

Mailed
MAY 6 1997

Decision 97-05-029 May 6, 1997

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application by Brumfield Network)
Communications for a Certificate)
of Public Convenience and)
Necessity to Provide Interexchange)
and Competitive Local Exchange)
Services as a Facilities-Based)
Carrier.)

ORIGINAL

Application 96-12-062
(Filed December 31, 1996)

O P I N I O N

Brumfield Network Communications seeks authority under the Public Utilities (PU) Code to permit it to provide facilities-based local exchange telecommunications service as a competitive local carrier (CLC) and interLATA and intraLATA telecommunications service.¹ By this decision, we grant authority requested subject to the terms and conditions set forth below.

Background

By Decision (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 CLCs who filed petitions by September 1, 1995, for CPCN authority to enter the local exchange market and otherwise met eligibility requirements were authorized to offer local exchange service under the following schedule. Competitive local exchange service for facilities-based carriers was authorized effective January 1, 1996.

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

Competitive resale of the bundled local exchange service of Pacific and GTEC was authorized effective March 31, 1996. Any filings for CLO/CPCN 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 provide local exchange service was made on December 31, 1996. Accordingly, the request was docketed as an application.

Applicant is a California corporation in good standing. A copy of the applicant's Articles of Incorporation is provided with the application.

In compliance with Rule 18(b), the names and addresses of the entities with which applicant may compete with respect to these services are listed in the application. A copy of the application and Notices of Availability were mailed to each likely competitor named.

Applicant seeks authority to provide interexchange services throughout the State of California and local exchange services within the base rate service areas of Pacific and GTEC to the full extent authorized by the Commission. Applicant intends to offer a variety of local and long distance switched and unswitched telecommunications services. Except for the installation of one or more switches in existing buildings, applicant will not construct or extend any existing facilities in California to provide the services for which it now seeks authority.

Applicant initially will provide its services exclusively through existing facilities and equipment located on its customers' premises. With respect to Rule 18(f), there is, therefore, no construction for which to provide costs at this time. Applicant proposes to provide services at rates competitive with those of existing carriers. Applicant must submit proposed tariffs which conform to the consumer protection rules set forth in Appendix B of D.95-07-054. Applicant's proposed tariffs, pursuant to Rule 18(h),

containing its proposed rates and terms and conditions of service, is attached as Exhs. D and E of the application.

We conclude that applicant's tariffs properly conform to Commission rules, except for the list of tariff deficiencies identified in Appendix B. In its compliance tariff filing, applicant is directed to correct the identified deficiencies as a condition of our granting approval of the tariffs.

We have reviewed the applicant's CPCN filing and conclude that it qualifies as a facilities-based CLC and provider of interLATA and intraLATA service. Applicant meets the financial requirements set forth in our adopted rules which require that it 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. 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.

In accordance with D.95-07-054, applicants seeking authority to become facilities-based carriers must demonstrate access to (1) a minimum of \$100,000 of cash or cash equivalent resources, as defined therein, and (2) sufficient additional resources to cover all deposits required by underlying carriers. Applicant has filed an unaudited balance sheet and income statement. In addition, applicant has filed a copy of a bank account statements showing balances in excess of \$100,000, along with verification by Ruth Brumfield of the continuing availability of such funds for the entire initial year of operations. While this application is pending and continuing for a period of 12 months beyond certification, applicant has stated that it will provide the Commission with any further information requested to verify the availability of the requisite cash resources.

Applicant seeks authority to provide interexchange services throughout California, and the local exchange services

within the territory defined by existing exchange areas in which Pacific and GTEC are already authorized to provide service. A map showing applicant's proposed local exchange and interexchange service areas is attached to the application.

In addition, an applicant is required to make a reasonable showing of technical expertise in telecommunications or a related business. Applicant has provided information on its key managers and a consultant indicating their education and experience. It can be summarized as follows:

Ruth Brumfield, President: Mrs. Brumfield has 12 years of experience in the telecommunications industry, primarily in the technical, marketing and customer service areas. She holds a Master of Business Administration degree from California State University, Hayward.

Fernando Garcia, Manager: Mr. Garcia has 20 years of experience in the telecommunications industry, primarily in the business management field. He holds a Master of Business Administration degree from Harvard Business School and a Juris Doctorate from Boalt Hall Law School, University of California.

Philip W. McLeod, Consultant: Mr. McLeod is a founding member of MHB Consultants, Inc., which specializes in the provision of economic analysis, strategic planning and the provision of litigation support services. Mr. McLeod holds a Doctorate from Stanford University and has 18 years of general business experience.

Applicant proposes to provide service using a combination of its own switches and facilities and services furnished by other authorized carriers. Applicant intends to install its initial switch within an existing building located in the City of Oakland. However, negotiations for a specific site have not yet been completed.

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 its PEA with the application. As described in the PEA, applicant's proposed new facilities will consist only of the installation of a switch to be placed entirely within an existing building in Oakland. Apart from this installation, Brumfield will not construct any new facilities (e.g., fiber optic cable) but will instead lease space in the existing facilities of other providers. Brumfield 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 it as a facilities-based local exchange carrier will have a significant adverse effect on the environment. To the extent necessary, Brumfield 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 subsequent CEQA reviews on a consolidated basis for those applicants which filed over a particular time period. Brumfield was included among those applicants covered by our fourth consolidated CEQA review.

Following a procedure similar to that used for the Negative Declaration approved in D.95-12-057, Energy Division (ED) prepared and circulated a draft Negative Declaration and Initial Study based upon an assessment of the PEAs of Brumfield and other CLC applicants. Public comments were received by March 26, 1997.

All public comments were reviewed and answered. ED then finalized the Negative Declaration covering nine facilities-based applications, including this applicant.²

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 approved 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, except for the deficiencies noted in Appendix B. Therefore, we will grant the applicant's request for authorization to provide facilities-based CLC and interLATA and intraLATA telecommunications services.

Findings of Fact

1. Applicant filed its application on December 31, 1996, for authority to provide facilities-based local exchange and interLATA and intraLATA telecommunications services.
2. Applicant served a Notice of Availability in lieu of its petition on 369 parties indicating that copies of the petition would be served at the request of any party receiving the notice.
3. A notice of the filing of the application appeared in the Daily Calendar on January 8, 1997.
4. No protests have been filed.

² The approved Final Negative Declaration covering this applicant is provided as Attachment B of D.97-04-011. A copy of the approved Negative Declaration shall be mailed to the applicant with this decision.

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 CLC resale services effective March 31, 1996, for carriers meeting specified criteria.

8. By prior Commission decisions, we authorized competition in providing interLATA telecommunications service but generally barred those offering such service from holding out to the public the provision of intraLATA service.

9. D.94-09-065, we authorized competitive intraLATA services effective January 1, 1995, for carriers meeting specified criteria.

10. 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.

11. Applicant's technical experience is demonstrated by the descriptions of the background qualifications of its managers as summarized above.

12. Applicant has submitted with its application a complete draft of applicant's initial tariffs which comply with the requirements established by the Commission, except for the deficiencies identified in Appendix B.

13. The Commission staff has conducted an Initial Study of the environmental impact of certain facilities-based CLC applications filed between October and December 1996, including the Brumfield application, and prepared a Mitigated Negative Declaration.

14. 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 Brumfield, will result in no significant impact on the environment.

15. Applicant has represented that one associated with or employed by applicant was previously associated with a NDIEC that filed for bankruptcy or went out of business.

16. 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.

17. 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.)

18. 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 and interLATA and intraLATA 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-16071, 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% 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. With the incorporation of the specific mitigation measures outlined in the Negative Declaration, Brumfield's proposed

project will not have potentially significant adverse environmental impacts.

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

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 and interLATA and intraLATA 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 Brumfield Network Communications (applicant) to operate as a provider of competitive local exchange services and interLocal Access and Transport Area (interLATA) and to the extent authorized by Decision (D.) 94-09-065, intraLocal Access and Transport Area (intraLATA) telecommunications 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 1 day after tariff approval

by 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. a. Applicant is authorized to file with this Commission tariff schedules for the provision of interLATA and intraLATA service. Applicant may not offer interLATA and intraLATA service until tariffs are on file. Applicant's initial filing shall be made in accordance with GO 96-A, excluding Sections IV, V, and VI, and shall be effective not less than one day after filing. Applicant shall comply with the provisions in its tariffs.

b. Applicant is a nondominant interexchange carrier (NDIEC). The effectiveness of its future tariffs is subject to the schedules set forth in Ordering Paragraph 5 of D.90-08-032 (37 CPUC2d 130 at 158), as modified by D.91-12-013 (42 CPUC2d 220 at 231) and D.92-06-034 (44 CPUC2d 617 at 618):

"5. All NDIECs are hereby placed on notice that their California tariff filings will be processed in accordance with the following effectiveness schedule:

"a. Inclusion of FCC-approved rates for interstate services in California public utilities tariff schedules shall become effective on one (1) day's notice.

"b. Uniform rate reductions for existing services shall become effective on five (5) days' notice.

"c. Uniform rate increases, except for minor rate increases, for existing services shall become effective on thirty (30) days' notice, and shall require bill inserts, a message on the bill itself, or first class mail notice to customers of the pending increased rates.

- "d. Uniform minor rate increases, as defined in D.90-11-029, for existing services shall become effective on not less than five (5) working days' notice. Customer notification is not required for such minor rate increases.
- "e. 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.
- "f. Advice letter filings merely revising the text or location of text material which do not cause an increase in any rate or charge shall become effective on not less than five (5) days' notice."

5. 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.

6. 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.

7. 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.

8. Applicant shall notify this Commission in writing of the date local exchange and/or interLATA and/or intraLATA service is first rendered to the public within 5 days after service begins.

9. 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.

10. 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 Telecommunications Division and contained in Appendix A.

11. Applicant shall ensure that its employees comply with the provisions of Public Utilities (PU) Code § 2889.5 regarding solicitation of customers.

12. 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.

13. The corporate identification number assigned to applicant is U-5774-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.

14. Within 60 days of the effective date of this order, applicant shall comply with PU Code § 708, Employee Identification Cards, and notify the Telecommunications Division in writing of its compliance.

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

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

17. 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.

18. The Final Negative Declaration including the Mitigation Monitoring Plan prepared by Energy Division (see Attachment B to D.97-04-011, which includes Brumfield) shall be mailed to applicant with this decision.

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

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

21. 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.

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

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

24. Application 96-12-062 is closed.

This order is effective today.

Dated May 6, 1997, Francisco, California.

P. GREGORY CONLON

President

JESSIE J. KNIGHT, JR.

HENRY M. DUQUE

JOSIAH L. NEEPER

RICHARD A. BILAS

Commissioners

APPENDIX A
Page 1

INFORMATION REQUESTED OF COMPETITIVE LOCAL CARRIERS
AND CALIFORNIA INTEREXCHANGE TELEPHONE UTILITIES

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 on page 2 of this Appendix 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.

APPENDIX A
Page 2

INFORMATION REQUESTED OF COMPETITIVE LOCAL CARRIERS
AND CALIFORNIA INTEREXCHANGE TELEPHONE UTILITIES

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)

APPENDIX B

LIST OF DEFICIENCIES IN TARIFFS FILED BY
BRUMFIELD NETWORK COMMUNICATIONS IN A.96-12-062

1. 1-T, Sheet 44: Update surcharge amount for California High Cost Fund-A to 0.0%.
2. 2-T, Sheet 5, Rule 4: Commission authorized changes in tariff rates are not automatically reflected in contracts, unless specifically directed by the Commission.
3. 2-T, Sheet 21: 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 charge when due."

(END OF APPENDIX B)