

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. The applicant must demonstrate that it has a minimum of \$100,000 of cash or cash equivalent (as described in D.91-10-041, Appendix A, Paragraph 5.1 (41 CPUC2d 505 at 520)), reasonably liquid and readily available to meet the firm's start-up expenses. Such applicants shall also document any deposits required by local exchange carriers (LECs) or interexchange carriers (IECs) and demonstrate that they have additional resources to cover all such deposits. Any applicant who can demonstrate that \$100,000 of cash is not needed for its first year of operation may be granted a CPCN with a lesser amount, based on the sufficiency requirements set forth in Ordering Paragraph 1.a of D.91-10-041. In addition, an applicant is required to make a reasonable showing of technical expertise in telecommunications or a related business. (D.90-08-032, 37 CPUC2d (130, at 147-48, 156, 158).)

As part of its application, applicant provided audited consolidated financial statements demonstrating the financial position of OpTel, Inc., the parent corporation, and its subsidiaries.³ Additionally, applicant submitted an irrevocable one-year⁴ cross-corporation guarantee for up to \$100,000, signed by OpTel, Inc. This indicates that applicant has more than \$100,000 consisting of cash equivalent. It satisfies our criteria for being reasonably liquid and readily available to meet the applicant's needs.

Applicant has provided information on its key managers indicating their experience. It can be summarized as follows:

Louis Brunel, the president and chief executive officer (CEO) of the parent corporation, will lead applicant's executive management team. Prior to assuming his

³ The information is as of August 31, 1995 and 1996 and the results of their operations and their cash flows for the period from April 20, 1993 (date of inception) to December 31, 1994, the period from January 1, 1995 to August 31, 1995, and the year ended August 31, 1996.

⁴ Following applicant's receipt of a CPCN by this Commission.

Mailed
JUN 26 1997

Decision 97-06-102 June 25, 1997

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application by OpTel(California) for Authority
to provide Facilities-Based Interexchange
Telecommunications Services Within the State of
California.

Application 97-04-004
(Filed April 3, 1997)

ORIGINAL

O P I N I O N

OpTel (California) Telecom, Inc. (OpTel (California) or applicant), a Delaware corporation, qualified to do business in California, seeks a certificate of public convenience and necessity (CPCN) under Public Utilities (PU) Code § 1001 to permit it to provide facilities-based interLATA and intraLATA telephone services in California.¹ Applicant also seeks partial exemption from Rule 18(b) of the Commission's Rules of Practice and Procedure to the extent that this rule requires the service of this application on cities and counties in the proposed service area. Applicant proposes initially to provide service using switching and transport facilities that we have authorized today in a companion case under Petition No. 70 in Investigation (I.) 95-04-044.²

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 to provide intraLATA service. Subsequently, by

¹ California is divided into 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.

² Decision (D.) 97-06-100.

which may consist of fiber optic, coaxial, copper cable, or microwave facilities, switching equipment, and appurtenant facilities, within existing rights-of-way and within or on existing structures. The facilities described in Exhibit A are the same facilities being evaluated in Petition No. 70. Applicant declares that it will comply with the Mitigation Measures described in the Commission's Final Negative Declaration appended to D.95-12-057 as well as any subsequently-issued requirements applicable to competitive local carriers (CLCs). Applicant submits that its proposed construction will not have an adverse impact on the environment.

Applicant's CEQA review was consolidated with the CEQA review of six other CPCN applications by facilities-based CLCs. After assessing the PEAs for these seven facilities-based CLCs, 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. (Public Resource Code §21080 (c) (2).) The draft documents were then circulated for public review and comment.

In D.97-06-100, issued today, and incorporated herein by reference, we approved the Final Mitigated Negative Declaration for the projects proposed by six of the seven applicants for facilities-based CLCs, including the project proposed by OpTel (California) 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.97-06-100, applicant's proposed project will not have potentially significant environmental effects. Accordingly, we shall require applicant to comply with the Mitigation Monitoring Plan⁵ in order to ensure that the listed Mitigation Measures will be followed and implemented.

We will authorize the interLATA and intraLATA services that applicant seeks to provide subject to the terms and conditions set forth in our order below.

⁵ Appendix to D.97-06-100.

current position, he was CEO of an international media firm where, among other things, he was responsible for establishing competitive local exchange operations in the United Kingdom. There, he built the customer base up to over 120,000 residential and business local exchange subscribers.

Rory O. Cole, applicant's chief operating officer, has a considerable number of years of managerial experience with Cox Cable, Time Warner, Ernst & Young, and most recently, an international media firm.

Vinod Batra, the parent corporation's vice president for engineering and construction, will serve in the same capacity for applicant. Prior to 1995, as a senior executive, he provided business and technical consulting services for cable television and telecommunications companies.

Applicant does not appear to be required to post a deposit with any LEC or IECs. It states that the employee who will serve as its vice president for product development was associated with, and then, briefly employed by an NDIEC that filed in April 1996 for reorganization under Chapter 11 of the bankruptcy laws. Applicant declares, however, that it is not aware of any activities by the employee that contributed to the NDIEC's insolvency.

Applications to provide facilities-based interexchange services must be reviewed for compliance with the California Environmental Quality Act (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 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 (EIR).

Applicant filed its PEA as Exhibit A to this application. As described in Exhibit A and Petition No. 70 under I.95-04-044, applicant intends to install its facilities,

13. D.97-06-100, issued today and incorporated by reference, approved a Final Mitigation Negative Declaration for the projects proposed by six facilities-based CLC applicants, including the applicant herein.

14. In D.97-06-100, the Commission found that with the incorporation of all mitigation measures discussed in the Mitigated Negative Declaration (Attachment B of D.97-06-100) certification of the six CLCs covered therein, including OpTel (California), will result in no significant adverse impact on the environment.

15. The Commission has routinely granted NDIECs, 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.

16. 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.)

17. The transfer or encumbrance of property of nondominant carriers has been exempted from the requirements of PU Code § 851 whenever such transfer or encumbrance services 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

Findings of Fact

1. Applicant served a copy of the application or a notice of availability upon 292 telephone corporations with which it is likely to compete.

2. A notice of the filing of the application appeared in the Daily Calendar on April 8, 1997.

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 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 \$100,000 of cash equivalent including an irrevocable cross-corporation guarantee from its parent corporation, reasonably liquid and readily available to meet its start-up expenses.

8. Applicant's technical experience consists of 3 key managers with a combined experience of over 10 years in telecommunications.

9. 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.

10. Although applicant indicated that an employee of applicant was previously associated with an NDIEC that filed for bankruptcy, this should not prohibit granting applicant a CPCN because the association appears to not have contributed to the NDIEC's insolvency.

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

12. Under I.95-04-044 and incorporated by reference, the Commission staff conducted an Initial Study of the environmental impact of seven facilities-based CLC applicants, including the applicant herein, and prepared a Mitigated Negative Declaration.

O R D E R

IT IS ORDERED that:

1. A certificate of public convenience and necessity (CPCN) is granted to OpTel (California) Telecom, Inc. (applicant) to operate as a facilities-based provider of interLocal Access and Transport Area (interLATA) 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 and/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):
 - "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.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 1997-1998 fiscal year (Resolution M-4786);
- 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, pp. 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. To be in compliance with CEQA, applicant is required to carry out the specific mitigation measures outlined in the Final Mitigated Negative Declaration appended to D.97-06-100.

10. With the incorporation of the specific mitigation measures outlined in the Final Mitigated Negative Declaration (see Attachment B of D.97-06-100), applicant's proposed project will not have potentially significant environmental impacts.

11. Because of the public interest in competitive interLATA and intraLATA services, the following order should be effective immediately.

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 Staff and contained in Attachment 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-5797-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. In response to the applicant's request for waiver, 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.

18. 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 CPCN, unless the applicant has received the written permission of Telecommunications Division to file or remit late.

19. The entire Final Mitigated Negative Declaration that was approved and adopted today in D.97-06-100 is hereby incorporated into this order by reference. A

- "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 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 interLATA service is first rendered to the public within five days after service begins and again within five days of when intraLATA 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

copy of the Final Mitigated Negative Declaration shall be provided to applicant with D.97-06-100.

20. The applicant shall comply with the conditions and carry out the mitigation measures outlined in the Final Mitigated Negative Declaration appended to D.97-06-100.

21. 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 Final Mitigated Negative Declaration adopted in D.97-06-100.

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

23. Application 97-04-004 is closed.

This order is effective today.

Dated June 25, 1997, at San Francisco, California.

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

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.

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)