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APR 23 1997

Decision 97-04-059 April 23, 1997

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ORIGINAL

In the Matter of the Application)
of North County Communications)
Corporation (U-5631-C) for Authority)
to Provide Competitive Local)
Exchange Service as a Facilities-)
Based Carrier and a Reseller.)

Application 96-08-003
(Filed August 2, 1996)

I. Summary

North County Communications Corporation (applicant) seeks a certificate of public convenience and necessity (CPCN),¹ under Public Utilities (PU) Code § 1001 for authority to provide both facilities-based and resold local exchange telecommunications service as a CLC. By this decision, we grant the authority requested subject to the terms and conditions set forth herein.

II. Background

In Decision (D.) 95-07-054 we established procedures to govern applications for CPCN authority to offer competitive local exchange service within the service territories of Pacific Bell (Pacific) and GTE California Incorporated (GTEC). This same decision authorized CLCs to provide facilities-based local exchange service beginning January 1, 1996, and resold local exchange service beginning March 31, 1996.

Applicants who are granted authority to provide competitive local exchange service must comply with various rules established by the Commission, including: (1) the consumer protection rules set forth in Appendix B of D.95-07-054; (2) the rules for local exchange competition set forth in Appendix C of

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

D.96-12-056, and (3) the customer notification and education rules adopted in D.96-04-049. Unless otherwise noted in this decision, we find that applicant has adequately demonstrated compliance with our rules.

III. Overview of the Application

Applicant, a California corporation, filed its application on August 2, 1996. There were no protests to the application. Applicant was previously authorized by the Commission in D.96-06-013 to resell interLATA and intraLATA interexchange telecommunications services within California. Applicant now seeks authority to provide local exchange services throughout the service territories of Pacific and GTEC. Applicant states that it will provide both facilities-based and resold local exchange telecommunications services. Applicant also states that it will modify its switch in order to provide local exchange services, but that no construction or extension of any facility will take place in order to provide the requested services.

Applicant served its application on Pacific and GTEC. In addition, applicant served a Notice of Availability of its application on each party appearing on the service list for Rulemaking (R.) 95-04-044. Subsequently, in compliance with the instructions of assigned Administrative Law Judge Kenney, applicant served on each of its likely competitors a Notice of Availability of its application as required by Rule 18(b) of the Commission's Rules of Practice and Procedure. However, applicant requests a waiver of Rule 18(b) to the extent 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 its application. We have routinely granted requests for waivers of Rule 18(b) under such

circumstances. Consistent with our well-established practice, applicant's request is granted.²

On January 7, 1997, the Commission's staff notified applicant of deficiencies in its tariff filing. Subsequently, on January 27, 1997, applicant filed an amendment to its application in order to remedy the tariff deficiencies identified by our staff. Copies of the tariff revisions were provided to any entity who requested a copy of the application after having been served with the Notice of Availability of the application.³ We find that applicant's tariffs properly conform to our rules. In its compliance tariff filing, applicant shall correct the identified deficiencies as a condition of our granting approval of the tariffs.

IV. Financial Qualifications of Applicant

To be granted a CPCN, an applicant for authority to provide facilities-based local exchange services must demonstrate that it has a minimum of \$100,000 of cash or cash equivalent to meet the firm's start-up expenses. The applicant must also demonstrate that it has sufficient additional resources to cover all deposits required by local exchange carriers (LECs) and/or interexchange carriers (IECs).⁴ To meet this requirement, applicant provided, under seal, a balance sheet and a guarantee for

² Although the application was not served on cities and counties, Commission staff did send copies of the Negative Declaration related to Application 96-08-003 to at least 35 public libraries across the state, as well as to county and city planning agencies, for public comment.

³ Only AT&T Communications of California, Inc. requested a copy of the application and thereby received a copy of the amended application.

⁴ The financial standards for certification to operate as a CLC are set forth in D.95-12-056, Appendix C, Rule 4.B.

\$100,000 executed by the applicant's president. Applicant also submitted, under seal, the bank statements of the president to demonstrate his capacity to meet his obligation under the guarantee.⁵ The information filed under seal demonstrates that applicant possesses \$100,000 of cash or cash equivalent. Applicant also represents that it is unaware of any deposits required by either LECs or IECs. We find that applicant has met our requirement that it possess sufficient financial resources to undertake its proposed operations.

V. Technical Qualifications of Applicant

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 three of its key employees who will direct the applicant's proposed operations:

Todd Lesser: Applicant states that Lesser has been involved in the telecommunications industry for over 10 years. He worked at Comtel Communications, an interconnect telephone company, during 1984 and 1985. In 1985, Lesser co-founded a company named Info Connection, Inc., which manufactures voicemail and teleconferencing equipment. Lesser is also certified to maintain and install Excel switches, the type of switch which applicant will employ to provide the proposed services.

Bill Cerny: Applicant states that Cerny has five years of experience in the telecommunications industry, including interacting with LECs and overseeing a customer service department.

⁵ In response to a motion filed by applicant, the applicant's balance sheet, guarantee, and bank statements were placed under seal for a period of one year pursuant to a ruling by the Law and Motion Judge dated September 3, 1996.

Jim Gottlieb: Applicant represents that Gottlieb has worked in the interexchange industry since 1977. During this time, Gottlieb acted primarily in managerial capacities and oversaw the technical, sales, and customer service aspects of various telecommunications businesses.

The experience of applicant's personnel demonstrates that applicant has the technical expertise and qualifications to conduct its business. As an additional check on the applicant's fitness, the name of the applicant and the above three key employees were searched in the ALLPUC file of the STATES library of Lexis. No information was uncovered that would indicate that the applicant or the above key employees are unfit to provide public utility service.

VI. California Environmental Quality Act (CEQA) Review

Applications to provide facilities-based local exchange services must be reviewed for compliance with CEQA.⁶ CEQA requires the Commission 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.

⁶ D.95-12-056, Appendix C, Section 4.C.(2).

Applicant filed its PEA as Exhibit A to the application. As described in the PEA, applicant will make minor modifications to its existing switch located in San Diego. Applicant's PEA also states that no construction or building permits will be required to complete the modifications to the switch. Accordingly, applicant claims that there is no possibility that granting a certificate to operate as a facilities-based LEC will have a significant adverse effect on the environment.

Applicant's CEQA review was consolidated with the CEQA review of seven other CPCN applications for authority to provide facilities-based local exchange service. After assessing the PEAs for these eight facilities-based CLCs, Commission staff prepared a draft Negative Declaration and Initial Study generally describing the applicants' projects and their potential environmental effects. The Initial Study identified potentially significant impacts from applicants' projects which, with mitigating measures, could be reduced to a less than significant level. (Pub. Res. Code § 21080(c)(2).) The draft Negative Declaration and Initial Study was circulated for public review and comment, but no comments were submitted.

In D.97-02-038, issued on February 19, 1997, in Application 96-09-025, we approved the Final Mitigated Negative Declaration for the projects proposed by eight applicants for facilities-based CLCs, including the project proposed by North County Communications Corporation in the instant application. We find that with the inclusion of mitigation measures set forth in the Final Mitigated Negative Declaration contained in Attachment B of D.97-02-038, applicant's proposed project will not have potentially significant environmental effects. Accordingly, we shall require applicant to comply with the Mitigation Monitoring Plan (Appendix C to the Final Mitigated Negative Declaration approved in D.97-02-038) in order to ensure that the listed Mitigation Measures will be followed and implemented.

VII. Conclusion

We conclude that the application conforms to our rules for certification as a CLC, subject to compliance with the terms and conditions set forth herein. We approve the application on that basis.

Findings of Fact

1. Applicant filed its application on August 2, 1996, for authority to provide both facilities-based and resold local exchange telecommunications services.

2. Applicant served a complete copy of its application on Pacific and GTEC. Applicant also served on all telephone corporations with which applicant is likely to compete a Notice of Availability of the application.

3. A notice of the filing of the application appeared in the Daily Calendar on August 5, 1996.

4. A notice of the filing of the amendment to the application appeared in the Daily Calendar on January 27, 1997.

5. Applicant requests a waiver of Rule 18(b) to the extent the rule requires applicant to serve its application on all cities and counties in which the applicant proposes to render service.

6. 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.

7. No protests have been filed.

8. A hearing is not required.

9. In prior decisions the Commission authorized competition in providing local exchange telecommunications service within the service territories of Pacific and GTEC.

10. By D.95-07-054, D.95-12-056, D.95-12-057, and D.96-02-072, the Commission authorized CLCs meeting specified criteria to provide facilities-based local exchange services

beginning January 1, 1996, and resold services beginning March 31, 1996.

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

12. Applicant has represented that no deposits are required by LECs or IECs in order to provide the proposed service.

13. Applicant's technical experience is demonstrated by the applicant's three key employees who have approximately 35 years of combined experience in the telecommunications industry.

14. A search of the ALLPUC file of the STATES library of the Lexis database did not reveal anything to indicate the applicant is unfit to provide public utility service.

15. Applicant submitted with its application a complete draft of its initial tariff. Subsequently, applicant amended its proposed tariffs to remedy various deficiencies identified by Commission staff. Applicant's tariffs, as amended, comply with the requirements established by the Commission.

16. 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.)

17. 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.)

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

19. The Commission staff has conducted an Initial Study of the environmental impact of eight facilities-based CLC applications, including this application, and prepared a Mitigated Negative Declaration.

20. D.97-02-038, issued on February 19, 1997 in A.96-09-025, approved a Final Mitigated Negative Declaration for the projects

proposed by eight applicants for facilities-based CLCs, including the project proposed by North County Communications Corporation (U-5631-C) in the instant application.

21. In D.97-02-038, the Commission found that with the incorporation of all mitigation measures discussed in the Mitigated Negative Declaration (Attachment B of D.97-02-038), certification of the eight CLCs covered therein, including North County Communications Corporation, will result in no significant adverse impact on the environment.

Conclusions of Law

1. Applicant has the financial ability to provide the proposed service.

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

3. Public convenience and necessity require the competitive local exchange services to be offered by applicant, subject to the terms and conditions set forth below.

4. Applicant is subject to:

- a. The current 3.2% surcharge applicable to all intrastate services except for those excluded by D.94-09-065, as modified by D.95-02-050, to fund 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-16017, April 9, 1997);
- 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% (zero percent) 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 to serve its 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. Applicant, once granted a CPCN to operate as a CLC, should be subject to the Commission's rules and regulations regarding the operations of CLCs as set forth in D.95-07-054, D.96-12-056, and other Commission decisions.

10. Any CLC which does not comply with our rules for local exchange competition adopted in R.95-04-043 shall be subject to sanctions including, but not limited to, revocation of its CLC certificate.

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

12. To be in compliance with CEQA, applicant is required to carry out the specific mitigation measures outlined in the Final Mitigated Negative Declaration appended to D.97-02-038.

13. With the incorporation of the specific mitigation measures outlined in the Final Mitigated Negative Declaration (see Attachment B of D.97-02-038), applicant's proposed project will not have potentially significant environmental impacts.

O R D E R

IT IS ORDERED that:

1. A certificate of public convenience and necessity is granted to North County Communications Corporation (U-5631-C) (applicant) to operate as both a facilities-based provider and reseller of competitive local exchange 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. 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. The tariff shall be effective not less than one 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 C, Section 4.E of Decision (D.) 95-12-056:

"E. CLCs shall be subject to the following tariff and contract filing, revision and service pricing standards:

- "(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.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.
- "(6) Contracts shall be subject to GO 96-A rules for NDIECs, except interconnection contracts.

"(7) CLCs shall file tariffs in accordance with PU Code Section 876."

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 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.

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 five 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 the 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 U-5631-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 in which applicant 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 applicant has received the written permission of the Commission's Telecommunications Division to file or remit late.

18. Applicant shall comply with the consumer protection rules contained in Appendix B of D.95-07-054.

19. Applicant shall comply with the Commission's rules for local exchange service competition in California contained in Appendix C of D.95-12-056, including the requirement that CLCs shall place customer deposits in a protected, segregated, interest-bearing escrow account subject to Commission oversight.

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

21. The entire Final Mitigated Negative Declaration that was approved and adopted in D.97-02-038 is hereby incorporated into this order by reference.

22. The applicant shall comply with the conditions and carry out the mitigation measures set forth in the Final Mitigated Negative Declaration attached to D.97-02-038.

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

24. Applicant shall send a copy of this decision to concerned local permitting agencies not later than 30 days from the date of this order.

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

26. Application 96-08-003 is closed.

This order is effective today.

Dated April 23, 1997, at San Francisco, California.

P. GREGORY CONLON

President

JESSIE J. KNIGHT, JR.

HENRY M. DUQUE

JOSIAH L. NEEPER

RICHARD A. BILAS

Commissioners

ATTACHMENT A
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INFORMATION REQUESTED OF COMPETITIVE LOCAL CARRIERS

TO: ALL COMPETITIVE LOCAL CARRIERS

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

A specific annual report form has not yet been prescribed for 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.

ATTACHMENT A
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INFORMATION REQUESTED OF COMPETITIVE LOCAL CARRIERS

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

1. Exact legal name and U # of reporting utility.
2. Address.
3. Name, title, address, and telephone number of the person to be contacted concerning the reported information.
4. Name and title of the officer having custody of the general books of account and the address of the office where such books are kept.
5. Type of organization (e.g., corporation, partnership, sole proprietorship, etc.).
If incorporated, specify:
 - a. Date of filing articles of incorporation with the Secretary of State.
 - b. State in which incorporated.
6. Commission decision number granting operating authority and the date of that decision.
7. Date operations were begun.
8. Description of other business activities in which the utility is engaged.
9. A list of all affiliated companies and their relationship to the utility. State if affiliate is:
 - a. Regulated public utility.
 - b. Publicly held corporation.
10. Balance sheet as of December 31st of the year for which information is submitted.
11. Income statement for California operations for the calendar year for which information is submitted.

(END OF ATTACHMENT A)