

MAY 6 1997

Decision 97-05-005 May 6, 1997

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application)
of American Communications)
Network, Inc. for a Certificate of)
Public Convenience and Necessity)
to Operate as a Reseller of Local)
Exchange Telecommunications Services)
Within California.)
(U-2528-C))

ORIGINAL

Application 96-07-033
(Filed July 25, 1996)

O P I N I O N

American Communications Network, Inc. (applicant), seeks a certificate of public convenience and necessity (CPCN) for authority to operate as a competitive local exchange resale carrier to the full extent allowed by the Commission in Decision (D.) 95-07-054. On August 2, 1996, applicant amended its application to ask for facilities-based local exchange authority. Applicant, also known as ACN, Inc., has offered interLocal Access and Transport Area and intraLocal Access Transport Area services in California for four years.

By this decision, we grant the authority requested subject to the terms and conditions set forth below.

Background

By D.95-07-054 (Rulemaking (R.) 95-04-043/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 (Pacific) and GTE California Incorporated (GTEC). Prospective competitive local carriers (CLC) 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 filings for CLC CPCN authority made after September 1, 1995, were to be treated as applications and processed in the normal course of the Commission's business.

Summary of Application

Applicant seeks authority to provide facilities-based and resale local exchange services throughout the State of California as authorized by this Commission. Applicant shall not offer such service except as authorized by D.95-07-054 and subsequent decisions issued in R.95-04-043 and I.95-04-044. Applicant will provide its service primarily by reselling calls routed over facilities owned by other certificated carriers, but may install interconnection facilities to serve certain areas.

We have reviewed the applicant's CPCN filing and concluded that it qualifies as a facilities-based reseller and competitive local carrier and meets the financial requirements set forth in our adopted rules for CLCs. A facilities-based CLC must demonstrate that it has a minimum of \$100,000 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. CLCs must also conform to the following financial requirement adopted in D.95-12-056: customer deposits collected by a CLC must be deposited in a protected, segregated interest-bearing escrow account subject to Commission oversight.

Included in the application is a bank statement from April 1996, as well as a balance sheet for applicant, showing that it has sufficient funds to cover projected expenses as a reseller. Thus, it is clear that applicant is capable of financing and operating its proposed operations.

Applicant must also submit proposed tariffs which conform to the consumer protection rules set forth in Appendix B of D.95-07-054.

Applicant's proposed schedule of rates is set forth in its Second Amendment to the application, which contains applicant's proposed tariff. The Second Amendment conforms applicant's tariffs to Commission rules.

In addition, applicant is required to make a reasonable showing of technical expertise in telecommunications or a related business. Applicant's operations are headed by its president who has 18 years of financing and accounting experience in the telecommunications industry. Applicant's other officers have experience in the telecommunications industry as well. Thus, applicant has the technical expertise and qualifications to conduct its business.

California Environmental Quality Act (CEQA) Review

We have also reviewed the application for compliance with CEQA. 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 of the Commission's Rules of Practice and Procedure 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).

Applicant filed a PEA with the application. As described in the PEA, applicant's proposed new facilities will consist only of the installation of a telephone switch to be placed entirely within ACN's existing place of business. Apart from this installation, ACN will not construct any new facilities (e.g., fiber optic cable) but will instead lease space in the existing

facilities of other providers. ACN will not engage in any construction as part of its proposed facilities-based operations. Accordingly, applicant claims that there is no possibility that authorization of ANC as a facilities-based local exchange carrier will have a significant adverse effect on the environment. To the extent necessary, ACN will obtain all local permits from the relevant county agency for the installation of the switch.

We previously performed a CEQA review for the initial group of 40 facilities-based CLCs which were certified pursuant to D.95-12-057. We consolidated these 40 CLC petitioners into a single comprehensive CEQA review. Based on its assessment of those 40 facilities-based petitioners' filed PEAs, the Commission Advisory and Compliance Division (CACD) prepared a draft Negative Declaration and Initial Study generally describing the facilities-based petitioners' project and their potential environmental effects. The Negative Declaration prepared by CACD 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 petitioners. (Pub. Res. Code § 21080(c)(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 adverse environmental effects. Accordingly, we approved the Negative Declaration as prepared by CACD including CACD's proposed Mitigation Monitoring Plan in D.95-12-057.

In order to assure compliance with CEQA for facilities-based CLC applications which were not included in the Negative Declaration adopted in D.95-12-057, we initiated a subsequent CEQA reviews on a consolidated basis for those applicants. ACN was included among those applicants covered by our third consolidated CEQA review.

Following a procedure similar to that used for the Negative Declaration approved in D.95-12-057, The Energy Division (ED) prepared and circulated a draft Negative Declaration and Initial Study based upon an assessment of the PEAs of ACN and other CLC applicants. Public comments were received by August 30, 1996.

All public comments were reviewed and answered. ED then finalized the Negative Declaration covering eight facilities-based applications, including this applicant. Comments and responses are attached to the Final Negative Declaration.¹

Based upon our Initial Study and the public comments, it has been determined that with the inclusion of mitigation measures incorporated in the projects, the proposed projects will not have potentially significant environmental effects. Accordingly, we shall approve the Negative Declaration as prepared by ED including ED's proposed Mitigation Monitoring Plan (attached to the Final Negative Declaration) which will ensure that the listed Mitigation Measures will be followed and implemented.

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.

Findings of Fact

1. Applicant filed its application on July 25, 1996, for authority to resell local exchange telecommunications services.
2. Applicant amended its application on August 2, 1996, requesting facilities-based authority.

¹ The approved Final Negative Declaration covering this applicant is provided as Attachment B of D.97-02-038 approving CPCN authority for SpectraNet Orange.

3. Applicant served a Notice of Availability in lieu of its petition on parties of record in R.95-04-043/I.95-04-044, indicating that copies of the petition would be served at the request of any party receiving the notice.

4. No protests have been filed.

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

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.

8. Applicant's technical experience is demonstrated by the fact that its operations are headed by its president who has 18 years of experience in the telecommunications area.

9. Applicant has submitted with its application a complete draft of applicant's initial tariff. The tariff attached to the Second Amendment to the application complies with the requirements established by the Commission.

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

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 the ACN application, and prepared a Mitigated Negative Declaration.

12. Commission staff has concluded that with the incorporation of all mitigation measures discussed in the Mitigated Negative Declaration certification of the CLCs covered therein, including ACN, will result in no significant impact on the environment.

13. No facilities are to be constructed except for a telephone switch to be installed entirely within ACN's existing place of business.

14. 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 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.

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

16. 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-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, p. 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 below.

9. ACN is required to carry out any specific mitigation measures outlined in the Negative Declaration applicable to its facilities to be in compliance with CEQA.

10. With the incorporation of the specific mitigation measures outlined in the Negative Declaration, ACN's proposed project will not have potentially significant adverse environmental impacts.

11. 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.

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

O R D E R

IT IS ORDERED that:

1. A certificate of public convenience and necessity is granted to American Communications Network (applicant) to operate as 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, and must include a satisfactory correction of each deficiency listed in Appendix B in this decision. The tariff shall be effective not less than one day after tariff

approval by 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 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 Service 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. 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.

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

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

15. 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.

16. If applicant is 90 days or more late in filing an annual report or in remitting the fees listed in Conclusion of Law 4, 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 Telecommunications Division to file or remit late.

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

18. The applicant shall comply with the conditions and carry out the mitigation measures outlined in the Negative Declaration.

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

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

21. Application 96-07-033 is closed.

This order is effective today.

Dated May 6, 1997, at San Francisco, California.

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

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.

ATTACHMENT A

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)

APPENDIX B

Page 1

Correctional Communications Corporation, Inc.

List of deficiencies in tariffs filed by Correctional Communications Corporation, Inc. A.96-02-054

1. No Title Sheet or Tariff Checking Sheet.
2. No Tariff Schedule, showing applicability of tariffs. You must define your local calling area and state whether the company concurs in Pacific's and GTEC's exchange boundaries and rate centers.
3. Tariff pages are misnumbered and Sheet No. 19 on Rendering and Payment of Bills is missing from the filing.
4. No Preliminary Statement, including symbols. Preliminary statement should indicate the intent to provide local exchange service in Pacific's and GTEC's service areas.
5. No Service Territory Map. You must include a map showing Pacific's and GTEC's service territories.
6. Cal PUC No. 1-T, Sheet No. 3: Definitions, need to include the definitions of "day", "evening" and "night/weekend". Also Item 12 on Sheet No. 4 is not clear. Need to define Non-Published and Unlisted Service separately.
7. Cal PUC No. 1, Sheet No. 5, Rule 2: Application of business and residential rates needs to be more clearly described. You should refer to Pacific's rule on description of business and residential rates.
8. Cal PUC No. 1-T, Sheet No. 7: Need to delete automatic renewal from contracts. Contracts may be renewed upon CPUC's approval.
9. Cal PUC No. 1-T, Sheet No. 10: The proposed tariff Rule 7 regarding the amount of deposits does not accurately reflect D.95-07-054, Appendix B, Rule 5 requirement that deposits shall be no greater than twice the estimated average monthly bill for the class of service applied for, not the applicant's or subscriber's average bill. Need to modify the language in the proposed tariff to fully comply with Rule 5.
10. Cal PUC No. 1-T, Sheet No. 23: Rule 11-B, (item vi) raises the potential for discrimination and must be deleted. Utility may not discontinue a customer's service based only on "evidencing an intent to not pay such charges when due".

APPENDIX B

Page 2

11. Cal PUC No. 1-T, Sheet No. 24: Liability, and all other sections in the tariff relating to limitations of liability must be replaced with Pacific's or GTEC's limitations of liability tariffs as found in appendices to D.95-12-057.

12. Cal PUC No. 1-T, Sheet No. 27, Rule 16: Use of Service for Unlawful Purposes should be removed since this is covered on Sheet No. 28, Rule 18 under Legal Requirements for Refusal or Discontinuance of Service.

13. Cal PUC No. 1-T, Sheet No. 27: The information provided on service interruption does not completely address utility responsibility for interruptions and failure of service. Clarify whether the company will provide refunds for service interruptions, and the specific credits available.

14. Cal PUC No. 1-T, Sheet No. 28, Rule 17: Statement relating to costs must be replaced with the following language. "The nonprevailing party may be liable for reasonable court costs and attorney fees as determined by the CPUC or by the Court".

15. Cal PUC No. 2-T, Sheet No. A: The page is mislabeled and should be corrected. Also if you intend to use the terms "Consumer Services" and "Commercial Services", you must include definitions of each in the definitions section of the tariff. The definitions must make it clear that only residential customers may purchase out of the consumer services tariff.

16. Cal PUC No. 2-T, Sheets Nos. 6 & 7 and all other tariff sheets where this applies: Delete all Zones 1 & 2 measured usage rates since they are the same as measured usage rates.

17. Cal PUC No. 2-T, Sheet No. 8: ULTS service: D.95-09-065 established statewide ULTS rates of \$5.62 for 1FR and \$3.00 for 1MR. Those rates must be shown in your tariff. You may not charge more than those rates. Also delete reference to the EUCL, which is mandated by the FCC, not the PUC.

18. Cal PUC No. 2-T, Sheet No. 11: Need to clarify "same customer" and "another customer". You may want to refer to GTEC's Schedule No. D-1 on Directory Service. Delete Directory assistance line under 1.9 since it is covered under 1.8. Put dashes or N.A for items under 1.9 which will not be tarified.

19. Cal PUC No. 2-T, Sheet No. 15: Appendix B, Rule 15 addresses customer requests for blocking access to 900 and 976 information services. You cannot charge residential customers for blocking. You need to revise your proposed tariff to reflect the requirements of Appendix B, Rule 15. Also is there a monthly service rate for vanity number service in Pacific's territory?

APPENDIX B

Page 3

20. Cal PUC No. 3-T, Sheet No. 3: Need to define Untimed Rate Service. Is this for local calls and ZUM 3 calls? Need to clarify if untimed rate service is an option for all business measured rate subscribers. Also, the rate is again repeated on Sheets Nos. 5, 8 & 11.

21. Cal PUC No. 3-T, Sheet No. 10: Need to define BTC and how BTC is applied. Pacific applies the BTC for a minimum term of 36 months.

22. Cal PUC No. 3-T, Sheet No. 23: What is semi-private listing? Also either show a rate or delete it.

23. Cal PUC No. 3-T, Sheet No. 24: Reminder, each promotional offering must be tariffed before it is offered to customers.

24. Cal PUC No. 4-T, Switched Access Rates: Delete this section regarding switched access service, which is not applicable to resellers.

25. Tariffs must be available for inspection at an office in California. The address should be shown in your tariff.

The following items are missing from the tariff:

- You must include a demarcation tariff or concur in another carrier's tariff.
- You must include sample forms with your compliance filing.
- Tariffs must state availability of 911 service at no charge.
- Include rule on prorating of bills. See Rule 7 of Appendix B.
- Include information on Taxes and Surcharges.

(END OF APPENDIX B)