

SEP 24 1996

Decision 96-09-074 September 20, 1996

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of COX CALIFORNIA	)	
TELCOM, INC. for Authority to	)	Application 96-03-050
Provide Local Exchange	)	(Filed March 27, 1996)
Telecommunications Services.	)	

**ORIGINAL**

O P I N I O N

I. Introduction

Cox California Telcom, Inc. (Cox or applicant), seeks a certificate of public convenience and necessity (CPCN) for authority to operate as a competitive local carrier (CLC) to the full extent allowed by the Commission in Decision (D.) 95-07-054. Cox seeks authority to provide a mixture of facilities-based and resale local exchange service, intraLATA toll, and interstate interLATA service in Southern California, ranging from points as far north as San Luis Obispo south to San Diego and the border of Mexico, in accordance with the terms and conditions of D.95-07-054 and subsequent Commission decisions. By this decision, we grant the authority requested subject to the terms and conditions set forth below.

II. Background

By D.95-07-054 (Rulemaking (R.) 95-04-043/Investigation (I.) 95-04-044), we established initial procedures for the filing for CPCN authority to offer competitive local exchange service within the service territories of Pacific Bell (Pacific) and GTE California Incorporated (GTEC). Prospective CLCs who filed petitions by September 1, 1995, for CPCN authority to enter the local exchange market and otherwise met eligibility requirements

were authorized to offer local exchange service under the following schedule. Competitive local exchange service for facilities-based carriers was authorized effective January 1, 1996. Competitive resale of the bundled local exchange service of Pacific and GTEC was authorized effective March 31, 1996. Any filings for CLC CPCN authority made after September 1, 1995, were to be treated as routine applications for certification authority and processed individually. Since Cox's filing was made after September 1, 1995, it is treated as an application.

### III. Overview of Application

Cox is a wholly-owned subsidiary corporation of Cox Broadband Services, Inc. (CBSI) which is currently being formed as a Delaware corporation. CBSI will be a wholly-owned subsidiary of Cox Communications, Inc. (CCI). CCI is a fully-integrated, diversified media and broadband communications company with operations and investments in four related areas: (i) U.S. cable television systems; (ii) international cable televisions systems; (iii) programming; and (iv) wireless and wireline telecommunications services. Cox is a Delaware corporation, and is currently qualified to do business in California.

Cox filed its application on March 27, 1996 for authority to provide a mixture of facilities-based and resale local exchange telephone service throughout Southern California. On May 22, 1996, Cox filed an amendment to its application to reflect a new corporate structure and to request additional authority to offer intraLATA and intrastate interLATA telecommunications services throughout the State of California. Cox's short-term projection for construction of a local exchange service area (i.e., in the first five years of operation) will be to establish service operations in the San Diego area where related Cox entities currently operate cable television systems and will provide

wireless communications services. Cox initially proposes to offer facilities-based local exchange services, including multi-line and single-line residential and business exchange, with some services offered through the resale of the facilities owned by entities related to Cox through its corporate parents CBSI and CCI as well as services purchased for resale from unrelated local exchange carriers (LECs) and long distance carriers.

Cox proposes to construct and offer local exchange and related telecommunications services by means of upgrading the existing broadband coaxial network owned and operated by its related cable entities. Initial switching services will be provided through resale of services offered by another certificated CLC, Teleport Communications Group (TCG), as well as wholesale services purchased from Pacific and GTEC. Cox intends to purchase its own switching facilities, and to provide switched telecommunications services through such facilities, sometime during the first five years of operation.

Cox seeks authority to offer and to provide switched local exchange services throughout Southern California from San Luis Obispo County south to the Mexican border. This region constitutes the service area for which Cox currently seeks authority to construct and operate. However, in the first 12 to 36 months, Cox anticipates that it will construct and operate its facilities only in the San Diego region where related Cox entities offer cable and will offer wireless services. Maps of the proposed total service area and the initial facilities-based service area are attached as Exhibit D to the application.

Cox will provide all exchange customers with access to 911 emergency services and E-911 emergency service through resale of services provided by TCG, Pacific and/or GTEC. Cox will cooperate with existing LECs to arrange for the necessary interconnections to permit efficient completion of these calls.

IV. Technical and Financial Qualifications

The Cox application has been reviewed for compliance with the certification and entry rules adopted in D.95-07-054 and subsequent decisions in R.95-04-043/I.95-04-044. Cox must demonstrate that it possesses the requisite managerial qualifications, technical competence, and financial resources to provide facilities-based local exchange service. As prescribed in Rule 4.B.(1), facilities-based CLCs must demonstrate that they possess a minimum of \$100,000 in cash or cash-equivalent resources, as defined in the rule. CLCs must also conform to the following financial requirement adopted in D.95-12-056: customer deposits collected by a CLC must be deposited in a protected, segregated interest-bearing escrow account subject to Commission oversight.

Cox is a wholly-owned subsidiary of CCI, and is not a publicly traded company. Cox's financial condition is directly related to and ultimately the responsibility of CCI. A current Balance Sheet and Income Statement for Cox's parent, CCI, effective as of December 31, 1994 are included in CCI's annual SEC Form 10-K filing, (attached to its application as Exhibit F). Cox's projected revenues and expenses associated with operating as a CLC are incorporated in the Statement of Projected Operations set forth at Exhibit E of its application. Based on review of Cox's financial statements, we conclude that Cox is financially qualified to offer basic local telecommunications services in its proposed service territory and satisfies the criteria of Rule 4.B.(1).

Applicant is also required to make a reasonable showing of technical expertise in telecommunications or a related field. Cox has the technical and management qualifications to provide the proposed basic local exchange services in its service territory through the existing management team as well as its affiliation with various related communications entities. Cox's technical and managerial qualifications are demonstrated by the professional

backgrounds of key members of its executive staff as described in detail in Section 15 of its application.

Applicants are also required to submit proposed tariffs which conform to the consumer protection rules set forth in Appendix B of D.95-07-054. As part of its application, Cox filed its Local Exchange Service Tariff (Exhibit G) and Local Exchange Access Tariff (Exhibit H). On June 28, 1996, Cox supplementally filed its proposed Intrastate InterLATA Exchange Services Tariff.

By letter dated August 12, 1996, we notified Cox of deficiencies in its proposed tariffs. Cox provided a supplemental filing of corrections on August 23, 1996, which were responsive to most of the noted deficiencies. Remaining deficiencies are set forth in Attachment B. Applicant's compliance tariff filing must include a satisfactory correction of each deficiency to be approved.

#### V. California Environmental Quality Act (CEQA) Review

We have reviewed the Cox application for compliance with CEQA. 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. To achieve this objective, Rule 17.1 of the Commission's Rules requires the proponent of any project subject to Commission approval to submit with the application for approval of such project an environmental assessment which is referred to as a Proponent's Environmental Assessment (PEA). The PEA is used by the Commission to focus on any impacts of the project which may be of concern and to prepare the Commission's Initial Study to determine whether the project would need a Negative Declaration or an Environmental Impact Report (EIR).

We previously performed a CEQA review for the initial group of 40 facilities-based CLCs which were certified pursuant to D.95-12-057. We consolidated these 40 CLC petitioners into a single comprehensive CEQA review. Based on its assessment of those 40 facilities-based petitioners' filed PEAs, the Commission Advisory and Compliance Division (CACD) prepared a draft Negative Declaration and Initial Study generally describing the facilities-based petitioners' project and their potential environmental effects. The Negative Declaration prepared by CACD was considered a mitigated Negative Declaration. This means that although the initial study identified potentially significant impacts, revisions which mitigate the impacts to a less than significant level were agreed to by the petitioners. (Pub. Res. Code § 21080(c)(2).)

Based upon our Initial Study and the public comments received, we determined that with the inclusion of mitigation measures incorporated in the projects, the proposed projects would not have potentially significant environmental effects. Accordingly, we approved the Negative Declaration as prepared by CACD, including CACD's proposed Mitigation Monitoring Plan, in D.95-12-057.

Pursuant to Rule 17.1 and Initial Rule 4.C(2), Cox provided a PEA as an attachment to its application, asserting that it meets the requirements of CEQA. Cox declares its intent to adopt the environmental mitigation requirements set forth in D.95-12-057. Consequently, Cox submits that its proposed construction would not result in a significant adverse environmental impact.

Cox proposes to construct and offer local exchange and related telecommunications services by means of upgrading the existing broadband coaxial network owned and operated by entities related to Cox through its corporate parent, CCI. This upgrade will be accomplished using a fiber optic overlay method to reduce amplifier cascades to no more than five with nodal sizes to 1,000

homes or less. Existing electronics will be replaced with bi-directional amplifiers using the latest available state-of-the-art technology. The system will be an advanced hybrid fiber/coaxial network capable of delivering multiple telecommunications services.

In addition, Cox will construct dedicated plant for the purpose of offering its telecommunications services as necessary. Cox will initially offer switched services through the purchase for resale of the switching facilities of its related entity, TCG. Within approximately two years after authorization to provide service, Cox will likely purchase and construct its own dedicated switching facilities.

In order to assure compliance with CEQA for facilities-based CLC applications which were not included in the Negative Declaration adopted in D.95-12-057, we initiated a second CEQA review on a consolidated basis for those CLCs. Cox was included among those CLCs covered by our second consolidated CEQA review.

Following a procedure similar to that used for the Negative Declaration approved in D.95-12-057, CACD prepared and circulated a draft Negative Declaration and Initial Study based upon an assessment of the PEAs of Cox and other CLC applicants. Public comments were received by August 30, 1996.

All public comments were reviewed and answered. CACD then finalized the Negative Declaration covering eight facilities-based applications, including this applicant. Comments and responses are attached to the Final Negative Declaration.<sup>1</sup>

Based upon our Initial Study and the public comments, it has been determined that with the inclusion of mitigation measures incorporated in the projects, the proposed projects will not have

<sup>1</sup> The approved Final Negative Declaration covering this applicant is provided as Attachment C of today's decision in A.95-12-050 approving CPCN authority for Frontier Local Services, Inc.

potentially significant environmental effects. Accordingly, we shall approve the Negative Declaration as prepared by CACD including CACD's proposed Mitigation Monitoring Plan (attached to the Final Negative Declaration) which will ensure that the listed Mitigation Measures will be followed and implemented.

## VI. Conclusion

Based upon our review of Cox's application, we conclude that it conforms to the adopted Commission rules for competitive local exchange certification subject to compliance with the terms and conditions set forth in this order. Accordingly, we approve Cox's application subject to the terms and conditions set forth herein.

### Findings of Fact

1. Applicant filed its application on March 27, 1996, for authority to provide a mixture of facilities-based and resale local exchange telecommunications services, and filed a supplement on May 22, 1996, for additional authority to offer intraLATA toll and intrastate interLATA telecommunication service throughout California.

2. Applicant served a Notice of Availability in lieu of its application on parties of record in R.95-04-043/I.95-04-044, indicating that copies of the application would be served at the request of any party receiving the notice.

3. A notice of the filing of the application appeared in the Daily Calendar on March 28, 1996.

4. No protests have been filed.

5. A hearing is not required.

6. By prior Commission decisions, we authorized competition in providing local exchange telecommunications service within the service territories of Pacific and GTEC.



7. By D.95-07-054, D.95-12-056, D.96-02-072, and D.96-03-020, we authorized facilities-based CLC services effective January 1, 1996, and CLC resale services effective March 31, 1996, for carriers meeting specified criteria.

8. Applicant has demonstrated that it has a minimum of \$100,000 of cash or cash equivalent reasonably liquid and readily available to meet its start-up expenses.

9. Applicant's technical experience is demonstrated by the fact that its operations are staffed by senior officers with several years of experience in the telecommunications area.

10. Applicant submitted with its application a complete draft of applicant's initial tariff and submitted an amended tariff filing on August 23, 1996, which complies with the requirements established by the Commission except for the deficiencies identified in Attachment B.

11. The transfer or encumbrance of property of nondominant carriers has been exempted from the requirements of PU Code § 851 whenever such transfer or encumbrance serves to secure debt. (See D.85-11-044.)

12. CEQA requires the Commission to assess the potential environmental impact of a project.

13. The Commission staff has conducted an Initial Study of the environmental impact of certain facilities-based CLC applications filed after September 1, 1995, including the Cox application, and prepared a Mitigated Negative Declaration.

14. Commission staff has concluded that with the incorporation of all mitigation measures discussed in the Mitigated Negative Declaration (see Attachment C to today's decision in A.95-12-050), certification of the CLCs covered therein, including Cox, will result in no significant adverse impact on the environment.

Conclusions of Law

1. Applicant has the financial ability to provide the proposed service.
2. Applicant has made a reasonable showing of technical expertise in telecommunications.
3. Public convenience and necessity require the competitive local exchange services to be offered by applicant, subject to the terms and conditions set forth below.
4. Applicant is subject to:
  - a. The current 3.2% surcharge applicable to all intrastate services except for those excluded by D.94-09-065, as modified by D.95-02-050, to fund Universal Lifeline Telephone Service Fund (PU Code § 879; Resolution T-15799, November 21, 1995);
  - b. The current 0.36% 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 (PU Code § 2881; Resolution T-15801, October 5, 1995);
  - c. The user fee provided in PU Code §§ 431-435, which is 0.11% of gross intrastate revenue for the 1996-1997 fiscal year (Resolution M-4782); and
  - d. The current 0.27% 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 (PU Code § 739.30; Resolution T-15826, December 20, 1995).
5. Applicant should be exempted from PU Code § 851 when the transfer or encumbrance serves to secure debt.
6. The application should be granted to the extent set forth below.
7. Any CLC which does not comply with our rules for local exchange competition adopted in R.95-04-043 shall be subject to

sanctions including, but not limited to, revocation of its CLC certificate.

8. Cox is required to carry out any specific mitigation measures outlined in the Negative Declaration applicable to its facilities to be in compliance with CEQA.

9. With the incorporation of the specific mitigation measures outlined in the Negative Declaration, Cox's proposed project will not have potentially significant adverse environmental impacts.

10. Because of the public interest in competitive local exchange services, the following order should be effective immediately.

O R D E R

IT IS ORDERED that:

1. A certificate of public convenience and necessity is granted to Cox California Telcom, Inc. (applicant) to operate both as a facilities-based carrier and as a reseller of competitive local exchange services, and to provide intraLATA and interstate interLATA service subject to the terms and conditions set forth below.

2. Applicant shall file a written acceptance of the certificate granted in this proceeding.

3. a. Applicant is authorized to file with this Commission tariff schedules for the provision of competitive local exchange services conforming to its proposed tariff as amended August 23, 1996 and as further amended by this decision. Applicant may not offer competitive local exchange services until tariffs are on file. Applicant's initial filing shall be made in accordance with General Order (GO) 96-A, excluding Sections IV, V, and VI, and must include a satisfactory correction of each deficiency listed in Attachment B in this decision. The tariff shall be effective not

less than 1 day after tariff approval by Commission's Telecommunications Division. Applicant shall comply with the provisions in its tariffs.

b. Applicant is a competitive local carrier (CLC). The effectiveness of its future tariffs is subject to the schedules set forth in Appendix A, Section 4.E of Decision (D.) 95-07-054:

"E. CLCs shall be subject to the following tariff and contract filing, revision and service pricing standards (Contracts shall be subject to GO 96-A rules for NLECs, except those for interconnection):

- "(1) Uniform rate reductions for existing tariff services shall become effective on five (5) working days' notice to the Commission. Customer notification is not required for rate decreases.
- "(2) Uniform major rate increases for existing tariff services shall become effective on thirty (30) days' notice to the Commission, and shall require bill inserts, or a message on the bill itself, or first class mail notice to customers at least 30 days in advance of the pending rate increase.
- "(3) Uniform minor rate increases, as which defined in D.95-07-054, shall become effective on not less than five (5) working days' notice to the Commission. Customer notification is not required for such minor rate increases.
- "(4) Advice letter filings for new services and for all other types of tariff revisions, except changes in text not affecting rates or relocations of text in the tariff schedules, shall become

effective on forty (40) days' notice to the Commission.

"(5) Advice letter filings revising the text or location of text material which do not result in an increase in any rate or charge shall become effective on not less than five (5) days' notice to the Commission."

4. Applicant may deviate from the following provisions of GO 96-A: (a) paragraph II.C.(1)(b), which requires consecutive sheet numbering and prohibits the reuse of sheet numbers, and (b) paragraph II.C.(4), which requires that "a separate sheet or series of sheets should be used for each rule." Tariff filings incorporating these deviations shall be subject to the approval of the Telecommunications Division. Tariff filings shall reflect all fees and surcharges to which applicant is subject, as reflected in Conclusion of Law 4.

5. Applicant shall file as part of its initial tariff, after the effective date of this order and consistent with Ordering Paragraph 3, a service area map or written description of their facilities. Such maps or description must be adequate for staff to make the determination that the Competitive Local Carrier is providing service to any interested customers located within 300 feet of the company's facilities.

6. Prior to initiating service, applicant shall provide the Commission's Consumer Services Division with the applicant's designated contact person(s) for purposes of resolving consumer complaints and the corresponding telephone number. This information shall be updated if the name or telephone number changes or at least annually.

7. Applicant shall notify this Commission in writing of the date intraLATA toll, interstate interLATA and local exchange service is first rendered to the public within 5 days after the service begins.

8. Applicant shall keep its books and records in accordance with the Uniform System of Accounts specified in Title 47, Code of Federal Regulations, Part 32.

9. Applicant shall file an annual report, in compliance with GO 104-A, on a calendar-year basis using the information request form contained in Attachment A.

10. Applicant shall ensure that its employees comply with the provisions of Public Utilities (PU) Code § 2889.5 regarding solicitation of customers.

11. The certificate granted and the authority to render service under the rates, charges, and rules authorized will expire if not exercised within 12 months after the effective date of this order.

12. The corporate identification number assigned to applicant is U-5684-C which shall be included in the caption of all original filings with this Commission, and in the titles of other pleadings filed in existing cases.

13. Within 60 days of the effective date of this order, applicant shall comply with PU Code § 708, Employee Identification Cards, and notify the Director of the Telecommunications Division in writing of its compliance.

14. Applicant is exempted from PU Code § 851 for the transfer or encumbrance of property, whenever such transfer or encumbrance serves to secure debt.

15. If applicant is 90 days or more late in filing an annual report or in remitting the fees listed in Conclusion of Law 4, the Telecommunications Division shall prepare for Commission consideration a resolution that revokes the applicant's certificate of public convenience and necessity, unless the applicant has received the written permission of the Telecommunications Division to file or remit late.

16. Applicant shall comply with the customer notification and education rules adopted in D.96-04-049 regarding passage of calling party number.

17. Certificated CLCs as authorized under this decision shall be subject to the rights and obligations of interconnection with Pacific or GTEC as prescribed in the interim rules adopted in the companion decision being issued today in this docket.

18. The Final Negative Declaration including the Mitigation Monitoring Plan prepared by CACD (see Attachment C to today's decision in A.95-12-050), is hereby approved and adopted.

19. The petitioners in Appendix A shall comply with the conditions and carry out the mitigation measures outlined in the Negative Declaration.

20. The applicant shall provide the Director of the Commission's Telecommunications Division with reports on compliance with the conditions and implementation of mitigation measures under the schedule as outlined in the Negative Declaration.

21. The application is granted, as set forth above.

22. Application 96-03-050 is closed.

This order is effective today.

Dated September 20, 1996, at San Francisco, California.

P. GREGORY CONLON  
President  
DANIEL Wm. FESSLER  
JESSIE J. KNIGHT, JR.  
HENRY M. DUQUE  
JOSIAH L. NEEPER  
Commissioners

ATTACHMENT A  
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INFORMATION REQUESTED OF COMPETITIVE LOCAL CARRIERS

TO: ALL COMPETITIVE LOCAL CARRIERS

Article 5 of the Public Utilities Code grants authority to the California Public Utilities Commission to require all public utilities doing business in California to file reports as specified by the Commission on the utilities' California operations.

A specific annual report form has not yet been prescribed for Competitive Local Carriers in California. However, you are hereby directed to submit an original and two copies of the information requested in Attachment A no later than March 31st of the year following the calendar year for which the annual report is submitted.

Address your report to:

California Public Utilities Commission  
Auditing and Compliance Branch, Room 3251  
505 Van Ness Avenue  
San Francisco, CA 94102-3298

Failure to file this information on time may result in a penalty as provided for in §§ 2107 and 2108 of the Public Utilities Code.

If you have any question concerning this matter, please call (415) 703-1961.



ATTACHMENT A  
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INFORMATION REQUESTED OF COMPETITIVE LOCAL CARRIERS

To be filed with the California Public Utilities Commission, 505 Van Ness Avenue, Room 3251, San Francisco, CA 94102-3298, no later than March 31st of the year following the calendar year for which the annual report is submitted.

1. Exact legal name and U # of 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. Commission decision number granting operating authority and the date of that decision.
7. Date operations were begun.
8. Description of other business activities in which the utility is engaged.
9. A list of all affiliated companies and their relationship to the utility. State if affiliate is:
  - 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.

(END OF ATTACHMENT A)

ATTACHMENT B

List of deficiencies in tariffs filed by Cox California Telcom, Inc. in A.96-03-050 to be corrected in tariff compliance filing.

1. Schedule A-1, Sheets 86-T and 87-T: Pursuant to Rule 2 of Appendix B of D.95-07-054, service may be initiated by either oral or written agreement. If the company proposes to initiate service only based on written agreements, it needs to delete the reference to the confirmation letter which is to be sent out following oral agreement.
2. Schedule A-1, Sheets 90-T, 99-T, 136-T: Are bills due and payable in 15 days or 30 days. The sections of the tariff are contradictory.
3. Schedule A-1, Sheet 95-T: Pursuant to Rule 5 of Appendix B, deposits are limited to twice the average monthly bill.
4. Schedule A-1, Sheet 124-T: Rule 25 indicates that Cox may impose a charge for deactivation of blocking. If Cox intends to impose a charge, it must be tariffed.
5. Schedule B-1, Sheet 48-T: Cox indicates it will provide local number portability by remote call forwarding, direct inward dialing, etc., but the rates shown (which appear to be for RCP service) are captioned "Rate- Number Portability Service." If those rates apply only to RCP, the tariff should be captioned accordingly.
6. Schedule B-1, Sheet 75-T: The CPUC reimbursement fee is currently 0.11%.

(END OF ATTACHMENT B)