

Decision 09-06-034 June 18, 2009

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of TCO Network, Inc., for a Certificate of Public Convenience and Necessity To Provide Resold Local Exchange Telecommunications Services Within California. (U 6773 C)

Application 09-03-030
(Filed March 30, 2009)

**DECISION EXPANDING A CERTIFICATE
OF PUBLIC CONVENIENCE AND NECESSITY**

Summary

This decision modifies and expands TCO Network, Inc.'s Certificate of Public Convenience and Necessity so that it may provide resold local exchange telecommunications services within California. This authority is being granted pursuant to Section 1001 of the California Public Utilities Code. The corporate identification number U-6773-C assigned to TCO Network, Inc. shall be included in the caption of all original filings with the Commission, and in the titles of other pleadings filed in existing cases.

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) formerly named Roseville Telephone Company, and Citizens Telecommunications Company of California, Inc. (CTC).

TCO Network, Inc. (TCO), a Wisconsin Corporation qualified to transact business in California as a foreign corporation, possesses a certificate of public convenience and necessity (CPCN) to operate as a switchless reseller of inter-Local Access and Transport Area (LATA) and intraLATA switchless resale telecommunications services in California under an assigned corporate identification number U-6773-C, pursuant to Decision (D.) 03-06-037, dated February 4, 2003.¹

TCO seeks to expand its CPCN authority to provide resold local exchange telecommunications services within California. Its principal place of business is located at 12970 West Bluemound Road, Suite 301, Elm Grove, Wisconsin 53122.

Financial Qualification

To be granted a CPCN, an applicant for authority to provide resold local exchange 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 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.³

¹ TCO did not identify in its application that it was previously granted a CPCN or that it was assigned a corporate identification number.

² The financial requirement for CLCs is contained in Decision (D.) 95-12-056, Appendix C. The financial requirement for NDIECs is contained in D.91-10-041.

³ 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

Footnote continued on next page

TCO submitted under seal copies of recent financial statements and bank statements to demonstrate that it has sufficient cash to satisfy the financial requirements and any deposits that may be required.

Technical Qualifications

Applicants for nondominant interexchange carrier (NDIEC) and competitive local carrier (CLC) authority are required to make a reasonable showing of technical expertise in telecommunications or a related business. TCO submitted biographical information on its owner and president that demonstrates that it possesses sufficient experience and knowledge 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 a telecommunications provider in a manner that complies with applicable laws and adequately serves the public.⁴

TCO 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 telecommunications carrier 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.

set forth in D.95-12-056, Appendix C. For NDIECs, the requirement is found in D.93-05-010.

⁴ See D.04-05-033.

Tariffs

Commission staff reviewed TCO's draft tariffs for compliance with Commission rules and regulations. The deficiencies are noted in Attachment A to this decision. In its compliance tariff filing, TCO is directed to correct these deficiencies as a condition of our granting approval of its tariffs.

California Environmental Quality Act (CEQA)

The 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. TCO will not be constructing any facilities. Therefore, it can be seen with certainty that there is no possibility that granting this application will have an adverse impact upon the environment. TCO must file for additional authority, and submit to any necessary CEQA review, before it can construct facilities.

Motion for Limited Protective Order

TCO has filed certain information regarding its financial position under seal and has requested that such information remain sealed. We have granted similar motions in other proceedings for a limited time, and will also do so here for TCO.

Conclusion

We conclude that the application conforms to our rules for authority to provide competitive local exchange telecommunications services. Accordingly, we shall approve the application subject to the terms and conditions set forth in the attachments to this decision.

Categorization and Need for Hearing

In Resolution ALJ 176-3232, dated April 16, 2009, the Commission preliminarily categorized this application as ratesetting, and preliminarily determined that hearings were not necessary. No protests have been received. 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.

Comments on Proposed Decision

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Section 311(g)(2) of the Public Utilities 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.

Assignment of Proceeding

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

Findings of Fact

1. A notice of the filing of the application appeared in the Daily Calendar on April 3, 2009.
2. There were no protests to this application.
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. TCO was previously granted a CPCN to operate as a switchless reseller of interLATA and intraLATA switchless resale telecommunications services in California under an assigned corporate identification number U-6773-C.

7. TCO has filed a motion to file certain information regarding its financial position under seal.

8. TCO 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. TCO 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.

10. TCO possesses sufficient experience and knowledge to provide telecommunications services.

11. As part of its application, TCO submitted a draft of its initial tariff that contained the deficiencies identified in Attachment A to this decision. Except for these deficiencies, TCO's draft tariffs complied with the Commission's requirements.

12. TCO will not construct any facilities.

Conclusions of Law

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

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

3. TCO's motion to file certain financial information under seal should be granted for a limited time.

4. Public convenience and necessity require the competitive local exchange services to be offered by TCO, subject to the terms and conditions set forth herein.

5. Since TCO 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. TCO should be subject to the applicable Commission rules, decisions, General Orders and statutes that pertain to California public utilities.

8. TCO'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 services, this order should be effective immediately.

O R D E R

IT IS ORDERED that:

1. TCO Network, Inc.'s Certificate of Public Convenience and Necessity issued pursuant to Decision 03-06-037 is modified and expanded to include resold local exchange telecommunications services within California and the service territories of Pacific Bell Telephone Company, Verizon California Inc., SureWest Telephone Company, and Citizens Telecommunications Company of California.

2. TCO Network, Inc. may not offer these services until tariffs are on file. TCO Network, Inc.'s initial filing shall be made in accordance with General Order (GO) 96-B and shall correct the deficiencies noted in Attachment A to this decision. The tariff shall be effective not less than one day after approval by the Commission's Communications Division. TCO Network, Inc. shall comply with its tariffs.

3. The modified and expanded Certificate of Public Convenience and Necessity granted and the authority to render service under the rates, charges,

and rules authorized herein will expire if not exercised within 12 months after the effective date of this order.

4. The corporate identification number U-6773-C assigned to TCO Network, Inc. shall continue to be used by TCO Network, Inc. and shall be included in the caption of all original filings with this Commission, and in the titles of other pleadings filed in existing cases.

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

6. All information placed under seal shall remain sealed for two years from the effective date of this decision. During that period 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 or assigned Administrative Law Judge. If TCO Network, Inc. believes that it is necessary to keep this information under seal for a period longer than two years, TCO Network, Inc. shall file a new motion at least 60 days before the expiration date of this limited protective order.

7. TCO Network, Inc. shall comply with the requirements applicable to competitive local exchange carriers and non-dominant interexchange carriers included in Attachments B, C, and D to this decision.

8. TCO Network, Inc. is not authorized to construct facilities.
9. Application 09-03-030 is closed.

This order is effective today.

Dated June 18, 2009, 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 tariff filed by TCO Network, Inc., in A.09-03-030 to be corrected in its 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 Inspection - 2-T, Sheet 27 - Include a telephone number and a company address in California where a copy of tariff can be inspected by the public. (GO 96-B, Section 8.1.3.)
3. Universal Lifeline Telephone Service Charges - 1-T Sheets 28/33 - Conform ULTS discounts to those specified on CPUC website: http://www.cpuc.ca.gov/PUC/Telco/Public+Programs/lifeline_details.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 Decision (D.) 00-10-028, the Combined California PUC Telephone Surcharge Transmittal Form must be submitted even if the amount due is zero.

- 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 Telephone Company (dba AT&T California) and apply the current surcharge and fee amounts in that joint tariff on end-user bills until further revised.

- 3. Applicant is a competitive local exchange carrier (CLC). The effectiveness of its future tariffs is subject to the requirements of General Order (GO) 96-B and the Telecommunications Industry Rules (D.07-09-019).
- 4. Applicant is a nondominant interexchange carrier (NDIEC). The effectiveness of its future NDIEC tariffs is subject to the requirements of GO 96-B and the Telecommunications Industry Rules (D.07-09-019).
- 5. Tariff filings shall reflect all fees and surcharges to which Applicant is subject, as reflected in 2 above.
- 6. Applicant shall file a service area map as part of its initial tariff.
- 7. 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.

8. 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.

9. 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

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

11. 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.

12. 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.

13. 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.

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

¹ California is divided into 10 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.

15. 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.

16. 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.

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

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

19. 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.

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

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

(END OF ATTACHMENT B)

ATTACHMENT C
ANNUAL REPORT

An original copy and a machine readable copy using Microsoft Word or compatible format shall be filed with the California Public Utilities Commission, State Office Building, 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 Sections 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 Sections I-F of Decision 93-02-019.

6. Utilities that do not 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)