

ORIGINAL

Decision 96-11-011 November 6, 1996

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of SpectraNet Anaheim for a certificate of public convenience and necessity to offer local exchange, access and interexchange services. Application 96-05-048 (Filed May 31, 1996) amended September 16, 1996

OPINION

Request

SpectraNet Anaheim (applicant), a California corporation, seeks a certificate of public convenience and necessity (CPCN) under Public Utilities Code § 1001 to provide facilities-based local exchange telecommunications service as a competitive local carrier (CLC) and as a reseller of interexchange intra-Local Access and Transport Area (interLATA) service and inter-Local Access and Transport Area (interLATA) services carrier.

Notice of Availability

In compliance with Rule 18(b) of the Commission's Rules of Practice and Procedure, applicant mailed a notice of availability of the application to the official service list in R.95-04-043, I.95-04-044, to those facilities-based CLCs applicant will compete with, and to those Cities and Counties which applicant intends to provide service in.

Protective Order

Concurrent with the filing of its application and notice of availability of application dated May 31, 1996, applicant filed a protective order. Applicant proposes to provide facilities-based and resold local exchange services and interexchange services to business customers

1. A competitive local carrier is a common carrier that is issued a CPCN to provide local exchange telecommunications service for a geographic area specified by such carrier.

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a motion for a limited protective order seeking to file its financial information, expected customer base information, and network map under seal. Given that no opposition to the motion was filed, applicant's motion was granted by a June 12, 1996 Administrative Law Judge (ALJ) ruling. As part of this protective order, applicant's financial information, expected customer base, and network map is to remain under seal for a period of one year from the date of the ruling, except upon further order of the Commission or ALJ.

Background

By Decision (D.) 95-07-054 (Rulemaking (R.) 95-04-043 and 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 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 subsequent filings for CLC CPCN authority after September 1, 1995, were to be treated as applications and processed in the normal course of the Commission's business.

Proposed Operation

Applicant is a wholly owned subsidiary of SpectraNet International Inc., a company engaged in the design and construction of broadband communications networks. Applicant proposes to provide facilities-based and resold local exchange services and interexchange services to business customers throughout California. Applicant seeks facilities-based and resale authority to provide interexchange services in the entire state and



In addition to the financial data submitted under seal, applicant provided a letter from Union Bank to applicant which confirms that applicant possesses a minimum of \$100,000 cash that is reasonably liquid and available. (Exhibit 10 to the application.) The financial data submitted under seal also identifies the financial arrangements supporting the applicant's contention that it will be able to procure the required financing for the development, construction, and initial operation of the project.

Applicant has satisfied our financial criteria by having sufficient funds be reasonably liquid and readily available to meet the applicant's needs for facilities-based local exchange service and interLATA and intraLATA services.

**Technical Experience Requirement**

To satisfy Rule 18(g)'s requirement to provide a reasonable showing of technical experience, applicant provided information on its seven key officers indicating their technical training and experience, as shown on Exhibit 14 to the application. These key officers are Executive Vice President and Chief Operating Officer Robert E. Randall, Vice President and Project Manager of Bradford Saunders, Senior Vice President of Network Systems Development William Johnson, Network Engineering and Operations Director Von Kistler, Senior Vice President of Engineering David B. Duffie, Network Systems Engineering Robert Wilson, and General Manager of Network Operations John W. Lewis.

Applicant further substantiated its technical experience by providing a complete draft of its California tariff schedule to the application as Exhibit 12. Applicant, in response to August 15, 1996 Commission staff tariff deficiency notice, filed an amendment to its application on September 16, 1996, correcting most of its tariff deficiencies. We conclude that applicant's tariffs as recently amended on August 15, 1996, except for certain deficiencies set forth in Appendix B, properly conform to Commission rules.

Environmental Impact Assessment The California Environmental Quality Act (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 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) for Applicant's PEA is attached to the application as Exhibit 13.

We have performed a CEQA review for a group of eight facilities-based CLCs which included applicant's. Based on its own assessment of those eight applications and PEAs, including those of applicant's, the Commission's Telecommunications Division prepared a draft Negative Declaration and Initial Study generally describing the facilities-based petitioners' projects and their potential environmental effects.

The Negative Declaration prepared by the Commission's Telecommunications Division 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 applicant. (Pub. Res. Code § 21080(d)(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 pursuant to

to D.96-09-072 we approved the Negative Declaration as prepared by the Commission's Telecommunications Division, including the Telecommunications Division's Mitigation Monitoring Plan in D.95-12-057, for applicant and seven other CLCs. Conclusion

Applicant possesses the necessary financial and technical expertise to operate as a facilities-based CLC and as an interexchange carrier. We will authorize the CLC services and interexchange services that applicant seeks to provide. Findings of Fact

1. Applicant filed its application on May 31, 1996 for authority to provide facilities-based CLC and resale interexchange telecommunications services. Applicant served a Notice of Availability in lieu of its petition on parties of record in R.95-04-043/I.95-04-044 and the cities and counties in which it proposes to provide service indicating that copies of the application would be served at the request of any party receiving the notice.

2. A notice of the filing of the application and amended application appeared in the Daily Calendar on June 5, 1996 and September 20, 1996 respectively.

3. No protests have been filed.

4. A hearing is not required.

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

6. 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.

7. 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 substantiated by the experience of its key officers and presentation of its initial tariff.

10. Applicant has submitted with its application and amended application a complete draft of its initial tariff which complies with the requirements established by the Commission, except for the deficiencies identified in Appendix B.

11. Exemption from the provisions of PU Code §§ 816-830 has been granted to other telecommunications carriers. (See, e.g., D.86-10-007 and D.88-12-076.)

12. 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.)

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 applicant's, and prepared a Mitigated Negative Declaration.

14. By D.96-09-072, the Commission adopted the Commission staff's conclusion that with the incorporation of all mitigation measures discussed in the Mitigated Negative Declaration attached to D.96-09-072 as Attachment C, that certification of applicant as a CLC 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. Public convenience and necessity require the competitive local exchange services and interexchange 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 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

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 §§ 816-830;

6. Applicant should be exempted from PU Code § 851 when the transfer or encumbrance serves to secure debt;

7. The application should be granted to the extent set forth in the order below.

8. Any CLC which does not comply with our rules for local exchange competition adopted in R.96-04-043 shall be subject to sanctions including, but not limited to, revocation of its CLC certificate;

9. Applicant is required to carry out any specific mitigation measures outlined in the Negative Declaration adopted by the Commission in D.96-09-072 which are applicable to its facilities to be in compliance with CEQA.



10. With the incorporation of the specific mitigation measures outlined in the Negative Declaration adopted by the Commission in D.96-09-072, applicant's proposed project will not have potentially significant environmental impacts.

11. Because of the public interest in competitive local exchange services, and interexchange services, the following order should be effective immediately:

**ORDER**

IT IS ORDERED that:

1. A certificate of public convenience and necessity is granted to SpectraNet Anaheim (applicant) to operate as a facilities-based competitive local carrier and resale interexchange inter-Local Access and Transport Area (interLATA) and, to the extent authorized by Decision (D.) 94-09-005, intra-Local Access and Transport Area (intraLATA) carrier 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 or interexchange services. Applicant may not offer competitive local exchange services and/or 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 must include a satisfactory correction of each deficiency listed in Appendix B in this decision. The tariff shall be effective not less than 1 day after tariff approval by the Commission's Telecommunications Division. Applicant shall comply with the provisions in its tariffs.

b. Applicant is a competitive local carrier (CLC) and an interexchange carrier. 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 for CLCs and Appendix A-5 of D.92-06-069 for interexchange carriers.

"E. CLCs and interexchange carriers 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 NDIECs 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 defined in D.92-11-029, 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 be effective on forty (40) days' notice to the Commission.

interexchange carrier. The effectiveness of its future tariffs is

(5) Advice letters 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-A1 (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 Branch. Tariff filings shall reflect all fees and surcharges to which applicant is subject, as reflected in Conclusion of Law 4.

5. Applicant shall file with the Director, Telecommunications Services, after the effective date of this order a service area map or written description of its activities. Such maps or description must be adequate for staff to make the determination that the CLC is providing service to interested customers located within 300 feet of the company's facilities.

6. Prior to initiating service, applicant shall provide the Commission's Consumer Affairs 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 local exchange service is first rendered to the public within 5 days after local exchange 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 contained in Appendix A to this order.

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. Applicant shall use its corporate identification number U-5702-C in the caption of all original filings with this Commission, and in the titles of other pleadings 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 the provisions of PU Code §§ 816-830.

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

16. Applicant is exempted from Rule 18(b) of the Commission's Rules of Practice and Procedure to the extent that the rule requires applicant to serve a copy of its application on the cities and counties it proposes to operate in and to the extent that the rule requires applicant to serve a copy of all exhibits attached to its application on potential competitors.

17. 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 Commission's 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.

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

19. Applicant shall comply with the Final Negative Declaration including the Mitigation Monitoring Plan adopted by the Commission in Decision 96-09-072, dated September 9, 1996.

20. Applicant's financial information, expected customer base information, and network map placed under seal pursuant to a June 12, 1996 Administrative Law Judge Ruling shall remain under seal for one year from today unless applicant makes a timely request for an extension of confidential treatment with good cause shown.

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

22. Application 96-05-048 is closed.

This order is effective today.

Dated November 6, 1996, at San Francisco, California.

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

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INFORMATION REQUESTED OF COMPETITIVE LOCAL CARRIERS

TO: ALL COMPETITIVE LOCAL CARRIERS. (The annual report is submitted no later than March 31st of the year following the calendar year for which the annual report is submitted.)

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 on page 2 of this attachment 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.

1. Date operations were begun.
2. Description of other business activities in which the utility is engaged.
3. A list of all affiliated companies and their relationship to the utility. State if affiliate is:
  - a. Regulated public utility.
  - b. Publicly held corporation.
4. Balance sheet as of December 31st of the year for which information is submitted.
5. Income statement for California operations for the calendar year for which information is submitted.

## APPENDIX 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 of utility in California to file reports.
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 APPENDIX A)

List of Deficiencies in Tariffs Filed by SpectraNet Anaheim, Inc. (U-5XXX-C), for authority to provide competitive local exchange services to be corrected in Tariff Compliance Filing.

Hereinafter, "Tariff 1-T" and "Tariff 2-T" refer to Cal. Schedules 1-T and 2-T, respectively, of the sample tariffs accompanying SpectraNet's Application

1. Please include sample forms in your tariff.
2. Tariff 1-T, Sheet 87, Rule 19, Limitations of Service, A. The provision that the Company may decline applications for service where necessary facilities or equipment are not available is in conflict with the Commission's requirement to serve all within 300 feet of the CLC's facilities. This provision must be deleted since such language may result in the discriminatory provision of service. Moreover, service may only be withdrawn with prior Commission approval.
3. Tariff 1-T, Sheet 106 refers to Appendix A of D.92860 and D.93361 regarding the release of nonpublished information. Please also describe completely or include the text of Appendix B of those decisions, regarding release of customers' credit information and calling records. Note that this is not the same as PU Code Section 2891.
4. Tariff 2-T, Sheet 49, Rule 9: Disputed Bill Procedure, The Telecommunications Division handles some types of inter-carrier disputes, but inter-carrier billing disputes should be resolved by the civil courts, not Commission staff.

(END OF APPENDIX B)