

JUN 11 1997

Decision 97-06-013 June 11, 1997

**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of	)	
Easy Cellular, Inc. for a Certificate	)	
of Public Convenience and Necessity	)	Application 96-12-046
to offer resold local and interexchange	)	(Filed December 24, 1996)
telecommunications services to the	)	
public in the State of California.	)	

O P I N I O N

1. Summary

Easy Cellular, Inc. (applicant) seeks authority under Public Utilities Code (PU Code) § 1001 to permit it to resell local exchange telecommunications service as a competitive local carrier.<sup>1</sup> Applicant also seeks authority to resell interLATA and intraLATA service.<sup>2</sup> 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 of requests for authority to offer competitive local exchange service within the service territories of Pacific Bell and GTE California Incorporated (GTEC).

<sup>1</sup> 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 the carrier.

<sup>2</sup> 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.

Prospective competitive local carriers 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 Bell 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 December 24, 1996. Accordingly, the request was docketed as an application.

Applicant is a limited liability corporation organized in Nevada, and it is authorized to conduct business in California. 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, Exhibit D.) 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. InterLATA and IntraLATA Authority

By D.84-01-037, 14 CPUC2d 317 (1984), and later decisions, we authorized interLATA entry generally. By D.94-09-065, 56 CPUC2d 117 (1994), we authorized competitive intraLATA services effective January 1, 1995. An applicant that is switchless reseller<sup>3</sup> must demonstrate that it has a minimum of \$25,000 in cash or cash equivalent available to meet the firm's start-up expenses (D.91-10-041, 41 CPUC2d 505 (1991), Appendix A, Paragraph 5.1), and that it has additional resources to cover

<sup>3</sup> In simplified terms, a switchless reseller purchases wholesale telephone capacity from facilities-based carriers and resells these services at retail to its customers. (See Re Tariff Filing Rules for Telecommunications Utilities (1993) 49 CPUC2d 197.)

deposits required by other telephone carriers (D.93-05-010, 49 CPUC2d 197 (1993)). In addition, an applicant is required to make a reasonable showing of technical expertise.

4. Discussion

Applicant seeks authorization to resell local exchange services authorized for resale in California in the service areas of Pacific Bell and GTEC, along with resold long distance and local toll service. Applicant intends to provide such service through prepaid customer accounts, in which subscribers pay in advance by credit card or other means for the amount of telephone service they wish to receive. Applicant 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 Exhibit E to the application. We conclude that applicant's tariffs properly conform to Commission rules, except for the list of tariff deficiencies identified in Appendix C of this decision. In its compliance tariff filing, applicant is directed to correct the deficiencies.

We also conclude that applicant qualifies as a competitive local carrier reseller and meets the financial requirements set forth in our rules. Applicant has submitted its financial data as Exhibit B to the application. The financial statements, consisting of balance sheets and income statements as of June 20, 1996, show available cash assets of approximately \$100,000. Applicant states that it is not required to place deposits with any other interexchange or local exchange carrier in order to provide its proposed services.

An applicant also is required to make a reasonable showing of technical expertise in telecommunications or a related business. Applicant states that its president, Richard Pollara, has 16 years of experience in franchise businesses and as a subagent for GTE Mobilnet cellular phones. For the past 12 years, companies directed by Pollara have focused on selling airtime, requiring prepayment by customers for use. Applicant states that these companies have become the largest provider of prepaid airtime in the Tampa/St. Petersburg market in Florida. Kirk J. Kunz has been retained as a consultant by applicant. Kunz has extensive experience in developing and marketing switched telecommunications products and services. Applicant has shown technical expertise and qualifications necessary to conduct its business.

As applicant will not be constructing any facilities for the purpose of providing local exchange services, it can be seen with certainty that there is no possibility that the grant of this application may have an adverse impact upon the environment.

#### 5. 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, except for the deficiencies noted in Appendix C. With that qualification, the application is approved as set forth below.

#### Findings of Fact

1. Applicant filed its application on December 24, 1996, for authority to resell local exchange telecommunications services and interLATA and intraLATA services.
2. Applicant served copies of its application on 364 telecommunications companies in California, including those certified to be competitive local carriers.
3. A notice of the filing of the application appeared in the Daily Calendar on December 30, 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 Bell 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 competitive local carrier services effective January 1, 1996, and 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. By D.94-09-065, 56 CPUC2d 117 (1994), we authorized competitive intraLATA services effective January 1, 1995, for carriers meeting specified criteria.

10. Applicant has demonstrated that it has a minimum of \$25,000 of cash or cash equivalent reasonably liquid and readily available to meet its start-up expenses.

11. Applicant's technical experience has been demonstrated.

12. Applicant has submitted with its application a draft of an initial tariff which complies with the requirements established by the Commission, except for the deficiencies identified in Appendix C.

13. Since no facilities are to be constructed, it can be seen with certainty that the proposed operation will not have a significant effect upon the environment.

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 PU Code §§ 816-830 has been granted to other resellers. (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, 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 2.7% surcharge applicable to all intrastate service 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 the Rule 18(b) requirement of service of the application on cities and counties.

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 competitive local carrier which does not comply with our rules for local exchange competition adopted in Order Instituting Rulemaking 95-04-043 shall be subject to sanctions including, but not limited to, revocation of its certificate.

10. 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 Easy Cellular, Inc. (applicant) to operate as a reseller

of competitive local exchange services and to operate as a reseller of interLocal Access and Transport Area (interLATA) and intra-Local 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 interLATA and intraLATA services. Applicant may not offer such 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 C in this decision. The tariff 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."

c. 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, 158, as modified by D.91-12-013 (42 CPUC2d 220, 231) and D.92-06-034 (44 CPUC2d 617, 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."

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 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. In the event the books and records of the applicant are required for inspection by the Commission or its staff, applicant shall either produce such records at the Commission's offices or reimburse the Commission for the reasonable costs incurred in having Commission staff travel to applicant's office.

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 Commission's auditing and compliance staff and contained in Appendix A and Appendix B.

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-5775-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 Director of 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. If applicant is 90 days or more late in filing its annual reports 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.

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

20. Application 96-12-046 is closed.

This order is effective today.

Dated June 11, 1997, at San Francisco, California.

P. GREGORY CONLON  
President

JESSIE J. KNIGHT, JR.

HENRY M. DUQUE

JOSIAH L. NEEPER

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.

APPENDIX 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:
  - 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  
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TO: ALL INTEREXCHANGE TELEPHONE UTILITIES

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.



APPENDIX B  
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Information Requested of 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 B)

APPENDIX C

List of deficiencies in tariffs filed by Easy Cellular, Inc. in Application 96-12-046 to be corrected in Tariff Compliance Filing.

1. Sample forms must be included with tariffs.
2. Sheet 10-T, Contracts or Agreements: Add a note stating that this rule does not apply to contracts involving local service.
3. Sheet 20-T, Overpayment: The company cannot require customers to submit a claim in the case of a carrier discovered error. Change "and" to "or" in Rule 19, Item 6. Also, Rule 20, if the company intends to charge to deactivate blocking the charge must be tariffed.

(END OF APPENDIX C)