

AUG 01 1997

Decision 97-08-014 August 1, 1997

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application)
 of Cominex, L.L.C. for a)
 Certificate of Public Convenience)
 and Necessity to Operate as a)
 Reseller of interLATA and)
 intraLATA Telecommunications)
 Services within the State of)
 California.)

Application 97-04-006
 (Filed April 4, 1997;
 Supplemented April 28, 1997)

ORIGINAL

O P I N I O N

Cominex, L.L.C. (applicant), a New Jersey corporation qualified to do business in California, seeks a certificate of public convenience and necessity (CPCN) under Public Utilities Code § 1001 to permit it to resell interLATA and intraLATA telephone services in California as a nondominant interexchange carrier (NDIEC).¹ Applicant also seeks an exemption from Rule 18(b) of the Commission's Rules of Practice and Procedure to the extent that this rule requires service of the application on cities and counties in the proposed service area. By Decision (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 D.94-09-065, we authorized

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.

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. An applicant who is a switchless reseller² 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. Such applicants shall also document any deposits required by LECs or interexchange carriers and demonstrate that they have additional resources to cover all such deposits. (D.93-05-010, 49 CPUC2d 197 at 208 (1993).) In addition, an applicant is required to make a reasonable showing of technical expertise in telecommunications or a related business.

Applicant represents that it has the financial ability to operate as a switchless reseller. Its April 28, 1997 supplemental filing shows that applicant has the minimum \$25,000 cash on hand for its proposed operations. However, it also shows that applicant's current liabilities are substantially larger than its combined cash on hand and other current assets, that it is operating at a loss, and that it has a negative \$254,992 net equity. In other words, if applicant was to sell all of its assets at book value and pay off its debt at face value, applicant would

² D.93-05-010 defines a switchless reseller as an 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.

be short \$254,992. Contrary to applicant's representation that it has ample financial resources, applicant does not have the minimum \$25,000 in uncommitted cash on hand for its proposed operations.

Applicant's own lack of financial strength, in itself, is no basis for denying applicant's CPCN request. Other similarly situated applicants have requested and obtained CPCNs by providing irrevocable letters of credit or by substantiating that their proposed operation would be viable with a lower threshold amount. Hence, the Assigned Administrative Law Judge (ALJ) issued a May 8, 1997, ruling which provided applicant additional time, until June 9, 1997, to demonstrate that it has a minimum of \$25,000 cash reasonably liquid and readily available for its proposed operations.

As of July 8, 1997, applicant has not responded to the ALJ ruling or demonstrated that it possesses or has access to the financial resources, as required by D.91-10-041. Absent applicant's ability to meet the financial requirement there is no reason to consider this application. This application should be denied.

Findings of Fact

1. Applicant seeks a CPCN to operate as a reseller of interLATA and intraLATA telecommunications services within California.

2. A notice of the filing of the application appeared in the Daily Calendar on April 10, 1997.

3. An applicant who is a switchless reseller must demonstrate that it has a minimum of \$25,000 cash or cash equivalent reasonably liquid and readily available to meet the firm's start-up expenses.

4. Applicant's financial statements show that its current liabilities are higher than its current assets, it is operating at a loss, and it has a negative \$254,992 in equity.

5. Applicant does not have the minimum \$25,000 in uncommitted cash on hand for its proposed operations.

6. An ALJ ruling provided applicant additional time, until June 9, 1997, to demonstrate that it has a minimum of \$25,000 cash reasonably liquid and readily available for its proposed operations.

7. Applicant has not responded to the ALJ ruling or demonstrated that it possess or has access to the minimum financial requirement.

8. There is no reason to keep this application open.
Conclusion of Law

The application should be denied because applicant has not demonstrated that it has the financial ability to provide the proposed service. This order should be made effective upon the date signed.

O R D E R

IT IS ORDERED that:

1. Cominex, L.L.C.'s (applicant) request for a certificate of public convenience and necessity (CPCN) to operate as a reseller of interLocal Access and Transport Area and intraLocal Access and Transport Area telecommunications services within California is denied. This denial is without prejudice to applicant filing a subsequent new application for a CPCN at such time applicant can demonstrate that it meets the minimum requirements established for a CPCN.

2. Application 97-04-006 is closed.

This order is effective today.

Dated August 1, 1997, at San Francisco, California.

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

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