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Decision 96-11-038 November 26, 1996

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of Phoenix Network, Inc. (U 5223 C) to Expand its Certificate of Public Convenience and Necessity Application 96-06-047 to Include Local Exchange Service (Filed June 3, 1996)

ORIGINAL

Application for Certificate of Public Convenience and Necessity to include local exchange service within the service territories of Pacific Bell and GTE California Incorporated.

Phoenix Network, Inc. (Phoenix or applicant) seeks a certificate of public convenience and necessity (CPCN) under the Public Utilities (PU) Code, § 1001, to permit it to resell local exchange telecommunications service as a competitive local carrier (CLC). By this decision, we grant the authority requested subject to the terms and conditions set forth below.

Background

In Decision (D.) 95-07-054 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 17, 1995, for CPCN authority to enter the local exchange market and otherwise meet eligibility requirements were authorized to offer local exchange services under the following schedule: Competitive local exchange services for facilities-based carriers was authorized effective January 1, 1996. Competitive resale of the bundled local exchange service of Pacific

the instant application. To be granted a CPCN, a CLC reseller must demonstrate that it has a minimum of \$25,000 of cash or cash equivalent, reasonably liquid and readily available to meet the firm's start-up

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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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.

Applicant, a Delaware Corporation qualified to transact business in California, filed its application on June 3, 1996. Applicant was previously authorized by the Commission in D.90-11-004 to resell interLATA telecommunications services within California. Applicant's authority was expanded to include the resale of intralATA services as a result of D.94-09-065. Applicant now seeks authority to provide local exchange services throughout the service territories of Pacific and GTEC. Applicant states that it will act as a reseller using the switches, facilities, and related services of other certificated carriers. Applicant also states that it will not construct or extend any facilities in order to provide the requested services. There were no protests to the application.

In compliance with a ruling issued by assigned Administrative Law Judge Kenney and Rule 18 (b) of the Commission's Rules of Practice and Procedure (Rule 18(b)), applicant served on each of its likely competitors a copy of its application and a Notice of Availability of the exhibits appended to its application. However, applicant requests a waiver of Rule 18(b) to the extent that the rule requires applicant to serve a copy of its application on the cities and counties in the proposed service area, on the grounds that applicant does not intend to engage in any construction in said cities and counties in connection with the authority sought in the instant application.

To be granted a CPCN, a CLC reseller must demonstrate that it has a minimum of \$25,000 of cash or cash equivalent, reasonably liquid and readily available to meet the firm's start-up expenses as prescribed in Rule 4.B(2) of D.95-07-054. To meet this requirement, applicant provided audited financial statements which

showed that, as of December 31, 1995, applicant possessed cash and cash equivalents of \$8.0 million, and that applicant's current assets of \$21.0 million exceeded its current liabilities of \$10.9 million. Thus, it is clear that applicant meets the minimum cash requirements of D.95-07-054 and is capable of financing and operating its proposed operations.

Applicants for CLC authority must also submit proposed tariffs which conform to the consumer protection rules set forth in Appendix B of D.95-07-054. We find that applicant's tariffs properly conform to our rules, except for the list of tariff deficiencies identified in Appendix B to this decision. In its compliance tariff filing, applicant is directed to correct the identified deficiencies as a condition of our granting approval of the tariffs.

CLCs must also conform to the financial responsibility requirements adopted in D.95-12-056. Among these requirements is that customer deposits collected by a CLC must be deposited in a protected, segregated and interest-bearing escrow account subject to Commission oversight.

In addition, applicants for CLC authority are required to make a reasonable showing of technical expertise in telecommunications or a related business. To meet this requirement, applicant submitted the following biographical information on its key employees:

Wallace M. Hammond, President: Hammond was hired as Executive Vice President in February 1994. He was then elected to the Board of Directors and named President and Chief Operating Officer in May 1994. Hammond became President and Chief Executive Officer of Phoenix in December 1994. From 1979 to 1992, Hammond was President and Chief Executive Officer of ANSCO & Associates, a telephone engineering and plant construction company. From 1979 to 1992, he was with BellSouth Communications Systems, Inc., a nationwide division of BellSouth Corporation involved in

the customer premises equipments after market, that showed where he was promoted to Vice President Operations in 1989.

Jeffrey L. Bailey, Senior Vice President and Chief Financial Officer: Bailey has held his current position since March 1990 and is a Certified Public Accountant. Prior to joining Phoenix in 1990, Bailey spent 15 years in public accountancy.

J. Rex Bell, Vice President of Operations: Bell has held his current position since March 1991. From January 1990 to March 1991, Bell was Director of Marketing for Phoenix. Prior to joining Phoenix, Bell was a senior telecommunications consultant for two consulting firms from 1984 to 1990. Between 1980 and 1984, Bell held management positions with MCI and Cable and Wireless, Ltd.

Jon Beizer, Vice President of Corporate Development: Beizer joined Phoenix in July 1992 and was promoted to his current position in 1995. Beizer has an M.B.A. from Stanford University.

Paul Cissel, Vice President of Sales and Marketing: Cissel joined the company in August 1992 and was promoted to his current position in November 1994.

The experience of applicant's key personnel demonstrates that applicant has the technical expertise and qualifications to conduct its business.

Applicant states that it will not construct any facilities and therefore it can be seen with certainty that granting its application will not have an adverse impact upon the environment. We agree with applicant since we previously stated in D.96-02-072, Conclusion of Law 3, that for "CLC resellers [who] do not use any of their own facilities and will not be constructing any facilities of any kind, it can be seen with certainty that granting their petitions will not have an adverse impact on the environment."

We have reviewed applicant's proposed filing and conclude that applicant is qualified to provide the proposed services. We shall accordingly grant the application subject to the terms and conditions set forth in this order. In deciding on applicant's request for a waiver of the Rule 18(b) requirement to serve its application on cities and counties in which applicant proposes to provide service, we note again that applicant does not propose to construct any facilities. We have routinely granted requests for waivers of Rule 18(b) under such circumstances, and shall likewise grant applicant's request.

Findings of Fact

1. Applicant filed its application on June 3, 1996 for authority to resell local exchange telecommunications services.

2. Applicant served on telephone corporations with which applicant is likely to compete a copy of its application and a Notice of Availability of the exhibits appended to its application.

3. A notice of the filing of the application appeared in the Daily Calendar on July 2, 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 GTE.

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 \$25,000 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 five key employees have a total of more than 45 years of combined experience in the telecommunications industry.

10. Applicant submitted with its 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 of this order.

11. 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.

12. The Commission has routinely granted nondominant telecommunications carriers, such as applicant, an exemption from Rule 18(b) where no construction is involved to the extent that the rule requires applicant to serve a copy of its application to cities and counties in the proposed service area.

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

14. 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.)

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 the following:

- 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);
- 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 Rule 18(b)'s requirement of service of the application on cities and counties in the proposed service area.
- 6. Applicant should be exempted from PU Code §§ 816-830.
- 7. Applicant should be exempted from PU Code § 851 when the transfer or encumbrance serves to secure debt.
- 8. The application should be granted to the extent set forth below.
- 9. Any CLC which does not comply with our rules for local exchange competition adopted in Rulemaking (R.) 96-04-043 shall be subject to sanctions including, but not limited to, revocation of its CLC certificate.
- 10. Applicant should file revised tariffs that do not contain the deficiencies identified in Finding of Fact 10.
- 11. Because of the public interest in competitive local exchange services, the following order should be effective immediately.
  - (2) become effective on five working days' notice to the Commission. Customer notification is not required for rate decreases.

The current 0.30% surcharge applies to all interstate services except for those excluded by D.95-07-054, as modified by D.95-07-050, to fund the California Relay Service and Communications Relay Code 2 8881; Resolution 1995-07-050.

**IT IS ORDERED that:**

1. A certificate of public convenience and necessity is granted to Phoenix Network, Inc. (U-5223-C) to operate as a reseller of competitive local exchange services, subject to the terms and conditions set forth below.
2. Phoenix Network, Inc. (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. 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 Appendix B to this decision. The tariff shall be effective not less than 1 day after tariff approval by Commission 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:
      - (1) Contracts shall be subject to GO 96-A rules for NDECs, except those for interconnection.
      - (2) Uniform rate reductions for existing 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.90-11-029, 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 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: (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 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 on which

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 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 request form developed by Commission Staff and 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 current corporate identification number assigned to applicant is U5223G 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 PUC 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.

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 Commission's 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. The application is granted, as set forth above.

20. Application 96-06-047 is closed.

This order is effective today.

Dated November 26, 1996, at San Francisco, California.

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

Commissioner Henry M. Duque,  
being necessarily absent, did  
not participate.

ATTACHMENT A  
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APPENDIX A  
Page 1

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 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.

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.
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.

## ATTACHMENT A

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APPENDIX A

Page 1

## 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 UIC # of reporting utility.
2. Address of utility doing business in California.
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

Corrections Applicant **IS** TO Make To Its Tariffs  
 (Page 1 of 1)

List of Deficiencies in Tariffs Filed by Phoenix Network, Inc. (U-5223-C) in A.96-06-047 to be Corrected in Tariff Compliance Filing.

1. Sheet 1-T: "Intrastate Resale Service" is not a good description of the services the company offers. Change it to read: "Long Distance and Local Exchange Resale Service."
2. Sheet 28-T: The statewide flat rate for ULTS service is \$5.62 per month. Also, the \$0.08 rate for calls over the 60 call allowance for measured rate customers is a per message rate, not a per minute rate.
3. Sheet 28-T and following sheets: are you charging the same rates in Pacific and GTEC's service territories?
4. Sheet 31-T: there is a reference to local loop demarcation point, but it is not defined. Tariff must include a demarcation tariff or concur in another company's tariff.
5. Sheet 32-T: The LECs' directory assistance allowances apply to 411 and NPA-555-1212 calls within the same LATA. Clarify if you intend to charge for all NPA-555-1212 calls?
6. Sheet 42-T: CPUC Reimbursement Fee is 0.11% effective 7/1/96.
7. Sheet 47-T: The household size income limitations for ULTS service have changed. See Resolution T-15829, February 23, 1996.
8. Sheet 56-T: Pursuant to Rule 3, Appendix B of D. 95-07-054, certain information is required on forms and needs to be included in this tariff section.
9. Sheet 57-T: You cannot require a bank guarantee in addition to a deposit or credit check.
10. Sheet 58-T: Interest on deposits must comply with Appendix B, Rule 5.
11. Sheet 59-T: You must include the notices shown in Rule 6 of Appendix B in this portion of your tariff.
12. Sheet 60-T and also definition on 44-T: you must specify in your tariff how long customers have to pay a bill before the late payment charge is assessed; 15 days is the minimum time allowed.
13. Sheet 66-T: Rule 14 indicates that a business customer "may" be charged to activate or deactivate blocking. Are these the \$15 charges shown on Sheet 31-T? Change "may" to "will." If the item is tarified, customers must pay the charge.

ATTACHMENT B  
Corrections Applicant Is To Make To Its Tariffs

Page 2

- 1. List of deficiencies in Tariffs filed by Phoenix Network, Inc. (PNI) in A.96-06-047 to be corrected in Tariff Compliance Filing 2283-C.
- 14. Sheet 68-T: The final sentence should be changed to read "The carrier responsible for the unauthorized transfer." Change the description of the services the company offers. Change the "read" to read: "Availability of 911 service (Rule 10C)"
- 15. The following items are missing from the tariff filing:
  - Availability of 911 service (Rule 10C)
  - Statement that residential customers whose service is discontinued for nonpayment will continue to have access to 911 service for measured rate customers as a percentage rate.
  - Sample forms (must be included in compliance filing not following certification)
- 3. Sheet 28-T and following sheets: are you charging the same rates in Pacific and GTRC's service territories?
- 4. Sheet 31-T: there is (END OF ATTACHMENT B) loop definition point, but it is not defined. Tariff must include a demarcation tariff or occur in another company's tariff.
- 5. Sheet 33-T: The LEGS, directory assistance allowances apply to 411 and NPA-822-1212 calls within the same LATA. Clarify if you intend to charge for 411 NPA-822-1212 calls?
- 6. Sheet 42-T: GTRC Reimbursement Fee is 0.112 effective 1/1/96.
- 7. Sheet 43-T: The household size income limitations for URS service have changed. See Resolution T-12322, February 23, 1996.
- 8. Sheet 56-T: Pursuant to Rule 3, Appendix B of D. 95-07-054, certain information is required on forms and needs to be included in this tariff section.
- 9. Sheet 57-T: You cannot require a bank guarantee in addition to a deposit or credit check.
- 10. Sheet 58-T: Interest on deposits must comply with Appendix B, Rule 2.
- 11. Sheet 59-T: You must include the notices shown in Rule 6 of Appendix B in this portion of your tariff.
- 12. Sheet 60-T and also definition on 44-T: You must specify in your tariff how long customers have to pay a bill before the late payment charge is assessed; 15 days is the minimum time allowed.
- 13. Sheet 66-T: Rule 14 indicates that a business customer "may" be charged to activate or deactivates blocking. Are these the \$15 charges shown on sheet 31-T? Change "may" to "will." If the item is tariffed, customers must pay the charge.