

AUG 0 1 1997

Decision 97-08-036 August 1, 1997

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

In the Matter of the Application of Cheetah Communications, LLC, a California Limited Liability Company, for a Certificate of Public Convenience and Necessity to Resell Local, InterLATA, and IntraLATA Telecommunications Services Within the State of California.

**ORIGINAL**Application 97-03-020  
(Filed March 5, 1997)**O P I N I O N**

Cheetah Communications, LLC, (applicant), a California limited liability company seeks a certificate of public convenience and necessity (CPCN) under Public Utilities (PU) Code § 1001 to permit it to resell local service to the extent permitted by the Commission in Decision (D.)95-07-054 and interLATA telephone services in California and intraLATA telephone service.<sup>1</sup>

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.

By D.95-07-054 (Rulemaking (R.) 95-04-043/Investigation (I.) 95-04-044), we established initial procedures for the filing for CPCN authority to offer competitive local exchange service within the service territories of Pacific Bell (Pacific) and GTE

---

<sup>1</sup> 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.

California Incorporated (GTEC). Prospective competitive local carriers (CLC) who filed petitions by September 1, 1995, for CPCN authority to enter the local exchange market and otherwise met eligibility requirements were authorized to offer local exchange service under the following schedule. Competitive local exchange service for facilities-based carriers was authorized effective January 1, 1996. Competitive resale of the bundled local exchange service of Pacific and GTEC was authorized effective March 31, 1996. Any filings for CLC CPCN authority made after September 1, 1995, were to be treated as applications and processed in the normal course of the Commission's business.

The Commission has established two major criteria for determining whether a CPCN should be granted for reseller of local, interLATA and intraLATA services. An applicant who is a switchless reseller<sup>2</sup> 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)(intraLATA and interLATA resellers) and Rule 17 of D.95-07-054 (reseller CLCs) reasonably liquid and readily available to meet the firm's start-up expenses. Applicants for resale of interLATA and intraLATA authority shall also document any deposits required by LECs or interexchange companies 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. Resale CLCs must also conform to the following financial requirement adopted in D.95-12-056: customer deposits

---

<sup>2</sup> 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.

collected by a CLC must be deposited in a protected, segregated interest-bearing escrow account subject to Commission oversight.

As part of its application, applicant provided an unaudited balance sheet which disclosed cash in excess of \$25,000 but a total long-term debt in the same amount, as well as a loss of almost \$10,000. Applicant is a start-up company. In response to an Administrative Law Judge's ruling requesting more information about the applicant's financial status and the terms of the loan, applicant asserted that the long-term loan was from the applicant's sole stockholder and president and was not payable for more than one year, and was intended to be a cash infusion into applicant, made specifically for the purpose of meeting its start-up and future operating expenses. Therefore, we believe that applicant has more than \$25,000 consisting of cash. It satisfies our criteria for being reasonably liquid and readily available to meet the applicant's needs.

Applicant must also submit proposed tariffs which conform to the customer protections rules set forth in Appendix B of D.95-07-054.

Applicant's proposed schedule of rates is set forth in its application, which contains applicant's proposed tariff. The tariffs are deficient in several minor aspects as set forth in Attachment B of this order. Applicant must correct the deficiencies prior to offering service.

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

Dave Wiegard, applicant's president and owner, was an executive with ADNET Telemanagement, Inc. (ADNET) from its inception in 1992 until it merged with another company in 1996. Prior to joining ADNET, Wiegard worked for Pacific Telephone for 16 years. He also founded a telecommunications consulting business dealing with long distance and local telephone services.

Scott White, the manager of applicant, also worked at ADNET from 1992 to 1996. Prior to joining ADNET, from 1984 to 1988, White was vice president of the American Sterling Group which managed operations and data processing for insurance and banking. From 1980 to 1984, he was director of Marine Terminals Corporation, responsible for management information services.

Since applicant will provide its services by resaling calls routed over facilities owned by other certificated carriers, we can see with certainty that there will be no significant impact on the environment.

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

**Findings of Fact**

1. Applicant served a copy of the application upon 294 telephone corporations with which it is likely to compete.
2. A notice of the filing of the application appeared in the Daily Calendar on March 18, 1997. A supplement to the application was filed May 16, 1997.
3. No protests have been filed.
4. A hearing is not required.
5. By prior Commission decisions, we authorized competition in providing local exchange telecommunications service within the service territories of Pacific and GTEC.
6. By D.95-07-054, D.95-12-056, D.96-02-072, and D.96-03-020, we authorized facilities-based CLC services effective January 1, 1996, and CLC resale services effective March 31, 1996, for carriers meeting specified criteria.
7. 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.
8. By D.94-09-065, we authorized competitive intraLATA services effective January 1, 1995, for carriers meeting specified criteria.
9. Applicant has demonstrated that it has a minimum of \$25,000 of cash, reasonably liquid and readily available to meet its start-up expenses.
10. Applicant has also represented that no deposits will be required by local exchange carriers or interexchange carriers.
11. Applicant's technical experience consists of 2 employees with a combined experience of over 24 years in telecommunications.

12. Applicant has submitted with its application a complete draft of applicant's initial tariff which complies with the requirements established by the Commission, except for the deficiencies identified in Attachment B, including prohibitions on unreasonable deposit requirements.

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

14. Since no facilities are to be constructed, it can be seen with certainty that the proposed operation will not have a significant impact upon the environment.

15. Applicant is exempt from Rule 18(b). (See, D.97-06-107.)

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 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 resale of local and 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.
  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. Any CLC which does not comply with our rules for local exchange competition adopted in R.95-04-043 shall be subject to sanctions including, but not limited to, revocation of its CLC certificate.
  10. Because of the public interest in competitive interLATA and intraLATA services and resale of local exchange 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 Cheetah Communications, LLC (applicant) to operate as a reseller of competitive local exchange services, 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, subject to the terms and conditions set forth below.

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 and the resale of local exchange service in Pacific Bell and GTE California Incorporated's service territories. Applicant may not offer interLATA and/or intraLATA service or resell local exchange service until tariffs are on file. Applicant's initial filing shall be made in accordance with General Order (GO) 96-A, excluding Sections III.G.(1) and (2), IV, V, and VI, and must include a satisfactory correction of each deficiency listed in Appendix B to this decision. The tariff shall be effective not less than one day after approval by the Telecommunications Division. 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. 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

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. Applicant is also exempt from GO 96-A, paragraph III.G.(1) and (2) which requires service of advice letters on competing and adjacent utilities, unless such utilities have specifically requested such service.

5. Applicant shall file as part of its initial tariff, after the effective date of this order and consistent with Ordering Paragraph 3 and Appendix B, 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, and again within five days of when resale of local exchange 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. Applicant shall file an annual report, in compliance with GO 104-A, on a calendar-year basis using the information request form developed by the Commission Staff and contained in Attachment A.

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

11. The certificate granted and the authority to render service under the rates, charges, and rules authorized will expire if not exercised within 12 months after the effective date of this order.



12. The corporate identification number assigned to applicant is U-5825-C which shall be included in the caption of all original filings with this Commission, and in the titles of other pleadings filed in existing cases.

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

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

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

16. Applicant is exempt from Rule 18(b) of the Commission's Rules of Practice and Procedure.

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

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

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

20. Application 97-03-020 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

**TO: ALL INTEREXCHANGE TELEPHONE UTILITIES AND  
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 or competitive local exchange telephone utilities. However, you are hereby directed to submit an original and two copies of the information requested in Attachment A no later than March 31<sup>st</sup> of the year following the calendar year for which the annual report is submitted.

Address your report to:

California Public Utilities Commission  
Financial Reports Room, Rm. 3251  
55 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 and 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:
  - 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)**

**ATTACHMENT B**

List of Deficiencies in Tariffs filed by Cheetah Communications, LLC in A.97-03-020 to be corrected in Tariff Compliance Filing.

1. Sample forms must be included with the tariffs.
2. CLC 1-T, Sheet vii, Preliminary Statement should indicate the intent to provide local exchange service in Pacific Bell and GTEC's service areas. Other areas of California are not yet open to competition.
3. CLC 1-T, Sheet viii includes a Map of California. Cheetah Communications, LLC should include a Service Area Map showing the exchange boundaries of Pacific Bell and GTEC if that is where the company intends to provide local service. Also, only the territories of Pacific Bell and GTEC have been opened for local exchange competition. The map should indicate this.
4. CLC 2-T, Sheet 4: Company must accept oral requests for service because Rule 2 of Appendix b of D.95-07-054 provides that service may be initiated based on written or oral agreement between the CLC and the customer.
5. CLC 2-T, Sheet 5: Commission authorized changes in tariff rates are not automatically reflected in contracts, unless specifically directed by the Commission.
6. Cheetah Communications must have a demarcation tariff or concur in another company's tariff.

**(END OF ATTACHMENT B)**