

Decision 96-10-056 October 25, 1996

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of Optex, Inc., dba Optex Communications, Inc., for a Certificate of Public Convenience and Necessity to provide interLATA and intraLATA telecommunications services within the State of California.

ORIGINAL

The applicant has a minimum of \$25,000 of cash or cash equivalents, plus any deposits that may be required. These financial resources may be reasonably liquid and readily available to meet the firm's start-up expenses.

OPINION

Optex, Inc., an Ohio corporation, which will do business in California as Optex Communications, Inc. (applicant), requests a certificate of public convenience and necessity (CPC&N) under Public Utilities (PU) Code Sections 234 and 1001 to permit it to operate as a switchless reseller of interLATA and intraLATA telephone services in California as a nondominant interexchange carrier (NDIEC).

The applicant served a notice of availability of the application upon the telephone corporations with which the applicant is likely to compete. Notice of the application appeared in the Commission's Daily Calendar on August 26, 1996. Since no protests to the application have been filed, no hearings are necessary.

In Decision (D.) 84-01-037 (14 CPUC2d 317) and later decisions, we authorized interLATA entry generally. However, we California is divided into ten Local Access and Transport Areas (LATAs) of various sizes, each containing numerous local telephone exchanges. InterLATA describes services and functions that relate to telecommunications originating in one LATA and terminating in another. IntraLATA describes services and functions that relate to telecommunications originating and terminating within a single LATA.

limited the authority conferred to interLATA service, and we imposed the condition on new entrants that they not hold themselves out to the public as providing intraLATA service. Subsequently, in D.94-09-065 we authorized competitive intraLATA services effective January 1, 1995, for carriers meeting specified criteria.

The Commission has established two major criteria for determining whether a CPC&N should be granted. An applicant who is a switchless reseller<sup>2</sup> must demonstrate that it has a minimum of \$25,000 of cash or cash equivalent, plus any deposits that may be required. These financial resources must be reasonably liquid and readily available to meet the firm's start-up expenses. In

addition, an applicant is required to make a reasonable showing of technical expertise in telecommunications or related businesses.

As part of its application, the applicant provided a balance sheet and income statement demonstrating that the applicant has the requisite finances. The applicant's balance sheet as of December 31, 1995, reflects current assets of \$319,648 of which \$40,775 is in a checking account. The verified application states that the applicant has more than \$25,000 in cash. The applicant also represents that no deposits will be required by the local exchange companies or interexchange carriers for the services which the applicant proposes to offer. The financial statements attached to the application demonstrate that the applicant has the financial ability to render the proposed service.

<sup>2</sup> D.93-05-010 defines a switchless reseller as a NDIEC with the following characteristics: it uses the switch of another carrier; it usually, but not always, uses access circuits that the underlying carrier purchases from an LEC; it provides service in its own name and its customers view it as their telephone company for interLATA and interstate calls. D.92-06-069 noted that it is possible to control, operate or manage telephone lines without owning them. The decision also notes that resellers which do not own or directly operate their own telephone wires may still have a plant which is owned, controlled, operated, and/or managed in order to facilitate communication by telephone.

As for the applicant's technical expertise, the applicant has provided information on its three key executives indicating their education, technical training, and experience in the telecommunications industry. The applicant's President, Michael A. Guider, has 20 years of experience in the telecommunications and information technology industries in such areas as information systems, marketing, product development, and network planning. The Chairman and Chief Executive Officer of the applicant, Michael V. Johnson, has 12 years of experience in software development, sales, and marketing in the telecommunications industry. The applicant's Director of Software Development, Jay U. Esquerre, has 14 years of experience in managing and developing software in the information technology industry. The application demonstrates that the applicant has the requisite technical experience in telecommunications and related businesses.

In D.93-05-010 (49 CPUC2d:197, 206), the Commission stated that reseller applications should also disclose whether anyone associated with the firm was previously associated with and NDIEC that filed for bankruptcy or went out of business. The verified application states that no person associated with the applicant has had any such association.

The application states that the applicant does not and does not propose to construct or extend any telecommunications facilities. Since the applicant will be operating as a switchless reseller, it can be seen with certainty that the proposed operations of the applicant will not have a significant impact upon the environment.

We will authorize the interLATA and intraLATA services that the applicant seeks to provide.

Findings of Fact

1. Applicant served a notice of availability of the application upon the telephone corporations with which it is likely to compete.

2. A notice of the filing of the application appeared in the Daily Calendar on August 26, 1996.

3. No protests have been filed.

4. A hearing is not required.

5. In prior Commission decisions, we authorized competition in providing interLATA telecommunications service but generally barred those offering such service from holding out to the public the provision of intraLATA service.

6. In D.94-09-065, we authorized competitive intraLATA services effective January 1, 1995, for carriers meeting specified criteria.

7. Applicant has demonstrated that it has a minimum of \$25,000 of cash, reasonably liquid and readily available to meet its start-up expenses.

8. The applicant represents that no deposits will be required by the local exchange companies or interexchange carriers for the services which the applicant proposes to offer.

9. The application demonstrates that the applicant has the requisite technical experience in telecommunications and related businesses.

10. Applicant has submitted with its application a complete draft of applicant's initial tariff which complies with the requirements established by the Commission including prohibitions on unreasonable deposit requirements.

11. Applicant has represented that no one associated with or employed by applicant was previously associated with an NDIEC that filed for bankruptcy or went out of business.

12. Since no facilities are to be constructed, it can be seen with certainty that the proposed operation will not have a significant effect upon the environment.

13. The Commission has routinely granted NDIECs such as the applicant an exemption from Rule 18(b) where no construction is involved.

14. The Commission has routinely granted NDIECs an exemption from the provisions of PU Code §§ 16-30, and 16-51.

Daily Calendar on August 26, 1996.

15. The Commission has also routinely granted to NDIECs an exemption from the General Order (GO) 96-A requirement that tariff pages be numbered consecutively, and that there be one rule on each tariff page.

Conclusions of Law

1. The applicant has the financial ability to provide the proposed service.

2. The applicant has made a reasonable showing of technical expertise in telecommunications.

3. An exemption from the requirements of PU Code §§ 816-830 and 851 should be granted to the applicant.

4. An exemption from the requirements of GO 96-A regarding tariff pagination and the setting forth of each tariff rule on a separate page should be granted to the applicant. Public convenience and necessity would be served by permitting the applicant to offer interLATA services.

5. The application should be granted to the extent set forth below:

7. 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 the Universal Lifeline Telephone Service, (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

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).

8. Because of the public interest in competitive interLATA and intraLATA 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 Optex, Inc. which will do business in California as Optex Communications, Inc. (applicant) to operate as a reseller of interLocal Access and Transport Area (interLATA) and, to the extent authorized by Decision (D.) 94-09-065, intraLocal Access and Transport Area (intraLATA) telecommunication services offered by communication common carriers in California.

2. Within 30 days after this order is effective, 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 interLATA and intraLATA service. Applicant may not offer interLATA and/or intraLATA service 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 shall be effective not less than 1 day after filing. Applicant shall comply with the provisions in its tariffs.

b. Applicant is a non-dominant interexchange carrier (NDIEC). The effectiveness of its future tariffs is subject to the schedules set forth in Ordering Paragraph 5 of D.90-08-032 (37

CPUC2d 130 at 158) as modified by D.91-12-013 (42 CPUC2d 220 at 231), and D.92-06-034 (44 CPUC2d 617 at 618) and the following provisions which require consecutive sheet numbering and prohibit the use of sheet numbering for each page of a tariff filing. These provisions shall be incorporated into all tariff filings.

"5. All NDIECs are hereby placed on notice that their California tariff filings will be processed in accordance with the following effectiveness schedule:

"a. Inclusion of FCC approved rates for interstate services in California public utilities tariff schedules shall become effective on one (1) day's notice.

"b. Uniform rate reductions for existing services shall become effective on five (5) days' notice.

"c. Uniform rate increases, except for minor rate increases, for existing services shall become effective on thirty (30) days' notice, and shall require bill inserts, a message on the bill itself, or first class mail notice to customers of the pending increased rates.

"d. Uniform minor rate increases, as defined in D.90-11-029, for existing services shall become effective on not less than 5 working days' notice. Customer notification is not required for such minor rate increases.

"e. Advice letter filings for new services and for all other types of tariff revisions, except changes in rates not affecting rates or relocations of text in the tariff schedules, shall become effective on forty (40) days' notice.

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

Pursuant to D.90-08-032, the 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 Commission's Telecommunications Division. Tariff filings shall reflect all fees and surcharges to which applicant is subject, as reflected in Conclusion of Law 7.

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.

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 within 5 days of the date interLATA service is first rendered to the public, and again within 5 days of when intraLATA 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. In the event the books and records of the applicant are required for inspection by the Commission or its staff, applicant 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 applicant's office.

10. Applicant shall file an annual report, in compliance with GO 104-A, on a calendar year basis using the information request form developed by the Commission Staff and attached hereto as Attachment A.



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

12. 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.

13. The corporate identification number assigned to applicant is U-5697-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.

14. 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.

15. Applicant is exempted from the provisions of PU Code §§ 816-830.

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

17. Since no construction is being proposed, the applicant is exempted from Rule 18(b) of the Commission's Rules of Practice and Procedure.

18. If applicant is 90 days or more late in filing an annual report or in remitting the fees listed in Conclusion of Law 7, the Telecommunications Division shall prepare for Commission consideration a resolution that revokes the applicant's certificate of public convenience and necessity, unless the applicants have received the written permission of the Telecommunications Division to file or remit late.

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

20. Application 96-05-052 is closed.

This order is effective today.

Dated, October 25, 1996, at Sacramento, California.

Service under the rates, charges, and rules authorized will expire if not exercised within 18 months after the effective date of this order.

P. GREGORY CONLON  
President

JESSIE J. KNIGHT, JR.  
HENRY M. DUQUE

JOSIAH L. NEPPER  
Commissioners

The Commission number assigned to applicant is U-2697-C-1311. The Commission number assigned to applicant is U-2697-C-1311. The Commission number assigned to applicant is U-2697-C-1311.

Commissioner Daniel W. Fessler, being necessarily absent, did not participate in the hearing.

Applicant shall comply with the provisions of the Telecommunications Act, and notify the Director of the Telecommunications Division in writing of its compliance.

Applicant is exempt from the provisions of 47 CFR 2.201-10.

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ATTACHMENT A

TO: ALL INTEREXCHANGE TELEPHONE UTILITIES

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 the California interexchange telephone utilities. 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.

Information Requested of California Interexchange Telephone Utilities.

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:
  - 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)