

interexchange services effective January 1, 1995, for carriers meeting specified criteria.

In D.95-07-054 and D.95-12-056, we authorized the filing of applications for authority to offer competitive local exchange service within the territories of Pacific Bell (Pacific) and GTE California Incorporated (GTEC). Applicants who are granted authority to provide competitive local exchange service must comply with various rules, including: (1) the consumer protection rules set forth in Appendix B of D.95-07-054; (2) the rules for local exchange competition set forth in Appendix C of D.95-12-056; and (3) the customer notification and education rules adopted in D.96-04-049.

III. Overview of the Application

SpectraNet, a California corporation, filed Application (A.) 96-12-056 on December 20, 1996. There were no protests to the application. Applicant seeks authority to provide facilities-based and resold local exchange services as a competitive local carrier (CLC) throughout Pacific's and GTEC's service territories. Applicant also requests authority to provide facilities-based and resold interexchange services (intraLATA and interLATA toll) as a nondominant interexchange carrier (NDIEC) throughout the entire state. Finally, applicant requests authority to construct a broadband telecommunications network within the County of Orange.

SpectraNet served a copy of its application along with a Notice of Availability of the exhibits to its application upon its CLC and NDIEC competitors. In addition, SpectraNet served its application upon the five local governments representing the communities in which applicant proposes to construct its telecommunications network, that is, the County of Orange and the Cities of Costa Mesa, Irvine, Newport Beach, and Tustin. On January 8, 1997, SpectraNet filed a motion requesting a waiver of Rule 18(b) of the Commission's Rules of Practice and Procedure (Rule) to the extent the Rule requires SpectraNet to serve its

application on those cities and counties in which the applicant does not intend to own, construct, or extend any facilities. We have routinely granted requests for waivers of Rule 18(b) under such circumstances, and shall likewise grant SpectraNet's request.

On March 26, 1997, the Commission's staff notified applicant of deficiencies in the draft tariffs included with its application. In addition, assigned Administrative Law Judge (ALJ) Kenney instructed applicant to submit amended draft tariffs that reflected the Commission's mandated rate of interest on customer deposits related to interexchange services. On April 30, 1997, SpectraNet filed an amendment to its application that cured the tariff deficiencies identified by Commission staff and the assigned ALJ. Copies of the amendment were served on all entities that received copies of applicant's draft tariffs.²

IV. Financial Qualifications of Applicant

To be granted a CPCN, an applicant for authority to provide facilities-based local exchange and/or interexchange services must demonstrate that it has a minimum of \$100,000 of cash or cash equivalent to meet the firm's start-up expenses.³ To meet this requirement, SpectraNet provided a letter from its bank which stated that applicant possessed \$125,000 in cash as of December 17, 1996. Applicant also provided, under seal, information representing that applicant has access to financial

² Protests to the amendment were prohibited in a ruling issued by the ALJ issued in accordance with Rule 8(a)(2).

³ The \$100,000 requirement for CLCs is contained in D.95-12-056, Appendix C, Rule 4.B(1). The \$100,000 requirement for NDIECs is described in D.91-10-041, 41 CPUC2d 505 at 520 (1991).

resources sufficient to build its proposed telecommunications network and fund its operations.⁴

An applicant seeking authority to provide facilities-based local exchange or interexchange services must also demonstrate that it has sufficient additional resources to cover all deposits required by local exchange carriers (LECs) and/or interexchange carriers (IECs).⁵ Applicant represents that as of February 5, 1997, no IEC or LEC had required applicant to submit any deposit. Applicant also stated that if any IEC and/or LEC requires applicant to submit a deposit prior to receiving its CPCN, then applicant would notify the Commission and make the requisite financial showing. Since we received no such notification, we shall assume applicant has not been required to post a deposit with any IEC or LEC.

We find that applicant has met our requirement that it possess sufficient financial resources to construct its proposed broadband telecommunications network and to fund its operations.

V. Technical Qualifications of Applicant

Applicants for NDIEC and CLC authority are required to make a reasonable showing of technical expertise in telecommunications or a related business. To meet this requirement, applicant submitted biographical information on eight of its key employees. This biographical information demonstrates

⁴ Applicant filed a motion to place under seal its network map, certain financial information, and estimated number of customers. The motion was granted in a ruling by the Law and Motion Judge dated January 27, 1997.

⁵ The requirement for CLC applicants to demonstrate that they have additional financial resources to meet any deposits required by underlying LECs and/or IECs is set forth in D.95-12-056, Appendix C, Rule 4.B(1). For NDIECs, the requirement is found in D.93-05-010, 49 CPUC2d 197 at 208.

that applicant's employees possess extensive experience and knowledge with regard to the construction, operations, and management of telecommunications networks. Applicant also states that it has no employees who previously worked for or were associated with an NDIEC that went bankrupt or out of business.

As an additional check on the applicant's technical qualifications, the names of the applicant and each of its eight key employees were searched in the ALLPUC file of the STATES library and the FCC file of the FEDCOM library of the Lexis database. No information was uncovered that would indicate that the applicant or any of its key employees is unfit to provide public utility service.

We find that applicant is technically qualified to operate as a public utility.

VI. California Environmental Quality Act (CEQA) Review

Applications to provide facilities-based local exchange services must be reviewed for compliance with CEQA.⁶ CEQA requires the Commission to assess the potential environmental impact of a project in order that adverse effects are avoided, alternatives are investigated, and environmental quality is restored or enhanced to the fullest extent possible. To achieve this objective, Rule 17.1 requires the proponent of any project subject to Commission approval to submit 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. Applicant filed its PEA as Exhibit 13 to the application.

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

Applicant states that it will construct a broadband telecommunications network in the County of Orange. The proposed network will include backbone fiber optic cable and transmission equipment. In addition, the network will have associated with it a number of enclosures located both above and below ground that will house equipment and backup power systems. Applicant claims that since it will comply with all mitigation measures adopted by the Commission, there is no possibility that granting the requested CPCN will have a significant adverse effect on the environment.

Applicant's CEQA review was consolidated with the CEQA review of eight other applications for CPCNs to construct facilities to provide CLC services. After assessing the PEAs for these nine applications, Commission staff prepared a draft Negative Declaration and Initial Study generally describing the applicants' projects and their potential environmental effects. The Initial Study identified potentially significant impacts from applicants' projects which, with mitigating measures, could be reduced to a less than significant level. (Pub. Res. Code § 21080(c)(2).) The draft Negative Declaration and Initial Study was then circulated for public review and comment.

In D.97-04-011, issued on April 9, 1997, we approved the Final Mitigated Negative Declaration for the projects proposed by the nine applicants for facilities-based CLC authority, including the project proposed by SpectraNet in the instant application. We find that with the inclusion of mitigation measures set forth in the Final Mitigated Negative Declaration contained in Attachment B of D.97-04-011, applicant's proposed project will not have potentially significant environmental effects. Accordingly, we shall require applicant to comply with the Mitigation Monitoring Plan (Appendix C to the Final Mitigated Negative Declaration

approved in D.97-04-011 in order to ensure ensure that the listed Mitigation Measures will be followed and implemented.⁷

VII. Conclusion

We conclude that the application conforms to our rules for certification to provide competitive local exchange and interexchange telecommunications services. Accordingly, we shall approve the application subject to the terms and conditions set forth herein.

Findings of Fact

1. SpectraNet filed A.96-12-056 on December 20, 1996, for authority to provide telecommunications services as both a CLC and an IEC.

2. SpectraNet served its application upon the local governments representing the communities in which applicant proposes to construct its telecommunications network.

3. SpectraNet served its application and a Notice of Availability of the exhibits to its application on all telephone corporations with which applicant is likely to compete.

4. Notice of A.96-12-056 appeared in the Daily Calendar on January 3, 1997.

5. Applicant requests a waiver of Rule 18(b) to the extent the Rule requires service of A.96-12-056 on all cities and counties in which the applicant does not intend to own, construct, or extend any facilities.

6. The Commission has routinely granted nondominant telecommunications carriers, such as applicant, an exemption from Rule 18(b) to the extent the Rule requires an applicant to serve

⁷ A copy of the Final Mitigated Negative Declaration approved in D.97-04-011 shall be mailed to applicant by the Commission's Process Office.

its application on cities and counties in which no construction of facilities is proposed.

7. No protests have been filed.

8. A hearing is not required.

9. In prior Commission decisions, competition in providing interLATA telecommunications services was authorized, but those offering such services were generally barred from holding out to the public the provision of intraLATA service.

10. In D.94-09-065, the Commission authorized competitive intraLATA services effective January 1, 1995, for carriers meeting specified criteria.

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

12. In D.95-07-054, D.95-12-056, D.95-12-057, and D.96-02-072, the Commission authorized CLCs meeting specified criteria to offer facilities-based services effective January 1, 1996, and resale services effective March 31, 1996.

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

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

15. Applicant possesses the requisite experience and knowledge to build a telecommunications network and manage a telephone utility.

16. Applicant 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.

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

18. A.96-12-056 included proposed tariffs. Subsequently, on April 30, 1997, applicant amended its proposed tariffs to remedy various deficiencies identified by Commission staff and the assigned ALJ. Notice of the amendment appeared in the Daily Calendar on May 5, 1997. Applicant's tariffs, as amended, comply with the requirements established by the Commission, including prohibitions on unreasonable deposit requirements.

19. Exemption from the provisions of PU Code §§ 816-830 has been granted to other NDIECs and CLCs. (See, e.g., D.86-10-007, D.88-12-076, and D.96-05-060.)

20. 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 and D.96-05-060, Ordering Paragraph No. 15.)

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

22. The Commission staff conducted an Initial Study of the environmental impact of nine facilities-based CLC applications, including A.96-12-056, and prepared a Mitigated Negative Declaration.

23. Commission staff has concluded that, with the incorporation of all mitigation measures discussed in the Final Mitigated Negative Declaration attached to D.97-04-011, certification of the nine CLCs covered therein, including SpectraNet, will result in no significant adverse impact on the environment.

Conclusions of Law

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

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

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

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 to serve its application on cities and counties in which the applicant does not propose to own, construct, or extend any facilities.

6. Applicant should be exempted from PU Code §§ 816-830.

7. Applicant should be exempted from PU Code § 851 when the transfer or encumbrance serves to secure debt.

8. The application should be granted to the extent set forth below.

9. Applicant, once granted a CPCN to operate as a CLC, should be subject to the Commission's rules and regulations regarding the operations of CLCs as set forth in D.95-07-054, D.95-12-056 and other Commission decisions.

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

11. To be in compliance with CEQA, applicant is required to carry out the specific mitigation measures outlined in the Final Mitigated Negative Declaration approved by the Commission in D.97-04-011.

12. With the incorporation of the specific mitigation measures outlined in the Final Mitigated Negative Declaration approved in D.97-04-011, applicant's proposed project will not have potentially significant environmental impacts.

13. Because of the public interest in competitive local exchange and interexchange 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 SpectraNet Orange Coast (applicant) to operate as a facilities-based provider and reseller of competitive local exchange and interexchange 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. Applicant is authorized to file with this Commission tariff schedules for the provision of competitive local exchange and interexchange services. Applicant may not offer services until tariffs are on file. Applicant's initial filing shall be made in accordance with General Order (GO) 96-A, excluding Sections IV, V, and VI. The tariff shall be effective not less than one day after tariff approval by the Commission's Telecommunications Division. Applicant shall comply with the provisions in its tariffs.

4. Applicant is a competitive local carrier (CLC). The effectiveness of its future CLC tariffs is subject to the schedules set forth in Appendix C, Section 4.E of Decision (D.) 95-12-056:

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

"(1) Uniform rate reductions for existing tariff services shall become effective on five (5) working days' notice to the Commission. Customer notification is not required for rate decreases.

- "(2) Uniform major rate increases for existing tariff services shall become effective on thirty (30) days' notice to the Commission, and shall require bill inserts, or a message on the bill itself, or first class mail notice to customers at least 30 days in advance of the pending rate increase.
- "(3) Uniform minor rate increases, as defined in D.90-11-029, shall become effective on not less than five (5) working days' notice to the Commission. Customer notification is not required for such minor rate increases.
- "(4) Advice letter filings for new services and for all other types of tariff revisions, except changes in text not affecting rates or relocations of text in the tariff schedules, shall become effective on forty (40) days' notice to the Commission.
- "(5) Advice letter filings revising the text or location of text material which do not result in an increase in any rate or charge shall become effective on not less than five (5) days' notice to the Commission.
- "(6) Contracts shall be subject to GO 96-A rules for NDIECs, except interconnection contracts.
- "(7) CLCs shall file tariffs in accordance with PU Code Section 876."

5. Applicant is a nondominant interexchange carrier (NDIEC). The effectiveness of its future NDIEC 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 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."

6. 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.

7. 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.

8. 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.

9. Applicant shall notify this Commission in writing of the date that local exchange service is first rendered to the public within five days after local exchange service begins.

10. Applicant shall notify this Commission in writing of the date interLATA service is first rendered to the public within five days after service begins and again within five days of when intraLATA service begins.

11. 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.

12. 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.

13. Applicant shall file an annual report, in compliance with GO 104-A, on a calendar-year basis using the information request form developed by Commission staff contained in Attachment A to this decision.

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

15. 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.

16. The corporate identification number assigned to applicant is U-5782-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.

17. 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.

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

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

20. Applicant is exempted from Rule 18(b) of the Commission's Rules of Practice and Procedure to the extent that the Rule requires applicant to serve a copy of its application on the cities and counties in which applicant does not propose to construct any facilities.

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, the Commission's Telecommunications Division shall prepare for Commission consideration a resolution that revokes the applicant's

certificate of public convenience and necessity, unless the applicant has received the written permission of the Commission's Telecommunications Division to file or remit late.

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

23. Applicant shall comply with the Commission's rules and regulations for local exchange competition contained in D.95-07-054, D.95-12-056, and other Commission decisions, including the requirement that CLCs shall place customer deposits in a protected, segregated, interest-bearing escrow account subject to Commission oversight (D.95-12-056, Appendix C, Section 4.F.(15)).

24. Applicant shall comply with the Commission's rules and regulations for NDIECs set forth in D.93-05-010, D.90-08-032, and other Commission decisions, including the requirement contained in D.90-08-032 (37 CPUC2d at 145-146) that customer deposits related to interexchange service that are held for more than one month must bear the Commission-required rate of interest currently set at 7% simple interest. This rate of interest shall apply unless and until it is reset by subsequent Commission action or superceded by the rate of interest set forth in Rule 4.B of Appendix A of D.96-09-098.

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

26. The entire Final Mitigated Negative Declaration that was approved and adopted in D.97-04-011 is hereby incorporated into this order by reference. A copy shall be provided to applicant along with this decision.

27. The applicant shall comply with the conditions and carry out the mitigation measures outlined in the Final Mitigated Negative Declaration attached to D.97-04-011.

28. The applicant shall provide the Director of the Commission's Energy Division with reports on compliance with the

conditions and implementation of mitigation measures under the schedule as outlined in the Negative Declaration.

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

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

31. Application 96-12-056 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

ATTACHMENT A
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INFORMATION REQUESTED OF COMPETITIVE LOCAL CARRIERS

TO: ALL COMPETITIVE LOCAL CARRIERS

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

A specific annual report form has not yet been prescribed for the California interexchange telephone utilities. However, you are hereby directed to submit an original and two copies of the information requested in Attachment A no later than March 31st of the year following the calendar year for which the annual report is submitted.

Address your report to:

California Public Utilities Commission
Auditing and Compliance Branch, Room 3251
505 Van Ness Avenue
San Francisco, CA 94102-3298

Failure to file this information on time may result in a penalty as provided for in §§ 2107 and 2108 of the Public Utilities Code.

If you have any question concerning this matter, please call (415) 703-1961.

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INFORMATION REQUESTED OF COMPETITIVE LOCAL CARRIERS

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

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

(END OF ATTACHMENT A)