

ALJ/TIM/gab

Decision 98-01-006 January 7, 1998

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

Application of Preferred Carrier Services, Inc.,  
(U-5641-C) for a Certificate of Public Convenience  
and Necessity to Provide Competitive Local  
Exchange Services on a Resold Basis within the  
State of California.

**ORIGINAL**  
Application 97-09-053  
(Filed September 24, 1997;  
supplemented November 7  
and 11, 1997)

**OPINION**

**Summary**

Preferred Carrier Services, Inc. (applicant), a Texas corporation qualified to transact business in California, seeks a certificate of public convenience and necessity (CPCN) under Public Utilities (PU) Code § 1001 for authority to provide resold local exchange telecommunications services as a competitive local carrier (CLC).<sup>1</sup> By this decision, we grant the authority requested by applicant.

**Regulatory Background**

In Decision (D.) 95-07-054, D.95-12-056, and D.97-06-107, we established procedures to govern applications for authority to offer competitive local exchange service within the service territories of Pacific Bell (Pacific) and GTE California Incorporated (GTEC).<sup>2</sup> 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.

<sup>1</sup> 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.

<sup>2</sup> D.97-09-115 established procedures to govern applications for authority to provide competitive local exchange service within the territories of Roseville Telephone Company (RTC) and Citizens Telephone Company (CTC).

### **Procedural Background and Summary of Application**

Application (A.) 97-09-053 was filed on September 24, 1997. Notice of A.97-09-053 appeared in the Commission's Daily Calendar on October 15, 1997. Applicant submitted supplemental information on November 7 and 11, 1997, pursuant to the instructions of assigned Administrative Law Judge (ALJ) Kenney. There were no protests to the application. Applicant was previously authorized by D.96-07-041 to provide interexchange services in California as a switchless reseller.<sup>3</sup>

In A.97-09-053 applicant requests authority to provide local exchange services within the service territories of Pacific and GTEC.<sup>4</sup> Applicant states that it does not own switches or transmission equipment, and that it plans to operate by reselling the services of other carriers. Applicant further states that it will not construct any facilities in order to provide the services for which authority is sought in A.97-09-053.

Included with the application was a motion to place under seal the financial statements contained in Exhibit H of the application. According to applicant, the financial information in Exhibit H is highly confidential, and public disclosure of this information would cause applicant to suffer an unfair business disadvantage. We find that applicant has shown good cause for keeping its financial statements confidential pursuant to General Order 66-C, and we shall grant the motion.

### **Financial Qualifications of Applicant**

To be granted a CPCN for authority to resell local exchange service, an applicant must demonstrate that it has \$25,000 of cash or cash equivalent to meet the firm's start-up expenses. The applicant must also demonstrate that it has sufficient additional

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<sup>3</sup> Applicant failed to disclose that it previously had been granted authority to provide interexchange service in California. Applicant also failed to include its corporate identification number in its application as required by Ordering Paragraph 13 of D.96-07-041 and Rule 3(c) of the Commission's Rules of Practice and Procedure.

<sup>4</sup> Contel of California was granted final approval to merge with GTEC in D.96-04-053. We assume that applicant's request to provide service within the territory of GTEC includes the territory GTEC acquired from Contel of California.

resources to cover all deposits required by local exchange carriers (LECs) and/or interexchange carriers (IECs).<sup>5</sup>

To demonstrate that it is financially qualified to be granted a CPCN, applicant provided a balance sheet dated December 31, 1996, which showed cash in excess of \$25,000. Applicant also represented that it does not have to post a deposit with any other telecommunications carrier in order to provide local exchange service.

We find that applicant has met our requirement that it possess sufficient financial resources to undertake its proposed operations.

#### **Technical Qualifications of Applicant**

To be granted a CPCN for authority to resell local exchange service, an applicant must make a reasonable showing of technical expertise in telecommunications or a related business. To meet this requirement, applicant provided the following biographical information on four of its key employees:

**Nelson Thibodeaux, Chief Executive Officer**, founded Preferred Carrier Services, Inc., in 1994. Nelson Thibodeaux previously founded Communications Gateway Network, Inc. (CGN), which he sold to WinStar Communications, a NASDAQ traded company.<sup>6</sup>

**Jamie Thibodeaux, President**, was previously an officer of CGN responsible for all Human Resources, insurance, and customer service operations.

**Clay Garey, Chief Information Officer**, was previously the Vice President of Networks at U.S. Long Distance and WinStar Gateway Network. He has 12 years of experience in the long distance industry, including experience in marketing, programming, and engineering.

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<sup>5</sup> The financial standards for certification to operate as a CLC are set forth in D.95-12-056, Appendix C, Rule 4.B.

<sup>6</sup> CGN was granted a CPCN to provide interexchange services within California in D.93-03-054. The purchase of CGN by WinStar was approved in D.95-05-009.

Alan Smith, Vice President, is a CPA and was previously the chief financial officer of WinStar Gateway Network.

To further demonstrate its technical expertise and fitness to serve, applicant represented that no one associated with or employed by applicant was previously associated with another telecommunications carrier that filed for bankruptcy or went out of business.

As an additional check on the applicant's technical qualifications, the names of the applicant, its key employee, and related matters were searched in the ALLPUC file of the STATES library and in the FCC file of the FEDCOM library of the Lexis database. This search revealed two concerns. First, CGN, the company previously owned by applicant's president, was sold to WinStar prior to obtaining the Commission's approval as required by the PU Code.<sup>7</sup> Second, Applicant's president appears to have been an officer at WinStar at a time when WinStar may have "slammed" at least one customer in another state.

We find that applicant has met our requirement that it possess adequate technical expertise to operate as a CLC, but we are concerned about the previous failure of applicant's management to comply with the PU Code as well as the possible association of applicant's management with slamming. We shall grant the application, but we warn applicant that it is subject to various sanctions if it does not comply with the PU Code. We also warn applicant that it can expect stern treatment if it engages in slamming.

Commission staff also reviewed applicant's draft tariffs for compliance with the Commission's rules and regulations. This review identified several deficiencies which are listed in Attachment B to this decision. We shall approve the application on the

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<sup>7</sup> D.95-05-009, Findings of Fact 5 and 6.

<sup>8</sup> "Slamming" is the industry term for switching a customer's long-distance service provider without the customer's authorization.

condition that the tariff deficiencies identified by our staff are corrected by applicant in its compliance tariff filing ordered herein.

### **Conclusion**

We conclude that the application conforms to our rules for certification as a CLC. Accordingly, we shall grant applicant a CPCN to resell local exchange service in the service territories of Pacific and GTEC, including the service territory of Contel which was merged into GTEC's service territory. In exercising the authority granted herein, applicant shall at all times comply with the terms and conditions set forth in the order that follows.

### **Findings of Fact**

1. A.97-09-053 was filed on September 24, 1997.
2. Notice of the filing of A.97-09-053 appeared in the Commission's Daily Calendar on October 15, 1997.
3. Pursuant to D.97-06-107, applicants for 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 A.97-09-053.
5. Applicant provided supplemental information on November 7 and 11, 1997, pursuant to the instructions of the ALJ.
6. By D.95-07-054, D.95-12-056, D.95-12-057, and D.96-02-072, the Commission authorized CLCs meeting specified criteria to provide facilities-based local exchange services within the service territories of Pacific and GTEC beginning January 1, 1996, and resold local exchange services within the service territories of Pacific and GTEC beginning March 31, 1996.
7. A hearing is not required.
8. In D.96-07-041 applicant was granted a CPCN to provide resold interexchange service in California.
9. Applicant represented that it has a minimum of \$25,000 of cash or cash equivalent that is reasonably liquid and readily available to meet its start-up expenses.

10. Applicant represented that no deposits are required by LECs or IECs in order for applicant to provide the proposed services.

11. Applicant represented that no one associated with or employed by applicant was previously associated with or employed by another telecommunications carrier that filed for bankruptcy or went out of business.

12. Applicant demonstrated that its management possesses the requisite technical expertise to provide resold local exchange services to the public.

13. As part of its application, applicant submitted a draft of its initial tariff which contained the deficiencies identified in Attachment B to this decision. Except for these deficiencies, applicant's draft tariffs complied with the requirements established by the Commission

14. Since applicant does not propose to construct any facilities in order to provide resold local exchange services, it can be seen with certainty that granting applicant authority to provide resold local exchange services will not have a significant adverse effect upon the environment.

15. Exemptions from the provisions of PU Code §§ 816-830 have been granted to other resellers of competitive local exchange services (e.g., D.97-04-059 and D.97-02-038).

16. The transfer or encumbrance of the 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 and D.96-05-060, Ordering Paragraph 15.)

17. D.97-09-115 established the procedures to be used for obtaining authority to provide competitive local exchange services within the service territories of RTC and CTC.

#### **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 competitive local exchange services to be offered by applicant, subject to the terms and conditions set forth herein.
4. Applicant is subject to:
  - a. The current 2.4% 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-16098, December 16, 1997);
  - b. The current 0.25% 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-16090, December 16, 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) pursuant to D.97-06-107.
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. Applicant, once granted a CPCN to operate as a CLC, should be subject to the Commission's rules and regulations regarding the operations of CLCs as set forth in D.95-07-054, D.95-12-056, and other Commission decisions.

10. Any CLC which does not comply with our rules for local exchange competition adopted in Rulemaking 95-04-043 shall be subject to sanctions including, but not limited to, revocation of its CLC certificate.

11. To obtain authority to provide competitive local exchange services within the service territories of RTC or CTC, applicant must follow the procedures specified in D.97-09-115.

12. The applicant's motion states proper grounds under General Order 66-C for a limited protective order and the requested relief should be granted.

13. Because of the public interest in competitive 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 Preferred Carrier Services, Inc. (applicant), to operate as a reseller of competitive local exchange services, subject to the terms and conditions set forth below.

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

3. 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 tariffs are on file. Applicant's initial filing shall be made in accordance with General Order (GO) 96-A, excluding §§ IV, V, and VI. The tariff shall be effective not less than one day after tariff approval by the Commission's Telecommunications Division. Applicant shall comply with the provisions in its tariffs.



4. Applicant is a competitive local exchange carrier (CLC). The effectiveness of its future CLC tariffs is subject to the schedules set forth in Appendix C, Section 4.B of Decision (D.) 95-12-056:

"E. CLCs shall be subject to the following tariff and contract filing, revision and service pricing standards:

"(1) Uniform rate reductions for existing tariff services shall become effective on five (5) working days' notice. 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 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.90-11-029, shall become effective on not less than (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.

"(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 § 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, 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 tariff, after the effective date of this order and consistent with Ordering Paragraph 3, a service area map.

7. Applicant's initial tariff shall correct the deficiencies identified in Attachment B to this order.

8. 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.

9. Applicant shall notify this Commission in writing of the date that local exchange service is first rendered to the public. This notice shall be provided no later than five days after local exchange service first begins.

10. 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.

11. 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.

12. Applicant shall file an annual report, in compliance with GO 104-A, on a calendar-year basis using the information request form developed by Commission staff contained in Attachment A to this decision.

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

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

15. The corporate identification number assigned to applicant by D.96-07-041 is U-5641-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.

16. 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.

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

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

19. 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 Commission's Telecommunications Division shall prepare for Commission consideration a resolution that revokes the applicant's CPCN, unless the applicant has received written permission from the Commission's Telecommunications Division to file or remit late.

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

23. This order does not grant authority to provide competitive local exchange services within the service territories of Roseville Telephone Company (RTC) or Citizens Telephone Company (CTC). To obtain authority to provide competitive local

exchange services within the service territories of RTC or CTC, applicant must follow the procedures specified in D.97-09-115.

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

25. The financial information referred to in the application as Exhibit H shall remain under seal for a period of one year from the date of this order, and during this period shall not be made accessible or disclosed to anyone other than Commission staff except on the further order or ruling of the Commission, the Assigned Commissioner, the assigned Administrative Law Judge (ALJ), or the ALJ then designated as the Law and Motion Judge. If the applicant believes that further protection of this information is needed after one year, it may file a motion stating the justification for further withholding of Exhibit H from public inspection or other such relief as the Commission's rules may then provide. This motion shall be filed no later than 30 days before the expiration of this limited protective order.

26. Application 97-09-053 is closed.

This order is effective today.

Dated January 7, 1998, at San Francisco, California.

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

A.97-09-053 ALJ/TIM/gab

**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 California Competitive Local Carriers. 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 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 Preferred Carrier Services, Inc. in A. 97-09-053 to be corrected in Tariff Compliance filing.

1. Include sample forms.
  2. On each tariff sheet, add and center the following words above the horizontal line:  
"Competitive Local Carrier".
  3. Need to list all Commission mandated surcharges.
  4. Include a preliminary statement showing symbols which conform with G.O.96-A.
  5. 1-T, Sheet 6, Item C: Delete the statement that company at its sole option accepts oral requests for service. 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.
  6. 1-T, Sheet 7, Contracts are subject to G.O. 96-A rules and must be approved by advice letter filing. There is no blanket authority for contract agreements.
  7. 1-T, Sheet 10, Deposits: Include statement that a customer's deposit will be refunded after 12 months of timely payments by the customer.
  8. 1-T, Sheet 10, Deposits: Need to clarify the deposit is based on twice the average monthly bill for class of service requested, not the customers past usage or the subscriber's own estimate of expected usage.
  9. 1-T, Sheet 13, Discontinuance of Service: State that 9-1-1 service is available at no charge even if residential customer is disconnected for non-payment as stated in Appendix B, Rule 10.C.
- 2-T, Sheet 9: ULTS rates: D. 95-09-065 established statewide ULTS rates of \$5.62 for 1FR and \$ 3.00 for 1MR. Those rates must be shown in your tariff. You may not charge more than those rates.

**(END OF ATTACHMENT B)**