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Decision 97-06-023 June 11, 1997

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

In the Matter of the Application of People's Communication Services, a Special Project of People's Advocate, Inc., for a Certificate of Public Convenience and Necessity to Provide InterLATA and IntraLATA Telecommunications Services on a Switchless Resale Basis Within the State of California.

Application 96-10-037  
(Filed October 11, 1996)

ORIGINAL

**O P I N I O N**

People's Advocate, Inc. (People's or applicant), a California nonprofit corporation, seeks a certificate of public convenience and necessity (CPCN) under Public Utilities (PU) Code § 1001 to permit it to resell interLATA and intraLATA telephone service within the State of California.<sup>1</sup> The certificate is sought on behalf of what applicant calls its "special project," which is named People's Communication

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<sup>1</sup> California is divided in ten Local Access and Transport Areas (LATAs) of various sizes, each containing numerous local telephone exchanges. "InterLATA" describes services, revenues, and functions that relate to telecommunications originating in one LATA and terminating in another. "IntraLATA" describes services, revenues, and functions that relate to telecommunications originating and terminating within a single LATA.

Services. Applicant proposes to operate its special project as a switchless reseller,<sup>2</sup> providing interLATA and intraLATA services between points in California on a 24-hour basis.

A "special project" is not listed as one of the entities to which this Commission may grant a CPCN under PU Code § 1001. However, a nonprofit corporation can be granted a CPCN under PU Code § 1001. Accordingly, we will treat the application as a request for a CPCN by People's Advocate, Inc. to do business under the name of People's Communication Services.

By D. 84-01-037 (14 CPUC2d 317 (1984)) and later decisions, we authorized interLATA entry generally. However, we limited the authority conferred to interLATA service; and we subjected the applicants to the condition that they not hold themselves out to the public as providing intraLATA service. Subsequently, by D.94-09-065, we authorized competitive intraLATA services effective January 1, 1995, for carriers meeting specified criteria.

The Commission has established two major criteria for determining whether a CPCN should be granted to a switchless reseller such as applicant. First, the applicant must demonstrate that it has a minimum of \$25,000 of cash or cash equivalent (as described in D.91-10-041, 41 CPUC2d 505 at 520 (1991)), reasonably liquid and readily available to meet the firm's start-up expenses. The applicant must also document any deposits required by LECs or interexchange carriers (IECs) and demonstrate that applicant has additional resources to cover all such deposits. (D.93-05-010, 49 CPUC2d

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<sup>2</sup> Decision (D.) 93-05-010 defines a switchless reseller as a nondominant interexchange carrier (NDIEC) with the following characteristics: it uses the switch of another carrier; it usually, but not always, uses access circuits that the underlying carrier purchases from a local exchange carrier (LEC), it provides service in its own name, and its customers view it as their telephone company for interLATA and interstate calls. D.92-06-069 noted that it is possible to control, operate, or manage telephone lines without owning them. The decision also notes that resellers which do not own or directly operate their own telephone wires may still have plant which is owned, controlled, operated, and/or managed in order to facilitate communication by telephone.

197 at 208 (1993).) In addition, the applicant is required to make a reasonable showing of technical expertise in telecommunications or a related business.

As part of its application, applicant has provided financial statements demonstrating that it has more than \$25,000 available in cash or cash equivalents to meet its start-up expenses.

Applicant has also provided information on its key managers indicating their education, technical training and experience. The Chief Executive Officer (CEO) of People's is Ted Costa, whose background is in direct mail. Mr. Costa joined applicant in 1982 as special assistant to its founder, Paul Gann. Upon Mr. Gann's death in 1989, Mr. Costa was elected to serve as CEO. A substantial part of Mr. Costa's work has been to manage the affairs of another of applicant's "special projects," National Communications, which has served as an agent for the sale of telecommunications services offered by such companies as AT&T Communications of California, Inc., GE Capital Exchange, and Quest Communications.

Applicant's president is Sidney Novaresi, a retired Air Force General who has been with People's since 1991. In addition to his experience as commander of the Fourth Air Force, General Novaresi has worked with a marketing firm.

To the extent Mr. Costa and General Novaresi need additional telecommunications expertise to operate a switchless reseller, that experience will be provided by Jack Dod, whom People's has hired as a consultant. Mr. Dod has over 25 years of experience with Pacific Bell (Pacific) and Michigan Bell. While at Pacific, he worked as a District Traffic Manager, developed the plan to operate Business Services as a separate functional unit, and handled major "cutovers" to Pacific's Centrex system.

Based upon applicant's showing that our requirements for financial strength and managerial experience have been met, we will authorize the services that applicant seeks to provide. However, it is also appropriate to comment on the form of corporate organization applicant apparently intends to pursue in the future. The application states that "it is the intent of the Board of Directors that People's Communication Services will eventually become a 'for profit' feeder corporation owned 100% by People's Advocate, Inc. in accordance with [the] Internal Revenue Service feeder corporation law." We

hereby place applicant on notice that a change of status from nonprofit to for-profit with respect to its switchless reseller activities may trigger the provisions of PU Code §§ 851-852, if it involves the dispositions of public utility assets or changes in corporate control.

**Findings of Fact**

1. Applicant served a copy of the application upon 367 telephone corporations with which it is likely to compete.

2. A notice of the filing of the application appeared in the Daily Calendar on October 31, 1996.

3. No protests have been filed.

4. A hearing is not required.

5. 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.

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

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

8. Applicant has presented evidence that in addition to \$25,000 to cover its start-up expenses, it has sufficient cash to pay any deposits demanded by its IECs.

9. Applicant's CEO and president have several years of experience in operating as an agent for established providers of telecommunications services. In addition, applicant has entered into a contract with an experienced telecommunications consultant to help it operate as a switchless reseller.

10. Applicant has submitted with its application a complete draft of applicant's initial tariff, which complies with the requirements established by the Commission, including prohibitions on unreasonable deposit requirements.

11. Applicant has represented that no one associated with or employed by applicant was previously associated with an NDIEC that filed for bankruptcy or went out of business.

12. 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.

13. The Commission has routinely granted to NDIECs such as applicant, in cases where no construction is involved, an exemption from Rule 18(b) to the extent that the rule requires applicant to serve a copy of its application on cities and counties in the proposed service area, and to the extent that it requires applicant to provide a conformed copy of all exhibits attached to applicant's filed application to potential competitors.

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

15. The transfer or encumbrance of property of nondominant carriers has been exempted from the requirements of PU Code § 851 whenever such transfer or encumbrance serves to secure debt. (See D.85-11-044.)

#### **Conclusions of Law**

1. Applicant has the financial ability to provide the proposed service.
2. Applicant has made a reasonable showing of technical expertise in telecommunications.
3. Public convenience and necessity require the interLATA and intraLATA services to be offered by applicant.
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% 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. In the event applicant changes the status of its switchless reseller activities from nonprofit to for-profit, such a change may subject applicant to the requirements of PU Code §§ 851-852.
  10. Because of the public interest in competitive 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 (CPCN) is granted to People's Advocate, Inc., doing business as People's Communication Services (applicant), to operate as a reseller of interLocal Access and Transport Area (interLATA) telecommunications services, and, to the extent authorized by Decision (D.) 94-09-065,

intraLocal Access and Transport Area (intraLATA) telecommunication services offered by communication common carriers in California.

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 interLATA and intraLATA service. Applicant may not offer interLATA or intraLATA service 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 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), as follows:

"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 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 contact person's telephone number. This information shall be updated annually, or whenever the name or telephone number of the contact person(s) changes.

7. Within five days after it first renders interLATA service to the public, applicant shall notify this Commission of that fact in writing. Applicant shall also give written notice to this Commission of the fact that it has begun to render intraLATA service to the public within five days after applicant first renders such service.

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 corporate identification number assigned to applicant is U-5778-C which shall be included in the caption of all original filings with this Commission, and in the titles of other pleadings filed in existing cases.

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

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

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

16. Applicant is exempted from Rule 18(b) of the Commission's Rules of Practice and Procedure to the extent that the rule requires applicant to serve a copy of its application on the cities and counties it proposes to operate in and to the extent that the rule requires applicant to serve a copy of all exhibits attached to its application on potential competitors.

17. If applicant is 90 days or more late in filing an annual report or in remitting the fees listed in Conclusion of Law 4, the Telecommunications Division shall prepare for Commission consideration a resolution that revokes the applicant's CPCN, unless the applicant have received the written permission of the Telecommunications Division to file or remit late.

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

19. Application 96-10-037 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

A.96-10-037 ALJ/MCK/jac

**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 31<sup>st</sup> 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 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 ATTACHMENT A)**