

Decision 97-12-013 December 3, 1997

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Cross Communications, Inc., a California corporation, for a Certificate of Public Convenience and Necessity to Resell Local, InterLATA, and IntraLATA Telecommunications Services within the State of California.

ORIGINAL
Application 97-07-029
(Filed July 24, 1997;
Supplemented August 12, 1997)

O P I N I O N

I. Summary

Cross Communications, Inc. (applicant), a California corporation, seeks a certificate of public convenience and necessity (CPCN) under Public Utilities Code § 1001 for authority to resell local, interLATA,¹ and intraLATA telecommunications services as both a competitive local carrier (CLC)² and a nondominant interexchange carrier (NDIEC). We deny the application on the basis that applicant has not demonstrated that it has access to \$25,000 in unencumbered cash or cash equivalent as required by Commission decisions.

II. Regulatory 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 as providing intraLATA service. Subsequently, by

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.

² A CLC is a common carrier that is issued a CPCN to provide local exchange telecommunications service for a geographic area specified by such carrier.

D.94-09-065, we authorized competitive intraLATA interexchange services effective January 1, 1995, for carriers meeting specified criteria. In D.97-06-107 we established a simplified registration process for applicants seeking authority to operate as an NDIEC. However, applicants seeking authority to operate as both an NDIEC and a CLC must continue to file an application.

In D.95-07-054, D.95-12-056, and D.97-06-107 we set forth procedures to govern applications for authority to offer competitive local exchange service within the service territories of Pacific Bell and GTE California Incorporated. Applicants seeking authority to provide competitive local exchange service must meet the same general criteria as NDIECs.

III. Financial Qualifications of Applicant

An applicant for authority to operate as a switchless reseller of local exchange and/or interexchange services must demonstrate that it has a minimum of \$25,000 of unencumbered cash or cash equivalent to meet the firm's start-up expenses. The applicant must also demonstrate that it has sufficient additional resources to cover all deposits required by local exchange carriers and/or interexchange carriers.³

To demonstrate that it is financially qualified to be granted a CPCN, applicant provided financial statements under seal.⁴ Applicant's balance sheet dated March 31, 1997, showed that applicant has at least \$25,000 in cash. However, the balance sheet also showed that applicant's current liabilities exceed its current assets, and that its total liabilities exceed its total assets (i.e., negative equity). In addition, applicant's income statement revealed that its current operations cannot be used as a basis for finding that applicant is financially qualified to be granted a CPCN.

³ The financial standards for certification to operate as a CLC are set forth in D.95-12-056, Appendix C, Rule 4.B. The financial standards for certification to operate as an NDIEC are set forth in D.97-06-056, Attachment A, Question 9 and Instruction No. 7.

⁴ Applicant's financial statements were placed under seal pursuant to a ruling by the Law and Motion Judge dated August 25, 1997.

In light of applicant's balance sheet, assigned Administrative Law Judge (ALJ) Kenney instructed applicant to provide supplemental information explaining how it will maintain sufficient liquidity for its first year of operations as required by D.97-06-107, quoted below:

"Attach [to the NDIEC Form of Application for Registration an] audited balance sheet for the most recent fiscal year, an unaudited balance sheet as of the most recent fiscal quarter, a bank statement as of the month prior to the date of filing the application, or a third-party undertaking to provide the required amounts on behalf of applicant. If the balance sheet shows current liabilities in excess of current assets or negative equity, explain how applicant will be able to maintain sufficient liquidity for its first year of operations." (By D.97-06-107, Attachment A, Instruction No. 7, emphasis added.)

However, instead of complying with the ALJ's instructions, applicant chose to "supplement its initial showing by also relying on one of the other methods of complying with Item No. 9. As permitted by Instruction No. 7, Cross now submits a 'bank statement as of the month prior to the date of filing the Application' showing access to the required amount."³

The bank statement submitted by applicant, like the balance sheet previously submitted, showed that applicant has more than \$25,000 in cash. However, merely showing \$25,000 in cash is insufficient since we require that applicants for authority to operate as switchless resellers to possess a minimum of \$25,000 in unencumbered cash or cash equivalent.⁴ As evidenced by applicant's balance sheet, applicant does not have any unencumbered cash since its current liabilities exceed its current assets, and its total liabilities exceed its total assets (i.e., applicant has negative equity). In addition, the cash shown in the bank statement, when combined with the assets shown on applicant's

³ Cover letter of applicant's supplement submitted on August 12, 1997.

⁴ D.95-12-056, Appendix C, Rule 4.B; D.93-05-010, Ordering Paragraph No. 10; and D.91-10-041, Appendix A, Paragraph 5.1.

balance sheet, still leaves applicant's current liabilities in excess of its current assets, and its total liabilities in excess of its total assets (i.e., negative equity).

We conclude that applicant has not met our criterion for financial fitness. Consistent with our prior practice in circumstances where applicants have not met our criterion for financial fitness,⁷ we shall deny the application and close the proceeding. In any future request for this authority, applicant is to disclose the existence of this decision.

Findings of Fact

1. Application 97-07-029 was filed on July 24, 1997.
2. Notice of the application appeared in the Commission's Daily Calendar on July 28, 1997.
3. By D.97-06-107, applicants for NDIEC and CLC authority are exempt from Rule 18(b) of the Commission's Rules of Practice and Procedure (Rule 18(b)).
4. There were no protests to the application.
5. A hearing is not required.
6. An applicant for authority to operate as a CLC and/or NDIEC switchless reseller must demonstrate that it has a minimum of \$25,000 in unencumbered cash or cash equivalent that is reasonably liquid and readily available to meet the firm's start-up expenses.
7. The balance sheet included with the application shows that applicant's current liabilities exceed its current assets, and its total liabilities exceed its total assets (i.e., negative equity).
8. D.97-06-107, Attachment A, Instruction No. 7, requires an applicant to explain how it will be able to maintain sufficient liquidity for its first year of operations if the applicant's balance sheet shows current liabilities in excess of current assets or negative equity.

⁷ See for example, D.97-03-014, D.96-05-069, D.95-12-031, D.95-08-030, D.93-07-006.

9. Applicant filed a supplement to its application on August 12, 1997.

10. Applicant does not have the minimum \$25,000 in unencumbered cash or cash equivalent on hand for its proposed operations.

11. Applicant did not demonstrate that it will be able to maintain sufficient liquidity for its first year of operations.

12. In D.97-08-014 and other decisions, the Commission denied applications for NDIEC authority to applicants who did not satisfy the Commission's criterion for financial fitness.

Conclusions of Law

1. Applicant is exempt from Rule 18(b) pursuant to D.97-06-107.

2. Applicant lacks the financial ability to provide the proposed services.

3. The application should be denied.

4. The following order should be effective immediately.

O R D E R

IT IS ORDERED that:

1. The application by Cross Communication, Inc. (applicant), for a certificate of public convenience and necessity (CPCN) to operate as a reseller of local exchange, interLocal Access and Transport Area, and intraLocal Access and Transport Area telecommunications services within California is denied. This denial is without prejudice to applicant filing a new application for a CPCN at such time that applicant can demonstrate that it meets the minimum requirements established for a CPCN. Applicant shall disclose the existence of this decision in any future application for authority.

2. Application 97-07-029 is closed.

This order is effective today.

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

P. GREGORY CONLON
President

JESSIE J. KNIGHT, JR.

HENRY M. DUQUE

JOSIAH L. NEEPER

RICHARD A. BILAS

Commissioners