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Decision 97-04-023 April 9, 1997

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
US ONE Communications Services)
Corporation for a Certificate of)
Public Convenience and Necessity to)
Provide Local Exchange Service on a)
Facilities-Based and Resale Basis as)
a Competitive Local Carrier in)
California.)

ORIGINAL

Application 96-09-047
(Filed September 20, 1996)

OPINION

1. Summary

US ONE Communications Services Corporation (US ONE or applicant) seeks authority under Public Utilities (PU) Code § 1001 for authority to provide facilities-based and resold local exchange telecommunications service as a competitive local carrier (CLC).¹ Applicant also seeks authority to provide facilities-based and resold intraLATA local toll service.² The application is granted, subject to the terms and conditions set forth below.

2. Background

By Decision (D.) 95-07-054, we established initial procedures for the filing for authority to offer competitive local exchange service within the service territories of Pacific Bell

¹ A competitive local carrier is a common carrier that is issued a Certificate of Public Convenience and Necessity to provide local exchange telecommunications service for a geographic area specified by such carrier.

² California is divided into Local Access and Transport Areas (LATAs) of various sizes, each containing numerous local telephone exchanges. "IntraLATA" describes telecommunications services originating and terminating within a single LATA. "InterLATA" describes telecommunications services originating in one LATA and terminating in another.

(Pacific) and GTE California Incorporated (GTEC). Prospective CLCs that filed petitions by September 1, 1995, and that 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 such authority made after September 1, 1995, were to be treated as applications and processed in the normal course of the Commission's business. Applicant's request for authority to resell local exchange service was made on September 20, 1996. Accordingly, the request was docketed as an application.

Applicant is a Delaware corporation, with principal California offices in Alamo. In compliance with Rule 18(b), applicant has provided the names and addresses of entities with which it may compete in offering these services. (Application, Ex. 5.) Applicant states that a copy of the application has been mailed to each of these likely competitors. No protests to the application have been received.

3. Discussion

Applicant seeks authorization to provide on a facilities-based and resale basis all local exchange services authorized in California in the service areas of Pacific and GTEC. Applicant initially will provide its services through existing facilities and equipment located on its customers' premises. No new construction is contemplated.

Applicant proposes to provide services at rates competitive with existing carriers. Applicant must submit proposed tariffs that conform to the consumer protection rules set forth in Appendix B of D.95-07-054. Applicant's proposed tariff, containing its proposed rates and terms and conditions of service, is attached

as Ex. 4 to the application. We conclude that applicant's tariffs properly conform to Commission rules.

We also conclude that applicant qualifies as a CLC and meets the financial requirements set forth in our rules. A facilities-based CLC must demonstrate that it has a minimum of \$100,000 in cash or cash equivalent, reasonably liquid and readily available to meet the firm's start-up expenses as prescribed in Rule 4.B of D.95-07-054. Pursuant to D.95-12-056, applicant also must agree that customer deposits, if any, must be maintained in a protected, segregated interest-bearing escrow account subject to Commission oversight.

Applicant has submitted its financial data under seal.³ The financial statements, consisting of balance sheets for 1994, 1995, and year to date to February 29, 1996, show adequate resources to meet the Commission's requirements.

An applicant also is required to make a reasonable showing of technical expertise in telecommunications or a related business. Applicant states that its staff has designed, managed, and/or operated advanced telecommunications facilities in the United States. Exhibits 9 and 10 of the application demonstrates extensive telecommunications experience by key officers. Applicant has shown the technical expertise and qualifications necessary to conduct its business.

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.

³ Applicant's motion to file its financial statements under seal was granted by the Law and Motion Administrative Law Judge by ruling dated October 17, 1996.

By D.97-02-038, 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.97-02-038 as Attachment B, certification of applicant as a CLC will result in no significant adverse impact on the environment.

Finally, the following excerpt from D.96-10-064 (October 25, 1996) is relevant here.

"Applicant requests that it be permitted to keep its books and accounts according to generally accepted accounting principles (GAAP), rather than the Uniform System of Accounts (USOA)....

"This is not an issue that uniquely affects Applicant. While it is true that USOA's major role historically has been in connection with traditional rate-of-return ratemaking, it performs other duties as well. Among these is assisting the Commission in auditing or investigating, as required from time to time, the calculation of various fees and surcharges that telephone corporations are responsible for collecting from subscribers. To the extent that GAAP may differ from regulatory accounting under USOA, the potential exists for inconsistent practices among telephone corporations with respect to such fees and charges and increased burdens on the Commission to detect and correct such inconsistencies. We will take up the general question of accounting treatment in the competitive regulatory environment by considering first how it affects nondominant interexchange carriers (NDIECs), as part of the pending Rulemaking (R.) and Investigation (I.) on the Commission's Own Motion to Establish a Simplified Registration Process for Telecommunications firms (R.94-02-003/I.94-02-004). NDIECs operate in the most competitive portion of the industry, and based on the results of that inquiry, we may consider whether CLCs present any different situation. Until we reach a conclusion in that proceeding, we will look with disfavor upon requests for exemption from USOA."

4. Conclusion

We have reviewed applicant's proposed filing and conclude that it conforms to the adopted Commission rules including the Consumer Protection Rules set forth in Appendix B of D.95-07-054. The application is approved.

Findings of Fact

1. Applicant filed its application on September 20, 1996, for authority to provide facilities-based and resold local exchange telecommunications services and intraLATA services.

2. Applicant served copies of its application to companies certified to be CLCs in California.

3. A notice of the filing of the application appeared in the Daily Calendar on September 26, 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 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 descriptions of the background qualifications of its officers and staff.

10. Applicant has submitted with its application a draft of an initial tariff which complies with the requirements established by the Commission.

11. 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.

12. By D.97-02-038, 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.97-02-038 as Attachment B, that certification of applicant as a CLC will result in no significant adverse impact on the environment.

13. The Commission has routinely granted nondominant telecommunications carriers, such as applicant, an exemption from Rule 18(b) to the extent that the rule requires applicant to serve a copy of its application on cities and counties in the proposed service area and to the extent that it requires applicant to provide a conformed copy of all exhibits attached to applicant's filed application to potential competitors.

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

15. 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:
 - 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);
- d. The current 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-A (PU Code § 739.30; D.96-10-066, pp. 3-4, App. B, Rule 1.C.); set by Resolution T-15987 at 0.0% for 1997, effective February 1, 1997;
- e. The current 2.87% 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-B (D.96-10-066, p. 191, App. B, Rule 6.F.); and
- f. The current 0.41% 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 Teleconnect Fund (D.96-10-066, p. 88, App. B, Rule 8.G.).

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 and service of all exhibits attached to this application on potential competitors.

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 in the order below.

9. 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 certificate.

10. Applicant is required to carry out any specific mitigation measures outlined in the Negative Declaration adopted by the Commission in D.97-02-038 which are applicable to its facilities to be in compliance with CEQA.

11. With the incorporation of the specific mitigation measures outlined in the Negative Declaration adopted by the Commission in D.97-02-038, applicant's proposed project will not have potentially significant environmental impacts.

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

ORDER

IT IS ORDERED that:

1. A certificate of public convenience and necessity is granted to US ONE Communications Service Corporation (applicant), to operate as a facilities-based carrier and reseller of competitive local exchange services and intraLocal Access and Transport Area (intraLATA) services, 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 and intralATA services. Applicant may not offer competitive local exchange services or intralATA 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. The tariffs 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). 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 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.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.

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 dates local exchange service and intraLATA toll service are first rendered to the public within 5 days after such 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 the Commission's auditing and compliance 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 corporate identification number assigned to applicant is U-5742-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 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 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 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 97-02-038, dated February 19, 1997.

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

21. Application 96-09-047 is closed.

This order is effective today.

Dated April 9, 1997, at San Francisco, California.

P. GREGORY CONLON
President
JESSIE J. KNIGHT, JR.
HENRY M. DUQUE
JOSIAH L. NEPPER
RICHARD A. BILAS
Commissioners

APPENDIX 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.

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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:
 - 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)