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SEP 4 1997

Decision 97-09-024 September 3, 1997

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
USA eXchange, LLC d/b/a/ Omniplex)
Communications Group for a)
Certificate of Public Convenience and)
Necessity to Operate as a Reseller of)
Local Exchange, Interexchange and)
Wireless Telecommunications Services)
Within the State of California.)

ORIGINAL

Application 97-06-017
(Filed June 11, 1997)

O P I N I O N

Request

USA eXchange, LLC (applicant), a Texas corporation qualified to do business in California, doing business as Omniplex Communications Group, seeks a certificate of public convenience and necessity (CPCN) under Public Utilities (PU) Code § 1001 to permit it to resell interLATA and intraLATA telephone services¹ as a nondominant interexchange carrier (NDIEC), to provide resold local exchange service as a competitive local exchange carrier to the full extent allowed by the Commission in Decision (D.) 95-07-054, and to provide wireless telecommunications services. 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

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.

service area. However, an individual exemption is not necessary because we exempted all NDIECs and CLCs from complying with the requirements of Rule 18(b) pursuant to D.97-06-107.

Protective Order

Concurrent with the filing of its application, applicant filed a motion for a limited protective order for authority to file its financial information under seal with good cause. No opposition to the motion was received. Accordingly, the motions to place applicant's financial information under seal should be granted. Such data should remain under seal for one year from today unless applicant makes a timely request for an extension of confidential treatment with good cause shown.

Background

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.

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

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 an 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

(Footnote continues on next page)

\$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 local exchange companies or interexchange carriers (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.

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 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.

(Footnote continued from previous page)
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.

Applicants who are granted authority to provide competitive local exchange service must comply with various rules established by the Commission, 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.96-12-056; and (3) the customer notification and education rules adopted in D.96-04-049.

Pursuant to D.94-10-031, 56 CPUC 2d 578 (1994), applicants seeking authority to provide wireless telecommunications service are no longer required to obtain a CPCN for authority to provide such service. This is because the Omnibus Budget Reconciliation Act of 1993, signed into law on August 10, 1993, removed entry and rate regulation from all commercial and private mobile radio service telecommunications entities, including all such telecommunications carriers operating as public utilities in California. However, it left in place, the state's authority to continue to regulate "terms and conditions" for such telecommunications carriers. Accordingly, D.94-10-031 established a registration process for potential wireless carriers. Hence, if applicant intends to provide wireless telecommunications services, applicant must follow the registration process set forth in D.94-10-031.

Financial Requirement

A CLC reseller must demonstrate that it has a minimum of \$25,000 of cash or cash equivalent, reasonably liquid and readily available to meet the firm's start-up expenses as prescribed in Rule 4.B(2) of D.95-07-054. CLCs must also conform to the following financial requirement adopted in D.95-12-056: customer deposits collected by a CLC must be deposited in a protected, segregated interest-bearing escrow account subject to Commission oversight.

Applicant's financial information filed under seal demonstrate that applicant has the \$25,000 minimum cash or cash

equivalent requirement, reasonably liquid and readily available to meet its start-up costs. Thus, it is clear that applicant is capable of financing and operating its proposed operations.

Technical Experience Requirement

Applicant must submit proposed tariffs which conform to the consumer protection rules set forth in Appendix B of D.95-07-054. Such tariffs are set forth in Exhibit I to the application. We have reviewed applicant's proposed tariff filing and conclude that it conforms to the adopted Commission rules including the Consumer Protection Rules set forth in Appendix B of D.95-07-054, except for the list of tariff deficiencies identified in Appendix B of this order. In its compliance tariff filing, applicant is directed to correct the identified deficiencies as a condition of our granting approval of the tariffs.

In addition, Applicant is required to make a reasonable showing of technical expertise in telecommunications or a related business. In this regard, applicant provided information on its three key officers indicating their more than 38 years of combined technical experience in the telecommunications field, as set forth in Exhibit E to the application. These key officers are President, Chief Executive Officer, and Treasurer S. Michael McKay, and Executive Vice President, Chief Operating Officer, and Secretary Michael S. Sawyer. Thus, applicant has the technical expertise and qualifications to conduct its business.

Environmental Assessment

As applicant will not be constructing any facilities for the purpose of providing local exchange services, it can be seen with certainty that there is no possibility that the grant of this application will have an adverse impact upon the environment.

Findings of Fact

1. A notice of the filing of the application appeared in the Commission's Daily Calendar on June 16, 1997.

2. Applicant filed a motion for authority to file financial data under seal with good cause shown.

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 those offering such service from holding out to the public the provision of intraLATA service.

6. By prior Commission decisions, we authorized competition in providing local exchange telecommunications service within the service territories of Pacific Bell and GTEC.

7. 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.

8. Applicant has demonstrated that it has a minimum of \$25,000 of cash or cash equivalent reasonably liquid and readily available to meet its start-up expenses.

9. Applicant's technical experience is demonstrated by the fact that its key officers have more than 38 years combined experience in the telecommunications area.

10. 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 Appendix B.

11. 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.

12. By D.97-06-107, applicants for NDIEC and CLCs are exempt from Rule 18(b).

13. Exemption from the provisions of Public Utilities (PU) Code §§ 816-830 has been granted to other resellers. (See, e.g., D.86-10-007 and D.88-12-076.)

14. 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.)

15. D.94-10-031 set forth a registration process for applicant's seeking authority to provide wireless telecommunications services.

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, and competitive local exchange services to be offered by applicant, subject to the terms and conditions set forth below.
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 Fund (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 should be exempted from PU Code §§ 816-830.
 6. Applicant should be exempted from PU Code § 851 when the transfer or encumbrance serves to secure debt.
 7. Applicant's motions to place its financial data under seal should be granted.
 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 local exchange services, the following order should be effective immediately.
 11. Applicant should follow the registration process set forth in D.94-10-031 as a prerequisite to providing wireless telecommunications service.

ORDER

IT IS ORDERED that:

1. A certificate of public convenience and necessity is granted to USA eXchange, LLC (applicant), doing business as Omniplex Communications Group, to operate as a reseller of interLocal Access and Transport Area (interLATA), intraLocal Access and Transport Area (intraLATA), and competitive local exchange services, subject to the terms and conditions set forth below. To the extent applicant seeks authority to provide wireless telecommunications services applicant must comply with registration process as set forth in Decision (D.) 94-10-031.

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, intraLATA, and competitive local exchange services. Applicant may not offer interLATA, intraLATA, or competitive local exchange 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, and must include a satisfactory correction of each deficiency listed in Appendix B in this decision. The tariff shall be effective not less than 1 day after tariff approval by Commission's Telecommunications Division. Applicant shall comply with the provisions in its tariffs.

b. Applicant is a competitive local carrier (CLC). The effectiveness of its future tariffs is subject to the schedules set forth in Appendix A, Section 4.E of D.95-07-054:

"E. CLCs shall be subject to the following tariff and contract filing, revision and service pricing standards [Contracts shall be subject to GO 96-A rules for NDIECs, except those for interconnection]:

- "(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 which defined in D.95-07-054, 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."

c. 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 major rate increases, except for existing services, shall become effective on thirty (30) days' notice, 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 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 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. Applicant is also exempt from GO96-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, a service area map.

6. Prior to initiating service, applicant shall provide the Commission's Consumer Service 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 local exchange, interLATA, and intraLATA services is first rendered to the public within five days after local exchange service, interLATA service, and 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 Commission's offices or reimburse the Commission for the reasonable costs incurred in having the Commission staff travel to applicants 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-5831-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. 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 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 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. Applicant's financial data shall be placed under seal for good cause shown and shall remain under seal for one year from today unless applicant makes a timely request for an extension of confidential treatment with good cause shown.

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

21. Application 97-06-017 is closed.

This order is effective today.

Dated September 3, 1997, at San Francisco, California.

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

A.97-06-017 ALJ/MFG/bwg

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 Competitive Local Carriers in California. 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.

APPENDIX A

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.
 - 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 APPENDIX A)

APPENDIX B
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USA EXCHANGE, LLC, d/b/a Omniplex Communications Group.

List of deficiencies in tariffs filed by USA eXchange, LLC in A.97-06-017 to be corrected in tariff compliance filing.

1. Title Sheet: indicate that the company intends to provide resale service.
2. Sample forms must be included.
3. Add and center "Competitive Local Carrier" on each tariff sheet above the horizontal line.
4. Sheet 8-T thru 18-T, Rate Schedules: You cannot just concur in Pacific Bell's and GTEC's local exchange tariff. Those rates and service descriptions need to be shown in your tariff schedule.
5. Sheet 22-T-23-T: Need to provide actual rates for the services listed.
6. Sheet 24-T, Special Promotions: There is no blanket authority for promotional offerings. Each promotional offering must be submitted by an Advise Letter filing. Such filings will be effective in 5 days.
7. Sheet 27-T, Rule 5.4.1 states that business or residential customers wishing to obtain services are required to sign a completed service order. Company cannot require a written service order because Rule 2 of Appendix B of D.95-07-054 provides that service may be initiated based on a written or oral agreement between the CLC and the customer. Also delete under "normal circumstances" the carrier will accept or reject the order within three business day and add if the agreement is oral then within 10 days of initiating the service order, the CLC will provide a confirmation letter setting forth a brief description of the services ordered and itemizing all charges which will appear on the customer's bill. Also if the company intends to offer residential service, then ULTS service must be provided. The ULTS service must be tariffed.
8. Sheet 27-T, Rule 5.4.2: Need to delete automatic modifications from contracts. If the CPUC approves a change in rates, that rate change is not automatically incorporated into contracts currently in effect.

APPENDIX B
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9. Sheet 28-T, Liability of the Company: Per D.95-12-057 you must concur in the limitations of liability tariffs of either Pacific Bell or GTEC as appended to the decision in Appendices B and C, respectively.
10. Sheet 29-T & 30-T : Modify Rule 5.7 to clarify that 7 days' written notice will be given by the company prior to disconnection, not just 5 days. Also, service cannot be disconnected for violation of the tariff.
11. Sheet 31-T, Rule 5.11.2: you cannot limit customers to 30 days to report billing disputes; the minimum is 2 years. Disputed bills must include all of the provisions of Rule 8 of Appendix B of D.95-07-054.
12. Sheet 32-T, Rule 5.12.2: Notice to the customers must be in writing. Only in emergencies, may the utility resort to verbal notices by telephone or by personal contact. Also, customers cannot be required to give written notice of intent to discontinue service per Rule 6(B), Appendix B of D.95-07-054. Also, you cannot adjust the amount of the deposit based on past usage, or other information. Deposit rules must conform to Rule 5 in Appendix B.
13. Include provision for blocking of 976/900 calls (Rule 15 in Appendix B).
14. Information specified in Rule 11, Change of Service Provider, Appendix B of D.95-07-054 must be included in the tariff.
15. Include information in Rule 3 of Appendix B on "Special Information Required on Forms".
16. Tariff must include statement on customer privacy per Appendix B, Rule 14.
17. Per D.95-12-057, the tariff must be revised to state which provider the company will use to administer the Deaf and Disabled program.
18. The following items are missing from the tariff:
 - Information on provisions of directories to customers.
 - Information on non-published service.
 - Tariff must state the availability of 911 service.
 - Include rule on prorating of bills. See Rule 7 of Appendix B.
 - You must include a demarcation tariff or concur in another carrier's demarcation tariff.
 - List all Commission mandated surcharges.

(END OF APPENDIX B)