

Decision 97-09-103 September 24, 1997

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of New Concept 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 97-05-046
(Filed May 21, 1997)

O P I N I O N

New Concept Communications, LLC (New Concept or 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 interLATA and intraLATA telephone services in California.¹ New Concept also seeks authority to resell local exchange service in areas currently served by Pacific Bell (Pacific) and GTE California Incorporated (GTEC).

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 as providing 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 in Rulemaking (R.) 95-04-043, we established initial procedures for obtaining authority to offer competitive local exchange service within the service

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.

territories of Pacific and GTEC. Prospective competitive local carriers (CLCs) that filed petitions by September 1, 1995, seeking CPCN authority to enter the local exchange market, and which otherwise met our eligibility requirements, were authorized to offer facilities-based local exchange service effective January 1, 1996. Otherwise-eligible CLCs that filed petitions by September 1, 1995, were authorized to offer bundled, resold local exchange purchased from Pacific or GTEC effective March 31, 1996. All subsequent filings by CLCs for authority to offer local exchange services were to be treated as applications and processed in the normal course of the Commission's business.

We have reviewed New Concept's filing and conclude that applicant has met the financial requirements set forth in our adopted rules for CLC entry. Under Rule 4.B(2) of D.95-07-054, a CLC reseller must demonstrate that it has a minimum of \$25,000 in cash or cash equivalents, reasonably liquid and readily available to meet the firm's start-up expenses.² CLCs must also conform to two additional financial requirements adopted in D.95-12-056. First, CLCs with no prior established credit record that order interconnection service from an incumbent local exchange carrier (LEC) must pay a deposit equal to an estimated two months of recurring flat-rated or usage-based interconnection charges based on the number and type of interconnection facilities

² New Concept's financial showing is also sufficient to satisfy the requirements of D.91-10-041, 41 CPUC2d 505, 520 (1991) and D.93-05-010, 49 CPUC2d 197, 208 (1993), which require that an applicant proposing to operate as a "switchless reseller" of inter or intraLATA services must also have \$25,000 in unencumbered cash or cash equivalents.

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.

ordered from the LEC. Second, customer deposits collected by a CLC must be deposited in a protected, segregated interest-bearing escrow account subject to Commission oversight.

Along with its financial statements, applicant has filed a motion for a limited protective order seeking to keep its financial statements confidential, on the ground that the statements contain confidential information that, if revealed, would do harm to applicant. No opposition to the motion has been filed.

CLC applicants are also required to submit proposed tariffs that conform to the consumer protection rules set forth in Appendix B of D.95-07-054. We have reviewed applicant's proposed tariff filing and conclude that, except for the deficiencies noted in Attachment B to this decision, applicant conforms to our adopted rules, including the Consumer Protection Rules.

New Concept has provided information on its key managers and employees, indicating their education, technical training, and experience. This information has been submitted because both CLC and switchless reseller applicants are required under our decisions to make a reasonable showing of expertise in telecommunications or a related business.

Applicant's President and Chief Executive Officer is Christian Hunter, whose background is in direct marketing. Mr. Hunter is currently president of Century Direct Marketing, Inc. Prior to joining applicant, he served in management positions with several other advertising and direct-marketing firms, including Public Information Services, Inc. (Public).

Applicant's Executive Vice President and Chief Information Officer is Michael Dubrow. Immediately prior to joining applicant, Mr. Dubrow served as president of Public. From 1984 to 1991, he was managing director of an investment firm, and from 1991 to 1994 was affiliated with the Sloan Financial Group.

Applicant's Vice President - Information Services is Antoine Bourdeaux. Mr. Bourdeaux graduated from Boston University with a Bachelor of Science degree in Electrical Engineering, and then served in the U.S. Army, where he graduated with honors from the Army Communications Security School. He has had extensive military

and private sector experience with computer science, and has been involved in the design and operation of both digital and analog communications systems.

Based on the above-described showing, we will authorize the local exchange, interLATA and intraLATA services that applicant seeks to provide.

Findings of Fact

1. On May 21, 1997, applicant filed its application for authority to resell (a) local exchange services as a CLC in the service territories of Pacific and GTEC, and (b) interLATA and intraLATA services.

2. A notice of the filing of the application appeared in the Daily Calendar on May 23, 1997.

3. No protests have been filed.

4. No opposition to the motion for confidentiality of the applicant's financial documents has been filed.

5. A hearing is not required.

6. 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.

7. By D.94-09-065, we authorized competitive intraLATA services effective January 1, 1995, for carriers meeting specified criteria.

8. By D.95-07-054, D.95-12-056, D.96-02-072 and D.96-03-020, we authorized CLCs to offer facilities-based local exchange service within the service territories of Pacific and GTEC effective January 1, 1996, and bundled, resold local exchange service purchased from Pacific or GTEC effective March 31, 1996.

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

10. Applicant's technical experience consists of three employees with a combined experience of over 20 years in telecommunications and related businesses.

11. Applicant has submitted with its application a complete draft of applicant's initial tariff for interLATA and intraLATA services. This draft complies with the

requirements established by the Commission, including prohibitions on unreasonable deposit requirements.

12. Applicant has submitted with its application a draft of applicant's initial tariff for offering local exchange services as a CLC. Except for the deficiencies noted in Attachment B of this order, this draft complies with the requirements established by the Commission.

13. Applicant has represented that no one associated with or employed by applicant was previously associated with an 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 effect upon the environment.

15. By D. 97-06-107, applicants for non-dominant interexchange or CLC authority are exempt from Rule 18(b).

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 interLATA and intraLATA services, and the competitive local exchange 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. Applicant's motion to file under seal, pursuant to General Order (G.O.) 66-C, the financial statements included as Exhibit B to the application, should be granted to the extent set forth below.
 9. Any competitive local carrier that 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 certificate.
 10. Because of the public interest in competitive interLATA, intraLATA and local exchange services, the following order should be effective immediately.
 11. The application should be granted to the extent set forth below.

O R D E R

IT IS ORDERED that:

1. A certificate of public convenience and necessity (CPCN) is granted to New Concept Communications, LLC (applicant) to operate as a reseller of competitive local

exchange services, interLocal Access and Transport Area (interLATA) services, and, to the extent authorized by Decision (D.) 94-09-065, intraLocal Access and Transport Area (intraLATA) telecommunication services of the kind offered by communication common carriers in California.

2. Applicant shall file a written acceptance of the certificate granted in this proceeding.

3. a. Applicant is authorized to file with this Commission tariff schedules for the provision of interLATA and intraLATA service. Applicant may not offer interLATA and/or intraLATA service until tariffs are on file. Applicant's initial filing shall be made in accordance with General Order (GO) 96-A, excluding Sections IV, V, and VI, and shall be effective not less than one day after filing. Applicant shall comply with the provisions in its tariffs.

b. Applicant is a nondominant interexchange carrier (NDIEC). The effectiveness of its future tariffs for interLATA and/or intraLATA services 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 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. a. Applicant is authorized to file with this Commission tariff schedules for the provision of competitive local exchange services. Applicant may not offer competitive local exchange services until such 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 correction acceptable to the Commission's Telecommunications Division of each deficiency listed in Attachment B to this decision. The tariff shall be effective not less than 1 day after tariff approval by the 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 for local exchange service is subject to the schedules set forth in Appendix A, Section 4.E of Decision (D.) 95-07-054, as follows:

"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 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 filing 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.

"(6) Contracts shall be subject to GO 96-A rules for NDIECs, except interconnection contracts.

"(7) CLCs shall file tariffs in accordance with PU Code Section 876."

5. 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 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.

6. Applicant shall file as part of its initial tariffs, after the effective date of this order and consistent with Ordering Paragraph 3, a service area map.

7. 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 at least annually, or if the name or telephone number of the contact person(s) changes.

8. Within five days after applicant first renders local exchange service to the public, applicant shall notify this Commission of that fact in writing. Applicant shall also

furnish written notice to the Commission within five days after applicant first renders interLATA and intraLATA service to the public, respectively.

9. 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.

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-5856-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 of its compliance in writing.

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

18. Applicant shall comply with the consumer protection set forth in Appendix B of D.95-07-054.

19. Applicant shall comply with the Commission's rules for local exchange competition in California that are set forth in Appendix C of D.95-12-056, including the

requirement that CLCs shall place customer deposits in a protected, segregated, interest-bearing escrow account subject to Commission oversight.

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

21. Applicant's motion for a limited protective order keeping its financial documents confidential is granted. Such documents will remain under seal for one year from today unless applicant makes a timely request for extension of confidential treatment with good cause shown.

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

23. Application 97-05-046 is closed.

This order is effective today.

Dated September 24, 1997, at San Francisco, California.

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

President P. Gregory Conlon,
being necessarily absent,
did not participate.

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.

5. Exact legal name and U # of reporting utility.
6. Address.
7. Name, title, address, and telephone number of the person to be contacted concerning the reported information.
8. 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.
9. 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 New Concepts Communications, LLC. in A. 97-05-046 to be corrected in Tariff Compliance Filing.

1. Sample forms must be included with tariffs.
2. Title sheet: indicate that the company intends to provide resale service.
3. Sheet No. viii: clarify language in the preliminary statement to indicate that while toll service may be provided statewide, competitive local service is limited to Pacific Bell's and GTEC's service territories.
4. Sheet No. ix: A Service Area Map was omitted.
5. Sheet 22 & 27: ULTS Income Limitations: Update the limits to reflect those adopted by Resolution T-16010, on June 11, 1997.
6. Sheet 45: Delete reference to Switched Access Service. Resellers do not provide Switched Access Service.
7. Sheet 46: Delete provisions for Number Portability. Since the company is asking for resale authority only, you do not require number portability.
8. Sheet 4: Need to state that application for service may be oral or written.
9. Sheet 8: Timely payment of charges is not a requirement for having the deposit returned after 12 months of service.

(END OF ATTACHMENT B)