Decision 06-04-049 April 27, 2006

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Telrite Corporation (U-6780-C) for a Certificate of Public Convenience and Necessity to Offer Resold Local Exchange Telephone Service.	Application 05-05-019 (Filed May 19, 2005)

OPINION DENYING APPLICATION FOR CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

I. Summary

Telrite Corporation (Applicant) seeks a certificate of public convenience and necessity (CPCN) under Pub. Util. Code § 1001[1] for authority to provide resold local exchange telecommunications services in California. Applicant currently holds a CPCN (U-6780-C) that authorizes the provision of resold interexchange services in this state.

By this decision, we deny the application based on Applicant's failure to file reports regarding public program surcharges and user fees as required by the terms of Applicant's licensing decision, Decision (D.) 03-06-038. If Applicant comes into compliance with these requirements and does not engage in additional violations, Applicant may reapply for a CPCN authorizing the

[1] All subsequent Code references are to the Public Utilities Code, unless otherwise stated.

provision of resold local exchange services after one year from the issuance of this decision. Otherwise, the Commission may revoke Applicant's currently held CPCN and may seek the imposition of monetary sanctions against Applicant.

II. Background

In prior decisions, we authorized the provision of competitive local exchange service within the service territories of Pacific Bell Telephone Company (Pacific), Verizon California Inc. (Verizon), SureWest Telephone (SureWest),[2] and Citizens Telecommunications Company of California, Inc. (CTC).

Applicant, a Georgia corporation, seeks authority to provide resold local exchange services in all areas of the state in which such service is authorized, but initially within the service territories of Pacific and Verizon. Applicant's principal place of business is located at Covington, Georgia.

A. 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.[3] An applicant must also demonstrate that it has sufficient additional resources to cover all deposits required by local exchange carriers (LECs) and/or IECs in order to provide the proposed service.[4] Applicant has provided financial

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[2] SureWest Telephone Company was previously known as Roseville Telephone Company.

[3] The financial requirement for CLCs is contained in D.95-12-056, Appendix C. The financial requirement for IECs is contained in D.91-10-041.

[4] 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.

documentation that demonstrates that it has sufficient cash to satisfy the financial requirement plus any required deposits that must be paid to other telecommunications carriers.

B. Technical and Managerial Qualifications

Applicants for CLC authority are required to make a reasonable showing of technical expertise in telecommunications or a related business. Applicant has submitted biographical information on its management which demonstrates its technical qualifications to operate as a telecommunications provider.

However, the Commission may 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 business in a manner that complies with applicable laws and Commission requirements and adequately serves the public.[5]

Here, Applicant has failed to file reports regarding its user fees and public program surcharges for 2003 and 2004 as required by the terms of its licensing decision, D. 03-06-048. The Commission Telecommunications Division (TD) first contacted Applicant in October 2005 and advised Applicant to promptly file these reports, as well as its 2004 annual report. Applicant subsequently submitted its 2004 annual report to TD on December 13, 2005, but did not the file reports regarding user fees and public program surcharges, did not explain its failure to do so, and did not request an extension of time.

On January 4, 2006, the assigned Administrative Law Judge (ALJ) issued a ruling which advised Applicant of the outstanding reports and ordered

Applicant to either file the public program surcharge reports and user fee reports with TD or to file a response to the ruling to contest or explain its non-compliance within 30 days. The ALJ's ruling stated that if Applicant did not comply with these requirements, the Commission might not find it appropriate to grant this application for expanded CPCN authority and could seek monetary sanctions against Applicant pursuant to Sections 2107 and 2108. More than 60 days has passed since the issuance of the ALJ's ruling, and to date, Applicant has not filed the required reports or a response to the ruling, and has not contacted the ALJ or TD to explain its failure to do so or to request an extension of time in which to comply.[6]

Based on these facts, we find it inappropriate to grant Applicant's request for expanded CPCN authority. Applicant's failure to file the required reports regarding user fees and public program surcharges and to respond to the ALJ's ruling demonstrates that Applicant is not operating its company in compliance with Commission requirements and has disregarded the order of a Commission ALJ. It would not serve the interests of Californians to permit Applicant to offer expanded telecommunications services in this state while in violation of Commission requirements.

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[5] *See* D.04-05-033.

[6] We note that the law firm handling this application is located in Metairie, Louisiana, and its operations may have been affected by Hurricane Katrina. However, TD spoke with a staff member at the law firm in October 2005 and advised of the pending compliance items. In addition, the Commission mailed the ALJ's January 4, 2006 ruling to Applicant's corporate counsel in Georgia, as well as to the law firm in Louisiana, to ensure that Applicant received adequate notice of the outstanding reports and the status of this application.

In addition, on March 9, 2006, TD issued a notice to Applicant that unless Applicant reports all user fees and public program surcharges due since the date its license was granted to TD within 30 days, TD will seek Commission revocation of Applicant's existing CPCN, which authorizes the provision of resold interexchange services in this state.

Applicant is also reminded that under Sections 2107 and 2108, violations of a Commission decision, order, rule, directive, or requirement are punishable by a penalty of not less than $500 nor more than $20,000 for each offense, and that each day on which a continuing violation exists constitutes a separate offense.

However, we wish to encourage competition in the telecommunications marketplace and to give Applicant an incentive for coming into compliance with Commission requirements. Therefore, if Applicant promptly files its user fee reports and public program surcharge reports for 2003 and 2004 by no later than May 5, 2006, and remains in compliance with all Commission and legal requirements for a period of at least one year after the issuance of this decision, Applicant may then reapply for a CPCN to provide local exchange services where authorized in this state. Otherwise, we direct TD to prepare a resolution requesting revocation of Applicant's existing CPCN for our consideration.

III. Conclusion

We conclude that the application should be denied based on Applicant's failure to comply with the requirements of its licensing decision (D.03-06-038). However, if Applicant promptly files its user fee reports and public program surcharge reports for 2003 and 2004 by May 5, 2006, and remains in compliance with all Commission and legal requirements, Applicant may then reapply for a CPCN authorizing the provision of local exchange services no sooner than

one year after the issuance of this decision. If Applicant fails to file its user fee reports and public program surcharge reports by April 10, 2006, TD shall prepare a resolution requesting revocation of Applicant's existing CPCN for our consideration.

IV. Comments on Draft Decision

The draft decision of the administrative law judge (ALJ) in this matter was mailed to the parties in accordance with § 311(g)(1) and Rule 77.7 of the Rules of Practice and Procedure. No comments were received.

V. Categorization and Need for Hearings

In Resolution ALJ 176-3153 dated May 23, 2005, the Commission preliminarily categorized this application as ratesetting, and preliminarily determined that hearings were not necessary. No protests have been received. Given these developments, a public hearing is not necessary, and it is not necessary to disturb the preliminary determinations.

VI. Assignment of Proceeding

John Bohn 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 May 27, 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 has a minimum of $25,000 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 has failed to timely file reports regarding its user fees and public program surcharges for 2003 and 2004 as required by the terms of its licensing decision, D.03-06-038, and as requested by TD staff.

9. Applicant failed to respond to an ALJ ruling dated January 4, 2006, which ordered Applicant to either file the public program surcharge reports and user fee reports for 2003 and 2004 with TD or else to file a response contesting or explaining its noncompliance within 30 days.

10. It does not serve the interests of Californians to expand Applicant's CPCN authority while Applicant remains in violation of Commission requirements and has disregarded an order of the assigned ALJ and the requests of TD staff.

Conclusions of Law

1. Applicant has the financial ability and technical expertise to provide the proposed service.

2. Applicant's licensing decision (D.03-06-038) requires Applicant to timely file reports regarding user fees and public program surcharges with TD.

3. In view of Applicant's failure to file user fee reports and public program reports for 2003 and 2004 as required by its licensing decision (D.03-06-038), it would not serve the public interest to grant this application expanding Applicant's CPCN authority in this state.

4. Applicant's continued failure to file the required reports with TD is grounds for revocation of Applicant's existing CPCN authorizing the provision of resold interexchange services.

5. Under Pub. Util. Code § 2107, violations of a Commission decision, order, rule, directive, or requirement are punishable by a penalty of no less than $500 and no more than $20,000 for each offense.

6. Under Pub. Util. Code § 2108, each date on which a violation of a Commission decision, order, rule, directive or requirement continues to exist constitutes a separate violation.

O R D E R

IT IS ORDERED that:

1. The application is denied.

2. If Applicant promptly comes into compliance with the terms of its licensing decision, Decision 03-06-038, by filing the required user fee reports and public program surcharge reports for 2003 and 2004 by May 5, 2006, and does not engage in additional violations of Commission or legal requirements, Applicant may reapply for a certificate of public convenience and necessity (CPCN) authorizing the provision of local exchange services no sooner than one year after the issuance of this decision.

3. If Applicant has not filed the user fee reports and public program surcharge reports for 2003 and 2004 by May 5, 2006, the TD shall prepare a resolution requesting revocation of Applicant's existing CPCN for our consideration. We may also seek monetary sanctions against Applicant pursuant to Pub. Util. Code §§ 2107 and 2108.

4. Application 05-05-019 is closed.

This order is effective today.

Dated April 27, 2006, at San Francisco, California.

MICHAEL R. PEEVEY
President
GEOFFREY F. BROWN
DIAN M. GRUENEICH
JOHN A. BOHN
RACHELLE B. CHONG
Commissioners