditional cost of service regulation on CLC services. The same rationale used in D.99-02-038 to exempt competitive carriers providing both local and interexchange services could logically be applied to purely NDIECs as well. Due to the nature of the docket in which the matter was being considered, we chose not to do so in that proceeding. We stated our intention to consider such requirements in another docket, and fully expected to see an application soon after that decision was issued.

We agree with Applicants' assertions that exempting NDIECs will not undermine our enforcement responsibilities or be contrary to the public interest. USOA-exempt NDIECs should be held to the same GAAP standards as CLCs

and they are also reminded that the provisions of Pub. Util. Code § 581 are still in effect and applicable to them.

Categorization and Need for Hearings

In Resolution ALJ 176-3185 dated January 11, 2007, the Commission preliminarily categorized this application as ratesetting, and preliminarily determined that hearings were not necessary. No protest have been received. Given this status public hearing is not necessary and it is not necessary to alter the preliminary determinations made in Resolution ALJ 176-3185.

Comments on Proposed Decision

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.

Assignment of Proceeding

Rachelle B. Chong is the assigned Commissioner and Linda Rochester is the assigned ALJ in this proceeding.

Findings of Fact

1. While the USOA is an appropriate accounting and reporting vehicle in the context of regulating monopoly service providers, it does not provide essential information necessary for the limited regulation generally applicable to CLCs and NDIECs.
2. Based on their lack of monopoly power, competitive NDIECs were relieved of economic regulation and given pricing freedom over 20 years ago.
3. Application of the USOA to NDIECs has been inconsistent and largely based on whether or not specific language regarding the CPUC requirements was contained in the decision granting individual NDIECs certification.

4. In D.99-02-038, the Commission exempted CLCs (other than AT&T) not affiliated with an incumbent local exchange carrier from the requirement to keep their books and records for their local and interexchange operations in accordance with the USOA.

5. D.99-02-038 did not exempt purely NDIECs from the USOA requirements because it was outside the scope of the proceeding, but the Commission expressed a willingness to review the issue in another docket.

6. CLCs are required to maintain their records according to GAAP and are to make their records available to the Commission on demand pursuant to Pub. Util. Code § 581.

7. There were no protests of this application.

Conclusions of Law

1. NDIECs should be exempt from the USOA accounting requirements.

2. NDIECs should be held to GAAP standards and are subject to Pub. Util. Code § 581.

3. Conclusion of Law 1 and Ordering Paragraph 1 of D.99-02-038 should be revised to exempt all NDIECs and CLCs from the USOA reporting requirements.

O R D E R

IT IS ORDERED that:

1. All nondominant interexchange carriers (NDIECs and Competitive Local Exchange Carriers (CLCs) which are not part of an incumbent local exchange corporate entity, are hereby exempt from the requirement of keeping their books and records in accordance with the Uniform System of Accounts (USOA) adopted by this Commission in OII 87-02-023.

2. Conclusion of Law 1, of Decision (D.) 99-02-038, shall be modified as follows:

“CLCs (other than AT&T) and NDIECS which are not part of an ILEC corporate entity should be relieved of the obligation to keep their books and records for their CLC and NDIEC operations in accordance with the USOA, but should still be required to keep their books and records in accordance with GAAP.”

3. Ordering Paragraph 1, of D.99-02-038, should be revised as follows:

“Competitive Local Carrier (CLCs) (other than AT&T) and non-dominant interexchange carriers (NDIECs) which are not part of an incumbent local exchange corporate entity are hereby exempted from the requirement to keep their books and records for their CLC and NDIEC operations in accordance with the Uniform System of Accounts (USOA) specified in Title 47, Code of Federal Regulations, Part 32.”

4. A copy of this order shall be served on all NDIECs.

5. Application 06-12-008 is closed.

This order is effective today.

Dated _____, at San Francisco, California.