

Decision 01-10-062 October 25, 2001

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

Application of Teligent Services, Inc. (U-5803-C)  
For Authority to Discontinue the Provision Of  
Local Exchange and Data Services.

Application 01-08-036  
(August 28, 2001)

Emergency Joint Application of Teligent Services,  
Inc. (U-5803-C) and TAC License Corp. For *Ex*  
*Parte* Grant of Authority Pursuant to Public  
Utilities Code Sections 851 and 854 Necessary to  
Consummate a Chapter 11 "Reemergence" Plan.

Application 01-09-018  
(September 7, 2001)

**OPINION GRANTING AUTHORITY TO DISCONTINUE THE PROVISION OF  
CERTAIN LOCAL EXCHANGE AND DATA SERVICES AND AUTHORIZING  
CONSUMMATION OF THE CHAPTER 11 REEMERGENCE PLAN**

**Summary**

By this decision, the Commission grants Teligent Services, Inc. (Teligent) authorization to discontinue providing certain facilities-based local exchange and data services to its business customers in the Sacramento and San Francisco market areas. The Commission also authorizes the completion of a Bankruptcy Code Chapter 11 plan that will enable Teligent to reemerge as a going concern. These consolidated proceedings are closed.

## **Background**

Teligent requests authority to discontinue providing facilities-based local exchange and data services to its business customers<sup>1</sup> in the Sacramento and San Francisco market areas. Because of reduced financial resources, on October 31, 2001,<sup>2</sup> Teligent will no longer have available provisioning facilities and operations for interconnected fixed-wireless local and data services in these specific market areas.

On May 21, 2001, Teligent filed for protection under Chapter 11 of the U.S. Bankruptcy Code.<sup>3</sup> Going forward, Teligent intends to continue providing local exchange and data services to its business customers in the Los Angeles and Ventura market areas. Once it becomes financially stable, Teligent hopes to continue offering and providing point-to-point private fixed-wireless circuits as well as wholesale offerings and resale long distance service to customers in the San Francisco and Sacramento market areas.

To emerge from bankruptcy, continue current services in its core markets, and possibly expand its operations into other markets in the future, Teligent joins

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<sup>1</sup> Teligent does not currently offer residential service to customers. Approximately 164 business customers in California will be affected by the discontinuance.

<sup>2</sup> By letter dated September 28, 2001, Teligent advised the Commission's Executive Director that it was extending the disconnection date from October 27, 2001 until October 31, 2001 "to ensure that all affected customer [sic] receive at least thirty days' advance written notice."

<sup>3</sup> See Case No. 01-12974 (SMB) (Bankr. S.D.N.Y.) On the same day, Teligent notified this Commission of its filing by letter and facsimile.

with TAC License Corp. (TAC License or New TSI)<sup>4</sup> for such authority<sup>5</sup> as may be necessary or required to enable the two to consummate an acquisition transaction proposed in the bankruptcy proceeding. In the course of the bankruptcy proceeding, a group of institutional investors joined with certain senior Teligent management to fund Teligent Acquisition Corp. and its wholly owned subsidiary New TSI in order to acquire the core domestic telecommunications business of Teligent's parent company. In this jurisdiction, Teligent seeks to assign to New TSI all its California operations and assets, including the associated certificate of public convenience and necessity (CPCN). To accomplish the assignment pursuant to California law, Teligent and New TSI ask for leave under Pub. Util. Code § 851 and § 854.

Teligent Acquisition Corp. is currently acquiring the financing necessary to obtain most of Teligent's communications assets, existing customer base, as well as federal and state licenses and/or certificates authorizing those operations. This must take place in order to get the assets and operations released from the Bankruptcy Court's jurisdiction, and to enable the new entity (New Teligent) to refocus and strengthen its ongoing business. While the financing arrangements are still being finalized, the Joint Applicants expect that the transaction will result in a capital infusion sufficient to fund New Teligent's operations.

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<sup>4</sup> New TSI is a recently formed Delaware corporation with its principal business office located in Herndon, Virginia. Hereafter, Teligent and New TSI, acting in concert, shall be referred to as the Joint Applicants.

<sup>5</sup> By Administrative Law Judge's Ruling of September 28, 2001, this matter was consolidated with the discontinuation of service application because of the interconnected subject matters. In accordance with the request to expedite consideration of the application, protests and responses were due no later than October 5, 2001.

Since the transaction includes members of Teligent's current senior management team who are keenly familiar with the financial and operating needs of the business, New Teligent will have a strong understanding of its financial and operational requirements. New Teligent will also have an ability to ensure that its operations maximize the use of available capital. The proposed acquisition is dependent upon obtaining the required funding as well as Bankruptcy Court approval; thus, the transaction cannot proceed unless sufficient capital is raised.

As stated above, New Teligent will rely on and benefit from the management and telecommunications expertise of the members of the most senior management team currently at Teligent. Upon completion of the transaction, New TSI plans to change its name to, and operate under, the name "Teligent Services, Inc.," and will continue to operate the same services pursuant to the same rates, terms, and conditions of services as currently provided by Teligent to its customers.<sup>6</sup> By going forward in this manner, New TSI hopes to provide convenience, avoid customer confusion, and ensure the uninterrupted business operations of the reemerged Teligent and its communications network. Finally, the Joint Applicants maintain that their request serves the public interest by reintroducing a more refined and focused Teligent as a viable competitor in its selected markets, minimizing service disruption and appearing virtually transparent to the existing customers.

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<sup>6</sup> New TSI states that it will adopt without change all of the tariffs of Teligent currently on file with the Commission.

Notice of the filing of each of these applications appeared in the Commission's Daily Calendar on September 6, 2001<sup>7</sup> and September 24, 2001,<sup>8</sup> respectively. In Resolution ALJ 176-3070, dated September 6, 2001, and Resolution ALJ 176-3071, dated September 20, 2001, the Commission preliminarily categorized these applications as ratesetting, and preliminarily determined that hearings were not necessary. No protests or responses have been received for either application.

### **Discussion**

We authorize Teligent to discontinue its provision of interconnected fixed-wireless facilities-based local and data services to its California customers in the Sacramento and San Francisco markets. Decision (D.) 97-06-096 imposes notice requirements on carriers seeking to withdraw service. Teligent has demonstrated that it has satisfied these requirements through its written communications to customers on: (1) May 21, 2001, noticing the Chapter 11 petition; (2) July 5, 2001, noticing application at the Federal Communications Commission to discontinue providing certain services in each of its markets; and (3) August 24, 2001, noticing its application to discontinue providing certain services before this Commission.

Teligent further states that once it knows how the Commission intends to proceed with this application, it will send any remaining customers additional notice advising them of the final California Commission authorized discontinuance date. Under General Order (GO) 96-A Section XIV, the carrier

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<sup>7</sup> The Daily Calendar noticed a shortened protest period on September 14, 2001.

<sup>8</sup> The Daily Calendar noticed a shortened protest period on September 28, 2001. Protests and responses were due on October 5, 2001.

must obtain authority from the Commission before withdrawing services. We note that in this circumstance, Teligent's precarious financial situation has compelled it to discontinue providing certain services that it will no longer have facilities for as of October 31, 2001.

We also authorize Joint Applicants' request to consummate the proposed transaction arising out of their Chapter 11 status in order to enable their current California operations to continue without further interruption through a new corporate entity that will operate under the existing Teligent name. In a situation where a company that does not possess a CPCN desires to acquire control of a company that does possess a CPCN, we will apply the same requirements as in the case of an applicant seeking a CPCN to exercise the type of authority held by the company being acquired. (*Joint Application of Empire One Telecommunications, Inc. and EOT Acquisition Corporation*, 2000 Cal. PUC Lexis 73, 2 (February 8, 2000).) Since Teligent possesses a CPCN to act as a provider of intrastate local exchange, long distance and private line telephone services to customers within the territories of Pacific Bell and Verizon California, Inc., we will apply the requirements for such authority to New TSI.

The Commission has established two major criteria for the issuance of a CPCN to act as a facilities-based provider of telecommunications services. An applicant that desires to act as such must demonstrate that it has a minimum of \$100,000 cash or cash equivalent,<sup>9</sup> reasonably liquid and readily available to meet the firm's startup expenses. An applicant that desires to act as a switchless reseller must demonstrate that it has a minimum of \$25,000 in cash or cash equivalent, reasonably liquid and readily available to meet startup expenses.

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<sup>9</sup> As described in D.91-10-041, Appendix A, Paragraph 5.1 (41 CPUC2d 505 at 520).

One interested in providing facilities-based or resale telecommunications services must also make a reasonable showing of technical or managerial expertise in telecommunications or a related business.

Joint Applicants submitted the unaudited pro forma balance sheet of Teligent Acquisition Corp. in support of their request.<sup>10</sup> The document indicates that prior to closing the proposed transaction, Teligent Acquisition Corp. expects to have raised approximately \$300 million to fund the acquisition and ongoing operational expenses needed to bring Teligent's assets and operations out of Chapter 11. Further, we note that it is unlikely that the Bankruptcy Court will approve this proposal if adequate funding is not obtained. Overall, Joint Applicants' showing demonstrates sufficient resources to meet our financial requirements. They also have provided information on the management team that demonstrates that it has sufficient knowledge and experience to satisfy our demands.

Both of these applications are uncontested matters in which the decision grants the requested relief. Therefore, pursuant to Pub. Util. Code § 311(g)(2), the otherwise applicable 30-day period for public review and comment is being waived.

### **Findings of Fact**

1. On May 21, 2001, Teligent filed a voluntary petition for protection under Chapter 11 of the U. S. Bankruptcy Code, and notified its customers in writing about the filing.

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<sup>10</sup> Exhibit E.

2. On July 5, 2001, Teligent sought authorization from the Federal Communications Commission to discontinue certain services in specified markets nationwide, and notified its customers in writing about the application.

3. On August 24, 2001, Teligent advised its California customers by letter that it would seek authorization to discontinue providing certain facilities-based local and data services in the Sacramento and San Francisco market areas.

4. As of October 31, 2001, Teligent will no longer have the facilities to provide interconnected fixed-wireless local and data services to its California customers in the Sacramento and San Francisco markets.

5. Going forward, Teligent intends to continue providing local exchange and data services to its business customers in the Los Angeles and Ventura market areas.

6. Once it becomes financially stable, Teligent hopes to continue offering and providing point-to-point private fixed-wireless circuits as well as wholesale offerings and resale long distance service to customers in the San Francisco and Sacramento market areas.

7. Pursuant to Pub. Util. Code § 851 and § 854, Teligent and New TSI seek authorization to complete a transaction developed during the bankruptcy proceedings that would enable Teligent to assign its facilities, operations and associated authority to New TSI who would go forward under the Teligent name.

8. Joint Applicants expect to raise approximately \$300 million to fund the acquisition and ongoing operational expenses needed to bring Teligent's assets and operations out of Chapter 11.

9. The new entity's senior management team has significantly technical and managerial expertise in the telecommunications business.

10. Notice of these applications appeared in the Daily Calendar on September 6, 2001 and September 24, 2001, respectively.

11. The protest periods were shortened for both applications.

12. No protests or responses have been filed for either application.

### **Conclusions of Law**

1. These applications should be consolidated because their subject matters are interconnected.

2. Teligent's California customers received adequate and timely notice of its financial situation as well as its federal and state applications to discontinue providing interconnected fixed-wireless facilities-based local and data services to the Sacramento and San Francisco markets.

3. Teligent should be authorized to discontinue providing interconnected fixed-wireless facilities-based local and data services to the Sacramento and San Francisco markets.

4. The Commission will apply the same requirements to a request for approval of an agreement to acquire control of a facilities-based provider of local and interexchange telecommunications services within California as it does to an applicant for authority to provide such services.

5. New TSI meets the Commission's requirements for the issuance of a CPCN to provide such services.

6. The proposed transaction, whereby all of Teligent's California operations and assets including the CPCN, are assigned to New TSI, a wholly owned subsidiary of Teligent Acquisition Corp., is not adverse to the public interest.

7. This consolidated proceeding is designated a ratesetting proceedings; no protests have been received; no hearing is necessary.

8. This decision should be effective immediately in order to prevent and/or minimize service disruptions for current Teligent customers.

## O R D E R

### **IT IS ORDERED** that:

1. Teligent Services, Inc. (Teligent) is authorized to discontinue providing interconnected fixed-wireless facilities-based local and data services to its California customers in the Sacramento and San Francisco markets.

2. Teligent and TAC License Corp. (New TSI) are authorized pursuant to Sections 851 and 854 of the Public Utilities Code to assign Teligent's California operations, assets, Certificate of Public Convenience and Necessity, and U-number to New TSI, as more fully described in Application (A.) 01-09-018 and its supporting exhibits.

3. Teligent and New TSI shall notify the Director of the Commission's Telecommunications Division in writing of the assignment and transfer of authority, as authorized herein, within ten days of the date of consummation of the transaction. A true copy of the instruments of assignment shall be attached to the notification.

4. The authority granted herein shall expire if not exercised within one year of the date of this order.

5. A.01-08-036 and A.01-09-018 are closed.

This order is effective today.

Dated October 25, 2001, at San Francisco, California.

LORETTA M. LYNCH  
President

HENRY M. DUQUE  
RICHARD A. BILAS  
CARL W. WOOD  
GEOFFREY F. BROWN  
Commissioners