

Decision 97-09-108 September 24, 1997

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Convergent Communications, Inc., for
a Certificate of Public Convenience and Necessity to
Offer Local Exchange, Access and Interexchange
Services.

ORIGINAL
Application 97-06-049
(Filed June 30, 1997;
Supplemented August 18, 1997)

O P I N I O N

Convergent Communications, Inc. (applicant), a Colorado corporation qualified to transact business in California seeks a certificate of public convenience and necessity (CPCN) under Public Utilities (PU) Code § 1001 to permit it to resell local exchange service to the extent permitted by the Commission in Decision (D.)95-07-054 and interLATA telephone services in California and intraLATA telephone service.¹

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 California Incorporated (GTEC). Prospective competitive local carriers (CLCs) who filed

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.

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 a reseller of local, interLATA and intraLATA services. 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)(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 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. Resale 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.

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.

As part of its application, applicant provided an audited set of financial statements, filed under seal pursuant to the ruling of the Law and Motion Administrative Law Judge. The statements disclose cash in excess of \$25,000. 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 consumer protection rules set forth in Appendix B of D.95-07-054. While the consumer protection rules for CLCs require interest on customer deposits to be paid at the three-month commercial paper rate of the Federal Reserve Board (D.95-07-054, App. B, Rule 5), the rules for NDIECs require 7% simple interest (37 CPUC2d at 146). Because applicant stated it would be administratively burdensome to segregate NDIEC deposit monies from CLC deposit monies when customers subscribe for both services, the ALJ directed applicant to apply the more pro-consumer rate of 7% simple interest on all such deposits. Similarly, she required that applicant delete the tariff provision that would have denied interest on deposits to such customers who receive two discontinuance notices within a 12 month period although this would be permissible as to CLC deposits. We concur with the ALJ's approach as to the applicable interest rate for this applicant. All deposit monies should be placed in the escrow account specified by D.95-12-056 for CLC deposits. Should we adopt a policy on this matter in the future, applicant may then file replacement tariff pages in accord with such a change. However, we believe that denial of interest is permissible when a customer receives two discontinuance notices in a 12-month period. Receipt of two disconnection notices does not ipso fact meet the NDIEC rule for prompt and timely payment in a 12-month period, which triggers the return of interest. Therefore, since this carrier cannot segregate CLC and NDIEC deposit monies, this approach may be applied to the funds, based on the specifics of this application.

Applicant's proposed schedule of rates is set forth in its application, which contains applicant's proposed tariff. In its supplement, the applicant revised the tariff provisions on deposits as set forth above. These should be corrected in line with the above paragraph as to deposits. In addition, the tariffs as to CLC service 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. Among them are:

John R. Evans, applicant's Chief Executive Officer (CEO) since 1995, served as the Chief Financial Officer and Executive Vice President (EVP) of InterCom Group, Inc. for five years. Prior to that, from 1989 to 1991, he was group controller of the electric products group of Shaw Industries. From 1983 to 1989, he held various senior management positions in accounting and treasury for Northern Telecom Canada Ltd. From 1978 to 1983, he held auditing and management information systems positions with Coopers & Lybrand. He graduated from McMaster University in 1978 and obtained his Chartered Accountancy designation in 1981. He has received post graduate training at Queen's University and Harvard Business School.

Keith V. Burge, applicant's president and chief operating officer (COO) since 1995, in 1986 was the founder, CEO and COO of Fiber Optic Technologies, Inc. (FOTI). From 1977 to 1986 he was employed by Digital Equipment Corporation. He received his B.S. degree from South Dakota State University in 1976.

Richard M. Acosta, applicant's EVP of sales and marketing, is the former VP and general manager of NextLink USA, a satellite programming subsidiary of TCI. Prior to that, he was senior manager of marketing analysis for MCI Telecommunications. From 1980 to 1985 he was product manager at US West. He holds a Bachelor's degree in business and a MBA from the University of Denver.

Christopher D. March, applicant's COO of network services, was president of the network integration services of FOTI from 1989 to 1996. From 1986 to 1989, he was an account executive with Threshold Technology, where he sold computer networking components and cabling infrastructure for local and wide area networks. He holds a mechanical engineering degree from the University of Wisconsin.

Since applicant will provide its services by reselling 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 581 telephone corporations with which it is likely to compete.

2. A notice of the filing of the application appeared in the Daily Calendar on July 7, 1997. A supplement to the application was filed August 18, 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 4 employees with a combined experience of over 50 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. Since applicant states it will be administratively burdensome to utilize two rates of interest for deposits from customers having both NDIEC and local exchange service, applicant shall apply the 7% simple interest rate to all such deposits, and must place the full deposit in the segregated escrow account specified by D.95-12-056, but may deny interest to such customers who have received two disconnect notices in a 12 month period. This approach is based on the specifics of this application.

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. The 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, 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; 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 Convergent Communications, Inc. (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'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 Attachment B to this decision. The tariff shall also be revised to comply with Finding of Fact 12 as to deposit monies for customers subscribing for both competitive local exchange service and interLATA/intraLATA service. 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 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 is also a competitive local carrier (CLC). The effectiveness of its future tariffs is subject to the schedules set forth in Appendix A, Section 4.B 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 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 filing revising the text and 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 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, Section II.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 tariff, after the effective date of this order and consistent with Ordering Paragraph 3 and Appendix B, 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 if the name or telephone number changes or at least annually.

8. 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.

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. 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.

11. 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.

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

13. 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.

14. The corporate identification number assigned to applicant is U-5874-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.

15. 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.

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

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

18. 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.

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

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

21. 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.

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

A.97-06-049 ALJ/ANW/wav

23. Application 97-06-049 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.

A.97-06-049 ALJ/ANW/wav

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 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 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 Convergent Communications, Inc. in A. 97-06-049 to be corrected in Tariff Compliance Filing.

1. Include sample forms.
2. Sheet 9: A Service Area Map was omitted. You must include a map showing Pacific Bell and GTEC's service territory.
3. Sheet 68: The tariff includes two sheet 68's. The first one shows current surcharges for CHCF-A and CHCF-B. This tariff sheet should be an original sheet not first revised sheet.
4. Sheet 87: Delete section 19.A regarding serving all locations within 300 feet of its facilities, which is not applicable to a reseller.

(END OF ATTACHMENT B)