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Decision 97-08-028 August 1, 1997

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of I.C.N., LLC for a Certificate of Public Convenience And Necessity to Operate as a Reseller of Telecommunications Services Within the State of California.

Application 97-02-030
(Filed February 24, 1997)

OPINION**ORIGINAL**

I.C.N., LLC (applicant), a Nevada corporation authorized to do business in California, seeks a certificate of public convenience and necessity (CPCN) to permit it to resell interLATA telephone services in California and intraLATA telephone service.¹ Applicant also seeks exemption (i) from the requirements of Public Utilities (PU) Code §§ 816-830, dealing with the issuance of stocks and other evidences of ownership and bonds, notes, and other evidences of indebtedness, and (ii) from the tariffing requirements of PU Code §§ 454, 489, 491, and 495, pursuant to § 495.7(b)(2). Applicant has submitted its verified statement adopting the Commission's Consumer Protection Rules.

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

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.

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 IECs 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.

As part of its supplemental filed information, applicant provided a bank statement demonstrating that applicant has more than \$25,000 consisting of cash. It satisfies our criteria for applicant's being reasonably liquid and having readily available assets to meet the applicant's needs.

Applicant has provided information on its key employees indicating their education, technical training, and experience. It can be summarized as follows:

Terry Fasy, president - five years in the telecommunications business.

Steve Lombardo, chief financial officer - eight years as a financial officer of real estate companies.

Alan King, engineer, 20 years' experience.

We will authorize the interLATA and intraLATA services that applicant seeks to provide.

² 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.

Findings of Fact

1. A notice of the filing of the application appeared in the Daily Calendar on March 7, 1997.
2. No protests have been filed.
3. A hearing is not required.
4. 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.
5. By D.94-09-065, we authorized competitive intraLATA services effective January 1, 1995, for carriers meeting specified criteria.
6. Applicant has demonstrated that it has a minimum of \$25,000 of cash, reasonably liquid and readily available to meet its start-up expenses.
7. Applicant's technical experience consists of three employees with a combined experience of over 30 years in telecommunications, marketing, engineering, and finance.
8. Applicant has filed its verified statement adopting the Commission's Consumer Protection Rules.
9. Although applicant indicated that an employee of applicant was previously associated with an NDIEC that went out of business, this should not prohibit granting applicant a CPCN because he left the NDIEC one year prior to its demise.
10. 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.
11. By D. 97-06-107, applicants for NDIEC authority are exempt from Rule 18(b).
12. 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) and from PU Code §§ 454, 489, 491, and 495.
13. 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 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, 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 is exempt from Rule 18(b).
6. Applicant should be exempted from PU Code §§ 816-830 and from PU Code §§ 454, 489, 491, and 495.
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. 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 I.C.N., LLC (applicant) to operate as a reseller 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. This authorization shall expire unless applicant files a written acceptance of the certificate granted in this proceeding before December 31, 1997.

3. 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.

4. 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.

5. 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.

6. 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.

7. 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.

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

9. 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.

10. The corporate identification number assigned to applicant is U-5819-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.

11. 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.

12. Applicant is exempted from the provisions of PU Code §§ 816-830 and from PU Code §§ 454, 489, 491, and 495. However, applicant shall be subject to the Consumer Protection Rules set forth in Appendix A to this order.

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

14. 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 applicant has received the written permission of Telecommunications Division to file or remit late.

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

16. Application 97-02-030 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

A.97-02-030 ALJ/RAB/wav

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)

Appendix A
**CONSUMER PROTECTION REGULATIONS APPLICABLE
TO REGISTERED IECs AND IECs NOT REQUIRED TO FILE TARIFFS**

RULE 1 - PURPOSE, APPLICABILITY AND DEFINITIONS

A. The purpose of these Consumer Protection Regulations is to establish rules for consumer protection of current or potential customers who take service from interexchange carriers (IECs) that are registered to operate within the State of California by the Commission and/or are not required to file tariffs (each, an Exempt IEC). In addition, any telephone corporation that does not hold a certificate of public convenience and necessity and is not registered shall be deemed to be an Exempt IEC for purpose of these Consumer Protection Regulations.

B. These Consumer Protection Regulations apply to Exempt IECs and, where noted, to IECs holding certificates of public convenience and necessity whether or not such IECs are also exempt from filing tariffs. Unless otherwise directed by the Commission, either on its own motion or after notice and an opportunity to be heard on the record into the facts and circumstances involved in any complaint proceeding, Exempt IECs shall observe the provisions set forth in these regulations.

C. The following definitions shall apply to these regulations:

- (1) Applicant or customer means any individual or entity that has applied to an Exempt IEC for service or is presently entitled to receive service, respectively, on a pre-subscribed basis. Where appropriate to protect the public under these Consumer Protection Regulations, customer shall also include a consumer who receives service from an IEC even though the consumer never authorized the IEC to provide service.
- (2) Commission means the Public Utilities Commission of the State of California.
- (3) Completed call or telephonic communication means a call or other telephonic communication, originated by a person or mechanical/electrical device from one number to another number that is answered by a person or such device. For such purpose, the numbers may be assigned to locations within any portion of the State of California and the communication may consist of voice, data, a combination of each of voice and data, or other transmission by wire or radio and may be of any duration.
- (4) Date of presentation means the latest postmark date on the billing envelope.

- (5) Agent means a business representative whose function is to bring about, modify, affect, accept performance of, or terminate contractual obligations between an Exempt IEC and applicants or customers.
- (6) Minor rate increase means an increase which (i) represents less than a 1% increase of the Exempt IEC's total California intrastate revenue compared to the rates and transactions in effect over the most recently completed fiscal year of the Exempt IEC and (ii) is less than 5% of the rate for the affected service. Increases shall be cumulative, such that if the sum of the proposed rate increase and rate increases that took effect during the preceding 12-month period for any service would not be a minor rate increase, then any rate increase that would otherwise be a minor rate increase shall be deemed a major rate increase.
- (7) Major rate increase means any rate increase that is not a minor rate increase as defined in Rule 1(C)(6).

RULE 2 - EXEMPT IEC INFORMATION

Exempt IECs shall inform each applicant or customer of his or her right to receive and shall provide, upon request, each applicant for service or customer the following:

- A. The California Public Utilities Commission identification number of its registration to operate as a telecommunications corporation within California.
- B. The address and telephone number (including any toll-free telephone number) of the California Public Utilities Commission to verify its authority to operate.
- C. A copy of these Consumer Protection Regulations.
- D. A toll-free number to call for service or billing inquiries, along with an address where the customer may write the Exempt IEC.
- E. A full disclosure of the name of the Exempt IEC and all fictitious i.e., "dba" names.
- F. Rate information as required by Rule 7(A).

RULE 3 - INITIATION OF SERVICE

Service may be initiated based on a written or oral agreement between the Exempt IEC and the customer. In either case, prior to the agreement, the customer shall be informed of all rates and charges for the services the customer desires and any other rates or charges which will appear on the customer's first bill.

If the agreement is oral, within 10 days of initiating the service order, the Exempt IEC will provide a confirmation letter setting forth a brief description of the services ordered and itemizing (in terms of the minimum and maximum per minute charges for calls within the State of California) all charges which will appear on the customer's bill. The letter must be in the same language in which the agreement was concluded.

Potential customers who are denied service for failure to establish credit or pay deposit as described in Rule 13 must be given the reason for the denial in writing within 10 days of service denial.

All orders for service must comply with the applicable requirements of state and federal law including, without limitation, Public Utilities Code Section 2889.5 and 47 CFR 64.1100 and 64.1150, and 16 CFR Parts 310 and 420.

Exempt IECs shall maintain a register of all forms of agreement in which such forms shall be identified with a unique designation. Exempt IECs shall record the form of agreement that applies to each customer. In the event that any form of agreement incorporates variable price terms, the Exempt IEC shall prepare a separately designated memorandum of such price terms for each customer taking service under such form of agreement and record the memorandum that applies to the customer. Upon the demand of the customer, the Exempt IEC shall promptly provide the form of agreement and any memorandum of price terms applicable to the customer.

RULE 4 - SPECIAL INFORMATION REQUIRED ON FORMS

A. Customer Bills

Whether the customer is billed directly by the IEC, through a billing agent, or through a local exchange company or competitive local carrier, the name of the Exempt IEC that provides service to the customer shall be identified on each bill prominently. The only other telephone corporation that may be identified on the bill is the local exchange carrier or competitive local carrier that provides service to the customer or the facilities based LEC that provides service to the Exempt IEC, in which case the names, logotypes or other identifying marks must be less prominent than those of the Exempt IEC and it must be stated that the Exempt IEC is the customer's long-distance telephone company. Each bill must prominently display a toll-free number for service or billing inquiries, along with an address where the customer may write. Each bill for telephone service will contain notations concerning the following areas:

- (1) When to pay your bill;
- (2) Billing detail including the period of service covered by the bill;
- (3) Late payment charge and when applied;

- (4) How to pay your bill;
- (5) Questions about your bill;
- (6) In addition to the above, each bill rendered to a California billing address shall include the following statement:

"This bill is now due and payable; it becomes subject to a late payment charge if not paid within 15 days calendar days of presentation date. Should you question this bill, please request an explanation from [name of Exempt IEC].

If you believe you have been billed incorrectly you may file a complaint with the California Public Utilities Commission, Consumer Services Division, 505 Van Ness Avenue, San Francisco, CA 94102, or 107 South Broadway, Room 5109, Los Angeles, CA 90012. To avoid having service disconnected, payment of the disputed bill should be made "under protest" to the CPUC or payment arrangements should be made agreeable to the Exempt IEC pending the outcome of the Commission's Consumer Services Division review. The Consumer Services Division shall review the basis of the billed amount, communicate the results of its review to the parties and inform you of your recourse to pursue the matter further with the Commission."

B. Deposit Receipts

Each deposit receipt shall contain the following provisions:

"This deposit, less the amount of any unpaid bills for service furnished by [name of Exempt IEC], shall be refunded, together with interest at the 3-month commercial paper rate published by the Federal Reserve Board, within 30 calendar days after the discontinuance of service, or after 12 months of service, whichever comes first. However, deposits may not receive interest if the customer has received a minimum of two notices of discontinuance of service for nonpayment of bills in a 12-month period.

RULE 5 - CREDIT ESTABLISHMENT

Each applicant for service shall provide credit information satisfactory to the Exempt IEC or pay a deposit. Deposits shall not be required if the applicant:

- A. Provides credit history acceptable to the Exempt IEC. Credit information contained in the applicant's account record may include, but shall not be limited to, account established date, "can-be-reached" number, name of employer, employer's address, customer's driver's license number or other acceptable personal identification,

billing name, and location of current and previous service. Credit cannot be denied for failure to provide social security number.

B. A cosigner or guarantor may be used providing the cosigner or guarantor has acceptable credit history with the serving Exempt IEC or an acceptable Exempt IEC.

C. A Exempt IEC cannot refuse a deposit to establish credit for service. However, it may request the deposit to be in cash or other acceptable form of payment (e.g., cashier's check, money order, bond, letter of credit).

RULE 6 - DEPOSITS

In the event the customer fails to establish a satisfactory credit history, deposits are a form of security that may be required from customers to ensure payment of bills.

Deposits shall be no greater than twice the estimated average monthly bill for the class of service applied for.

The average bill will reflect the aggregate services requested by the customer. Deposits will be refunded with interest within 30 days after discontinuance of service or after 12 months of service, whichever comes first. Interest will be added to the deposit using the 3-month commercial paper rate published by the Federal Reserve Board, except under the following conditions: no interest shall be given if the customer has received a minimum of two notices in a 12-month period as provided under Rule 7(B)(2).

RULE 7 - NOTICES

Each Exempt IEC shall provide notices to its customers, as follows:

A. Rate information and information regarding the terms and conditions of service shall be provided in writing upon request by a current or potential customer. Upon written request, customers shall be entitled to receive notice of major increases in rates, which shall be provided in writing and postmarked at least 30 days prior to the effective date of the change. No customer notice shall be required for minor rate increases or for rate decreases. Upon written request, customers shall be entitled to be advised of optional service plans in writing as they become available. In addition, upon written request, customers shall be entitled to be advised of changes to the terms and conditions of service prior to the beginning of the company's periodic billing cycle during which such changes are intended to become effective.

B. Discontinuance of Service Notice

(1) Notice by Customers

Customers are responsible for notifying the Exempt IEC of their desire to discontinue service on or before the date of disconnection. Such notice may be either oral or written. If oral, the IEC may require appropriate verification of the identity of the customer. A customer may authorize another Exempt IEC or a local exchange company or competitive local carrier to give such notice on customer's behalf, and no Exempt IEC shall re-establish service that has been terminated without the express consent of the customer, which consent may not be founded upon any purported term in an agreement for service that binds the customer to take service from the Exempt IEC for a term or continually.

(2) Notice by Exempt IEC

Rules in Commission Decision 91188, regarding discontinuance of service related to criminal prosecution, will remain in effect for Exempt IECs.

Notices to discontinue service for nonpayment of bills shall be provided in writing by first class mail to the customer not less than 7 calendar days prior to termination. Each notice shall include all of the following information:

- (a) The name and address of the customer whose account is delinquent.
- (b) The amount that is delinquent.
- (c) The date when payment or arrangements for payment are required in order to avoid termination.
- (d) The procedure the customer may use to initiate a complaint or to request an investigation concerning service or charges.
- (e) The procedure the customer may use to request amortization of the unpaid charges.
- (f) The toll-free telephone number of a representative of the Exempt IEC, who can provide additional information or institute arrangements for payment.¹
- (g) The telephone number (including any toll-free number) of the Commission's Consumer Services Division where the customer may direct inquiries.

C. Rules for Exempt IEC Notices

Notices the Exempt IEC sends to customers, or the Commission, shall be a legible size and printed in a minimum point size type of 10 and are deemed made on

date of presentation (Rule 1(C)(4)). The Exempt IEC shall provide a copy of the form of any notice required to the Consumer Services Division (CSD) of the Commission.

RULE 8 - PRORATING OF BILLS

Any prorated bill shall use a 30-day month to calculate the pro-rata amount. Prorating shall apply only to recurring charges. All nonrecurring and usage charges incurred during the billing period shall be billed in addition to prorated amounts.

RULE 9 - DISPUTED BILLS

In case of a billing dispute between the customer and the Exempt IEC as to the correct amount of a bill, which cannot be adjusted with mutual satisfaction, the customer can make the following arrangement:

A. First, the customer may make a request, and the Exempt IEC will comply with the request, for an investigation and review of the disputed amount.

B. The undisputed portion of the bill must be paid by the Due By Date (No sooner than 15 days of the date of presentation) shown on the bill or the service will be subject to disconnection if the Exempt IEC has notified the customer by written notice of such delinquency and impending termination.

C. If there is still disagreement after the investigation and review by a manager of the Exempt IEC, the customer may appeal to CSD for its investigation and decision. To avoid disconnection of service, the customer must submit the claim and, if the bill has not been paid, deposit the amount in dispute with CSD within 7 calendar days after the date the Exempt IEC notifies the customer that the investigation and review are completed and that such deposit must be made or service will be interrupted. However, the service will not be disconnected prior to the Due By Date shown on the bill.

D. The Exempt IEC may not disconnect the customer's service for nonpayment as long as the customer complies with (B) and (C) above.

E. The Exempt IEC shall respond to CSD's requests for information within 10 business days; provided, however, that the Exempt IEC shall provide CSD a copy of the form of agreement and memorandum (if any) applicable to the customer as described in Rule 3 within two business days following CSD's request.

F. The CSD will review the claim of the disputed amount, communicate the results of its review to the customer and Exempt IEC and make disbursement of the deposited amount if neither the customer nor the Exempt IEC requests in writing that the dispute be converted into a formal complaint within 10 days. The customer's request may be in letter form, but the request of the Exempt IEC shall be an appropriate formal pleading.

G. After the investigation and review are completed by the Exempt IEC as noted in (A) above, if the customer elects not to deposit the amount in dispute with the

CSD, such amount becomes due and payable at once. In order to avoid disconnection of service, such amount must be paid within 7 calendar days after the date the Exempt IEC notifies the customer that the investigation and review are completed and that such payment must be made if service will be interrupted. However, the service will not be disconnected prior to the Due By Date shown on the bill.

RULE 10 - BILLS PAST DUE

Bills are due and payable on the date of presentation. A late payment charge of not more than 1.5% per month may be applied if payment is not received by the utility on or before the late payment date which date will be prominently displayed on the customer's bill. The late payment date will be at least 15 days after the date of presentation on the billing envelope. Exempt IECs shall credit payments as of the business day received to avoid assessing late payment charges incorrectly.

RULE 11 - DISCONTINUANCE AND RESTORATION OF SERVICE

A. Service may be discontinued for nonpayment of bills provided:

- (1) The bill has not been paid by the due date shown on the bill.
- (2) Notice of the proposed discontinuance is provided pursuant to Rule 7(B)(2).
- (3) Service is not initially discontinued on any Saturday, Sunday, legal holiday, or any other day Exempt IEC service representatives are not available to serve customers.

B. Fraud

The Exempt IEC shall have the right to refuse or discontinue service without advance notice if the acts of the customer are such as to indicate intention to defraud the Exempt IEC. This includes fraudulently placing and receiving calls and/or providing false credit information.

RULE 12 - CHANGE OF SERVICE PROVIDER

A. Solicitation of customer authorization for service termination and transfer.

Solicitations by Exempt IECs, or their agents, of customer authorization for termination of service with an existing carrier and the subsequent transfer to a new carrier must include current rate information on the new carrier and information regarding the terms and conditions of service with the new carrier.

Solicitations by Exempt IECs, or their agents, must conform with California Public Utilities Code Section 2889.5 and other applicable state and federal law. All

solicitations sent by Exempt IECs or their agents to customers must be legible and printed in a minimum point size type of at least 10 points. A penalty or fine of up to \$500 may apply for each violation of this Rule.

B. Unauthorized service termination and transfer ("Slamming")

An Exempt IEC will be held liable for any violation of PU Code Section 2889.5, including, without limitation, the unauthorized termination of service with an existing carrier and the subsequent unauthorized transfer to their own service. Exempt IECs are responsible for the actions of their agents that solicit unauthorized service termination and transfers. A carrier who engages in such unauthorized activity shall restore the customer's service to the original carrier without charge to the customer. All billings during the unauthorized service period shall be refunded to the applicant or customer. A penalty or fine may apply to each violation of this Rule, pursuant to PU Code Section 2107. As prescribed under PU Code Section 2108, each day of a continuing violation shall constitute a separate and distinct offense. The Exempt IEC responsible for the unauthorized transfer will reimburse the original carrier for reestablishing service at the tariff rate of the original carrier, or, if such carrier does not have a tariff, at the highest rate such carrier then offers to new customers.

RULE 13 - FAILURE TO ESTABLISH CREDIT OR PAY DEPOSIT

The Exempt IEC may refuse service if credit is not established satisfactory to the Exempt IEC and may deny or disconnect service if a deposit is not paid as required in Rule 6.

RULE 14 - LIMITATION OF LIABILITY OF EXEMPT IEC

The Exempt IEC shall not be liable for consequential damages or for any failure of performance due to causes beyond its control, including, without limitation to, acts of God, fires, floods or other catastrophes, national emergencies, insurrections, riots or wars, strikes, lockouts, work stoppage or other labor difficulties, and any order, regulation or other action of any governing authority or agency thereof.

RULE 15 - PRIVACY OF CUSTOMERS

Exempt IECs are restricted from releasing nonpublic customer information in accordance with PU Code Sections 2891, 2891.1, and 2893. For each new customer, and on an annual basis for continuing customers, Exempt IECs shall provide in writing a description of how the carrier handles the customer's private information and a disclosure of any ways that such information might be used or transferred that would not be obvious to the customer. Exempt IECs are subject to the credit information and calling record privacy rules set forth in Appendix B of Decision Nos. 92860 and 93361, except as modified by Decision Nos. 83-06-066, 83-06-073, and 83-09-061.

RULE 16 - VENUE

To protect customers against the practice of Exempt IEC's obtaining out-of-state small claims court default judgments arising from alleged payment defaults, a Exempt IEC shall bring an action for collection of any charge only in the county in which the customer resides or, in the case of a business customer, has its principal place of business within the State of California. Every registrant shall consent to venue for actions brought by a customer in the county in which the customer resides or has its principal place of business within the State of California.

RULE 17 - EMPLOYEE IDENTIFICATION

Each Exempt IEC shall cause any employee to be issued an identification card if the employee requests entry in the course of employment into any building or structure on the premises of the customer, and shall require the employee to present such card as required by PU Code Section 708. Each Exempt IEC shall cause each employee to identify himself or herself at the request of any applicant or customer in a telephone conversation with his or her first and last name or a unique employee number.

RULE 18 - FEES AND SURCHARGES

Each Exempt IEC 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-15801, October 5, 1995);

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 4782); and

D. The current 0.27% 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 (PU Code § 739.30; Resolution T-15826, December 20, 1995).

The Executive Director of the Commission is authorized to amend this Rule from time to time to conform to subsequent resolutions of the Commission.

(END OF APPENDIX A)