

Decision 98-01-015 January 7, 1998

JAN 7 1998

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Focal Communications Corporation of California for a Certificate of Public Convenience and Necessity to Provide Switched and Dedicated, Resale and Facilities Based, Interexchange and Local Exchange Telecommunications Services in California.

Application 97-07-028
(Filed July 23, 1997)

O P I N I O N

ORIGINAL

Summary

By this decision, we grant Focal's application for authority to act as a Competitive Local Exchange Carrier (CLC) and Interexchange Carrier (IEC) within the territories of Pacific Bell and GTE California Incorporated (GTEC), and to provide resold interLATA and intraLATA telecommunications services within California. Focal's application for authority to provide facilities-based telecommunications services will be handled in a separate decision.

The Application

Focal Communications Corporation of California (Focal or applicant), a Delaware corporation authorized to do business in California, and a subsidiary of Focal Communications Corporation, also a Delaware corporation, seeks a Certificate of Public Convenience and Necessity (CPCN) under Public Utilities (PU) Code §1001 to permit it to provide "switched and dedicated, resale- and facilities-based, Interexchange and Local Exchange telecommunications services in California." Because of delay necessitated by the Commission having to conduct an environmental impact review for applications for facilities-based telecommunications services, this decision deals only with that part of Focal's application to resell interLATA and intraLATA

telecommunications services' as well as act as a CLC and as an IEC. That part of Focal's application that seeks a CPCN to provide switched and dedicated facilities-based telecommunications services in California will, as noted above, be handled in a separate decision.

Notice of the filing of the application appeared in the July 25, 1997, Daily Calendar. No protests or other opposition to the application have been submitted and the time for submission of the same has expired. No hearing on the application is deemed necessary.

Discussion

InterLATA and IntraLATA Reseller Authority

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.

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.

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 \$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 firms start-up expenses. Such applicants 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.

Applicant proposes to provide services at rates competitive with existing carriers. Applicant must submit proposed tariffs that conform to the consumer protection rules set forth in Appendix B of D.95-07-054. Applicant's proposed tariff, containing its proposed rates and terms and conditions of service, is attached as Exhibit 6 to the application. We conclude that applicant's tariffs properly conform to Commission rules, except for the list of tariff deficiencies identified in Attachment B of this decision. In its compliance tariff filing, applicant is directed to correct the deficiencies.

Financial Information

For its financial information (Exhibit 5 to the application), Focal indicated that it will rely on its parent, Focal Communications Corporation, and has provided a blank page marked "confidential" in the application, but filed the required information separately under seal. We deem that to be the equivalent of a motion for a limited

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.

protective order concerning the information in Exhibit 5. No opposition or objection has been filed, and we will grant the request for a limited protective order concerning that information (Exhibit 5). A review of the financial information submitted indicates that applicant has more than \$25,000 available for its use from its parent. It therefore satisfies our criteria for being reasonably liquid and readily available to meet the applicant's needs.

Technical/Managerial Expertise

Applicant has provided information on its key managers, indicating their education, technical training, and experience. It can be summarized as follows:

Robert C. Taylor, Jr., President and Chief Executive Officer, served with MFS Communications of Mexico for approximately three years, as Regional Director of Development, Vice President -Strategic Business Operations, and most recently as Chief Operating Officer. Prior to his service with MFS of Mexico, Mr. Taylor worked for eight years in various executive capacities with Ameritech, Bell Communications Research, MCI Communications Corp., and McLeod Telecommunications Group. Mr. Taylor holds a B.S. in Mechanical Engineering from the University of Denver and an M.B.A. (Management/Finance) from the University of Chicago .

John R. Binicle, Executive Vice President/Chief Operating Officer has been associated with the telecommunications industry since June of 1986. Since that time, he has served as Staff Engineer-Technical Planning with Centel Telephone Headquarters, Manager of Sales Engineering at Centel of Florida, Senior Manager of Marketing at Centel of Illinois, Director of Product Development at MFS Telecom and most recently as Vice President-Marketing at MFS Telecom Companies. He holds a B.S. in Electrical Engineering from the University of Illinois and an M.B.A. with Distinction (Finance) from DePaul University

Brian F. Addy, Executive Vice President, has been engaged in various aspects of telecommunications since August, 1986. He has served as Account Executive with Centel Business Systems, Products Manager with Centel Telephone Headquarters, General Manager of Centel Paging, Sales Manager of Centel of Illinois and most

recently as General Manager of Centel Cellular Company of New Mexico. He holds a B.S. in Electrical Engineering from Duke University.

Joseph A. Beatty, Executive Vice President/Chief Financial Officer, worked directly in telecommunications from June, 1985 to July, 1989 as Assistant staff Manager - Technical Planning, for Centel Telephone Headquarters, and from July, 1989 to July, 1992 as Manager-Sales Engineering for Centel of Illinois/Ohio. More recently, he served from July, 1992 to September, 1994 as Vice President of Duff & Phelps Credit Rating Company, where he was responsible for providing credit ratings on public bond issues of telecommunications firms, and from September, 1994 to the application date as Vice President, Investment Analyst, where he was responsible for investment research coverage of the telecommunications industry for a "major broker/dealer". Mr. Beatty holds a B.S. in Electrical Engineering from the University of Illinois, an M.B.A. (Finance) from The University of Chicago, and is a Chartered Financial Analyst accredited by the Association for Investment Management and Research.

From the above, we conclude that Focal has the financial resources and requisite level of technical/management expertise available to it to meet the Commission's requirements, and will grant the application to provide interLATA and intraLATA services within California.

Competitive Local Exchange and Interexchange Authority

By D.95-07-054, we established initial procedures for the filing of requests for authority to offer competitive local exchange service, commonly referred to as competitive local carrier or CLC service within the service territories of Pacific Bell and GTEC. Prospective competitive local service carriers that filed petitions by September 1, 1995, and that 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 Bell and GTEC was authorized effective March 31, 1996. Any filings for such authority made after September 5, 1995, were to be treated as applications and processed in the normal course of the Commission's business. Applicant's request for authority to resell local

exchange service was made on July 23, 1997, therefore, the request was docketed as an application.

The financial and technical expertise requirements for non-facilities based CLC's are the same as those for switchless interLATA and intraLATA telecommunications providers respectively. Here, since Focal meets the requirements for authority to provide switchless interLATA and intraLATA telecommunications services within California, it also meets the requirements for nonfacilities based CLCs. We will grant the authority to provide service as a CLC within the territories of Pacific Bell and GTEC subject to the consumer protection regulations affixed as Appendix A.

In compliance with Rule 18(b), of the Commission's Rules of Practice and Procedure, applicant has provided the names and addresses of entities with which it may compete in offering these services (Exhibit 3 to the application). Applicant states that a copy of the application has been mailed to each of these likely competitors.

Findings of Fact

1. A notice of the filing of the application appeared in the Daily Calendar on July 25, 1997.
2. No protests have been filed.
3. No opposition to the motion for confidentiality of the applicant's financial documents has 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 D.94-09-065, we authorized competitive intraLATA services effective January 1, 1995, for carriers meeting specified criteria.
7. By prior Commission decisions, we authorized competition in providing local exchange telecommunications service within the service territories of Pacific and GTEC.

8. By D.95-07-054, D.95-12-056, D.96-02-072, and D.96-03-020, we authorized resale competitive local carrier services effective March 31, 1996, for carriers meeting specific criteria.

9. 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.

10. Applicant's technical experience consists of four employees with a combined experience of over 40 years in telecommunications.

11. Applicant has submitted with its application a complete draft of applicant's initial tariff which complies with the requirements established by the Commission including prohibitions on unreasonable deposit requirements.

12. 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.

13. Since no facilities are to be constructed in connection with the services authorized by this CPN, it can be seen with certainty that the proposed operation will not have a significant effect upon the environment.

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

15. 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.)

16. 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 authorized by this CPCN.

2. Applicant has made a reasonable showing of technical expertise in telecommunications.

3. Public convenience and necessity require the competitive local exchange and interLATA and intraLATA services to be offered by applicant.
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).
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 competitive local carrier which does not comply with our rules for local exchange competition adopted in Order Instituting Rulemaking 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 local exchange services and competitive interLATA and intraLATA 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 Focal Communications Corporation of California (applicant) to operate as a reseller of competitive local exchange services and to operate as reseller of interLocal Access and Transport Area (interLATA) and, to the extent authorized by Decision (D.) 94-09-065, intraLocal Access and Transport Area (intraLATA) telecommunication service[s] 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 services. Applicant may not offer such 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 Attachment B in this decision. 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.

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."

c. 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.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 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."

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 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.

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 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.

7. Applicant shall notify this Commission in writing of the date local exchange or interLATA service is first rendered to the public within five days after each 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 Commission staff travel to applicant's 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 and Appendix 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-5922-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. Applicant is exempted from Rule 18(b) of the Commission's Rules of Practice and Procedure to the extent that the rule requires applicant to serve a copy of its application on the cities and counties it propose to operate in and to the extent that the rule requires applicant to serve a copy of all exhibits attached to its application on potential competitors.

18. If applicant is 90 days or more late in filing an annual report or 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 applicant has received the written permission of Telecommunications Division to file or remit late.

19. 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.

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

21. Application 97-07-028 shall remain open for consideration of that part of the application that seeks authority to provide facilities based telecommunications services.

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.97-07-028 ALJ/RLR/wgp

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.

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)

Appendix A
CONSUMER PROTECTION REGULATIONS APPLICABLE
TO REGISTERED IECs AND IECs NOT REQUIRED TO FILE TARIFFS

RULE 1 - PURPOSE, APPLICABILITY AND DEFINITIONS

A. The purpose of these Consumer Protection Regulations is to establish rules for consumer protection of current or potential customers who take service from interexchange carriers (IECs) that are registered to operate within the State of California by the Commission and/or are not required to file tariffs (each, an Exempt IEC). In addition, any telephone corporation that does not hold a certificate of public convenience and necessity and is not registered shall be deemed to be an Exempt IEC for purpose of these Consumer Protection Regulations.

B. These Consumer Protection Regulations apply to Exempt IECs and, where noted, to IECs holding certificates of public convenience and necessity whether or not such IECs are also exempt from filing tariffs. Unless otherwise directed by the Commission, either on its own motion or after notice and an opportunity to be heard on the record into the facts and circumstances involved in any complaint proceeding, Exempt IECs shall observe the provisions set forth in these regulations.

C. The following definitions shall apply to these regulations:

- (1) Applicant or customer means any individual or entity that has applied to an Exempt IEC for service or is presently entitled to receive service, respectively, on a pre-subscribed basis. Where appropriate to protect the public under these Consumer Protection Regulations, customer shall also include a consumer who receives service from an IEC even though the consumer never authorized the IEC to provide service.
- (2) Commission means the Public Utilities Commission of the State of California.
- (3) Completed call or telephonic communication means a call or other telephonic communication, originated by a person or mechanical/electrical device from one number to another number that is answered by a person or such device. For such purpose, the numbers may be assigned to locations within any portion of the State of California and the communication may consist of voice, data, a combination of each of voice and data, or other transmission by wire or radio and may be of any duration.
- (4) Date of presentation means the latest postmark date on the billing envelope.

COM/JXX

- (5) Agent means a business representative whose function is to bring about, modify, affect, accept performance of, or terminate contractual obligations between an Exempt IEC and applicants or customers.
- (6) Minor rate increase means an increase which (i) represents less than a 1% increase of the Exempt IEC's total California intrastate revenue compared to the rates and transactions in effect over the most recently completed fiscal year of the Exempt IEC and (ii) is less than 5% of the rate for the affected service. Increases shall be cumulative, such that if the sum of the proposed rate increase and rate increases that took effect during the preceding 12-month period for any service would not be a minor rate increase, then any rate increase that would otherwise be a minor rate increase shall be deemed a major rate increase.
- (7) Major rate increase means any rate increase that is not a minor rate increase as defined in Rule 1(C)(6).

RULE 2 - EXEMPT IEC INFORMATION

Exempt IECs shall inform each applicant or customer of his or her right to receive and shall provide, upon request, each applicant for service or customer the following:

- A. The California Public Utilities Commission identification number of its registration to operate as a telecommunications corporation within California.
- B. The address and telephone number (including any toll-free telephone number) of the California Public Utilities Commission to verify its authority to operate.
- C. A copy of these Consumer Protection Regulations.
- D. A toll-free number to call for service or billing inquiries, along with an address where the customer may write the Exempt IEC.
- E. A full disclosure of the name of the Exempt IEC and all fictitious i.e., "dba" names.
- F. Rate information as required by Rule 7(A).

RULE 3 - INITIATION OF SERVICE

Service may be initiated based on a written or oral agreement between the Exempt IEC and the customer. In either case, prior to the agreement, the customer shall be informed of all rates and charges for the services the customer desires and any other rates or charges which will appear on the customer's first bill.

COM/JXX

If the agreement is oral, within 10 days of initiating the service order, the Exempt IEC will provide a confirmation letter setting forth a brief description of the services ordered and itemizing (in terms of the minimum and maximum per minute charges for calls within the State of California) all charges which will appear on the customer's bill. The letter must be in the same language in which the agreement was concluded.

Potential customers who are denied service for failure to establish credit or pay deposit as described in Rule 13 must be given the reason for the denial in writing within 10 days of service denial.

All orders for service must comply with the applicable requirements of state and federal law including, without limitation, Public Utilities Code Section 2889.5 and 47 CFR 64.1100 and 64.1150, and 16 CFR Parts 310 and 420.

Exempt IECs shall maintain a register of all forms of agreement in which such forms shall be identified with a unique designation. Exempt IECs shall record the form of agreement that applies to each customer. In the event that any form of agreement incorporates variable price terms, the Exempt IEC shall prepare a separately designated memorandum of such price terms for each customer taking service under such form of agreement and record the memorandum that applies to the customer. Upon the demand of the customer, the Exempt IEC shall promptly provide the form of agreement and any memorandum of price terms applicable to the customer.

RULE 4 - SPECIAL INFORMATION REQUIRED ON FORMS

A. Customer Bills

Whether the customer is billed directly by the IEC, through a billing agent, or through a local exchange company or competitive local carrier, the name of the Exempt IEC that provides service to the customer shall be identified on each bill prominently. The only other telephone corporation that may be identified on the bill is the local exchange carrier or competitive local carrier that provides service to the customer or the facilities based LEC that provides service to the Exempt IEC, in which case the names, logotypes or other identifying marks must be less prominent than those of the Exempt IEC and it must be stated that the Exempt IEC is the customer's long-distance telephone company. Each bill must prominently display a toll-free number for service or billing inquiries, along with an address where the customer may write. Each bill for telephone service will contain notations concerning the following areas:

- (1) When to pay your bill;
- (2) Billing detail including the period of service covered by the bill;
- (3) Late payment charge and when applied;

COM/JXX

- (4) How to pay your bill;
- (5) Questions about your bill;
- (6) In addition to the above, each bill rendered to a California billing address shall include the following statement:

"This bill is now due and payable; it becomes subject to a late payment charge if not paid within 15 days calendar days of presentation date. Should you question this bill, please request an explanation from [name of Exempt IEC].

If you believe you have been billed incorrectly you may file a complaint with the California Public Utilities Commission, Consumer Services Division, 505 Van Ness Avenue, San Francisco, CA 94102, or 107 South Broadway, Room 5109, Los Angeles, CA 90012. To avoid having service disconnected, payment of the disputed bill should be made "under protest" to the CPUC or payment arrangements should be made agreeable to the Exempt IEC pending the outcome of the Commission's Consumer Services Division review. The Consumer Services Division shall review the basis of the billed amount, communicate the results of its review to the parties and inform you of your recourse to pursue the matter further with the Commission."

B. Deposit Receipts

Each deposit receipt shall contain the following provisions:

"This deposit, less the amount of any unpaid bills for service furnished by [name of Exempt IEC], shall be refunded, together with interest at the 3-month commercial paper rate published by the Federal Reserve Board, within 30 calendar days after the discontinuance of service, or after 12 months of service, whichever comes first. However, deposits may not receive interest if the customer has received a minimum of two notices of discontinuance of service for nonpayment of bills in a 12-month period.

RULE 5 - CREDIT ESTABLISHMENT

Each applicant for service shall provide credit information satisfactory to the Exempt IEC or pay a deposit. Deposits shall not be required if the applicant:

- A. Provides credit history acceptable to the Exempt IEC. Credit information contained in the applicant's account record may include, but shall not be limited to, account established date, "can-be-reached" number, name of employer, employer's address, customer's driver's license number or other acceptable personal identification,

COM/JXX

billing name, and location of current and previous service. Credit cannot be denied for failure to provide social security number.

B. A cosigner or guarantor may be used providing the cosigner or guarantor has acceptable credit history with the serving Exempt IEC or an acceptable Exempt IEC.

C. A Exempt IEC cannot refuse a deposit to establish credit for service. However, it may request the deposit to be in cash or other acceptable form of payment (e.g., cashier's check, money order, bond, letter of credit).

RULE 6 - DEPOSITS

In the event the customer fails to establish a satisfactory credit history, deposits are a form of security that may be required from customers to ensure payment of bills.

Deposits shall be no greater than twice the estimated average monthly bill for the class of service applied for.

The average bill will reflect the aggregate services requested by the customer. Deposits will be refunded with interest within 30 days after discontinuance of service or after 12 months of service, whichever comes first. Interest will be added to the deposit using the 3-month commercial paper rate published by the Federal Reserve Board, except under the following conditions: no interest shall be given if the customer has received a minimum of two notices in a 12-month period as provided under Rule 7(B)(2).

RULE 7 - NOTICES

Each Exempt IEC shall provide notices to its customers, as follows:

A. Rate information and information regarding the terms and conditions of service shall be provided in writing upon request by a current or potential customer. Upon written request, customers shall be entitled to receive notice of major increases in rates, which shall be provided in writing and postmarked at least 30 days prior to the effective date of the change. No customer notice shall be required for minor rate increases or for rate decreases. Upon written request, customers shall be entitled to be advised of optional service plans in writing as they become available. In addition, upon written request, customers shall be entitled to be advised of changes to the terms and conditions of service prior to the beginning of the company's periodic billing cycle during which such changes are intended to become effective.

B. Discontinuance of Service Notice

(1) Notice by Customers

COM/JXX

Customers are responsible for notifying the Exempt IEC of their desire to discontinue service on or before the date of disconnection. Such notice may be either oral or written. If oral, the IEC may require appropriate verification of the identity of the customer. A customer may authorize another Exempt IEC or a local exchange company or competitive local carrier to give such notice on customer's behalf, and no Exempt IEC shall re-establish service that has been terminated without the express consent of the customer, which consent may not be founded upon any purported term in an agreement for service that binds the customer to take service from the Exempt IEC for a term or continually.

(2) Notice by Exempt IEC

Rules in Commission Decision 91188, regarding discontinuance of service related to criminal prosecution, will remain in effect for Exempt IECs.

Notices to discontinue service for nonpayment of bills shall be provided in writing by first class mail to the customer not less than 7 calendar days prior to termination. Each notice shall include all of the following information:

- (a) The name and address of the customer whose account is delinquent.
- (b) The amount that is delinquent.
- (c) The date when payment or arrangements for payment are required in order to avoid termination.
- (d) The procedure the customer may use to initiate a complaint or to request an investigation concerning service or charges.
- (e) The procedure the customer may use to request amortization of the unpaid charges.
- (f) The toll-free telephone number of a representative of the Exempt IEC, who can provide additional information or institute arrangements for payment.
- (g) The telephone number (including any toll-free number) of the Commission's Consumer Services Division where the customer may direct inquiries.

C. Rules for Exempt IEC Notices

Notices the Exempt IEC sends to customers, or the Commission, shall be a legible size and printed in a minimum point size type of 10 and are deemed made on

COM/JXX

date of presentation (Rule 1(C)(4)). The Exempt IEC shall provide a copy of the form of any notice required to the Consumer Services Division (CSD) of the Commission.

RULE 8 - PRORATING OF BILLS

Any prorated bill shall use a 30-day month to calculate the pro-rata amount. Prorating shall apply only to recurring charges. All nonrecurring and usage charges incurred during the billing period shall be billed in addition to prorated amounts.

RULE 9 - DISPUTED BILLS

In case of a billing dispute between the customer and the Exempt IEC as to the correct amount of a bill, which cannot be adjusted with mutual satisfaction, the customer can make the following arrangement:

A. First, the customer may make a request, and the Exempt IEC will comply with the request, for an investigation and review of the disputed amount.

B. The undisputed portion of the bill must be paid by the Due By Date (No sooner than 15 days of the date of presentation) shown on the bill or the service will be subject to disconnection if the Exempt IEC has notified the customer by written notice of such delinquency and impending termination.

C. If there is still disagreement after the investigation and review by a manager of the Exempt IEC, the customer may appeal to CSD for its investigation and decision. To avoid disconnection of service, the customer must submit the claim and, if the bill has not been paid, deposit the amount in dispute with CSD within 7 calendar days after the date the Exempt IEC notifies the customer that the investigation and review are completed and that such deposit must be made or service will be interrupted. However, the service will not be disconnected prior to the Due By Date shown on the bill.

D. The Exempt IEC may not disconnect the customer's service for nonpayment as long as the customer complies with (B) and (C) above.

E. The Exempt IEC shall respond to CSD's requests for information within 10 business days; provided, however, that the Exempt IEC shall provide CSD a copy of the form of agreement and memorandum (if any) applicable to the customer as described in Rule 3 within two business days following CSD's request.

F. The CSD will review the claim of the disputed amount, communicate the results of its review to the customer and Exempt IEC and make disbursement of the deposited amount if neither the customer nor the Exempt IEC requests in writing that the dispute be converted into a formal complaint within 10 days. The customer's request may be in letter form, but the request of the Exempt IEC shall be an appropriate formal pleading.

G. After the investigation and review are completed by the Exempt IEC as noted in (A) above, if the customer elects not to deposit the amount in dispute with the

COM/JXX

CSD, such amount becomes due and payable at once. In order to avoid disconnection of service, such amount must be paid within 7 calendar days after the date the Exempt IEC notifies the customer that the investigation and review aye completed and that such payment must be made if service will be interrupted. However, the service will not be disconnected prior to the Due By Date shown on the bill.

RULE 10 - BILLS PAST DUE

Bills are due and payable on the date of presentation. A late payment charge of not more than 1.5% per month may be applied if payment is not received by the utility on or before the late payment date which date will be prominently displayed on the customer's bill. The late payment date will be at least 15 days after the date of presentation on the billing envelope. Exempt IECs shall credit payments as of the business day received to avoid assessing late payment charges incorrectly.

RULE 11 - DISCONTINUANCE AND RESTORATION OF SERVICE

A. Service may be discontinued for nonpayment of bills provided:

- (1) The bill has not been paid by the due date shown on the bill.
- (2) Notice of the proposed discontinuance is provided pursuant to Rule 7(B)(2).
- (3) Service is not initially discontinued on any Saturday, Sunday, legal holiday, or any other day Exempt IEC service representatives are not available to serve customers.

B. Fraud

The Exempt IEC shall have the right to refuse or discontinue service without advance notice if the acts of the customer are such as to indicate intention to defraud the Exempt IEC. This includes fraudulently placing and receiving calls and/or providing false credit information.

RULE 12 - CHANGE OF SERVICE PROVIDER

A. Solicitation of customer authorization for service termination and transfer.

Solicitations by Exempt IECs, or their agents, of customer authorization for termination of service with an existing carrier and the subsequent transfer to a new carrier must include current rate information on the new carrier and information regarding the terms and conditions of service with the new carrier.

Solicitations by Exempt IECs, or their agents, must conform with California Public Utilities Code Section 2889.5 and other applicable state and federal law. All

COM/JXX

solicitations sent by Exempt IECs or their agents to customers must be legible and printed in a minimum point size type of at least 10 points. A penalty or fine of up to \$500 may apply for each violation of this Rule.

B. Unauthorized service termination and transfer ("Slamming")

An Exempt IEC will be held liable for any violation of PU Code Section 2889.5, including, without limitation, the unauthorized termination of service with an existing carrier and the subsequent unauthorized transfer to their own service. Exempt IECs are responsible for the actions of their agents that solicit unauthorized service termination and transfers. A carrier who engages in such unauthorized activity shall restore the customer's service to the original carrier without charge to the customer. All billings during the unauthorized service period shall be refunded to the applicant or customer. A penalty or fine may apply to each violation of this Rule, pursuant to PU Code Section 2107. As prescribed under PU Code Section 2108, each day of a continuing violation shall constitute a separate and distinct offense. The Exempt IEC responsible for the unauthorized transfer will reimburse the original carrier for reestablishing service at the tariff rate of the original carrier, or, if such carrier does not have a tariff, at the highest rate such carrier then offers to new customers.

RULE 13 - FAILURE TO ESTABLISH CREDIT OR PAY DEPOSIT

The Exempt IEC may refuse service if credit is not established satisfactory to the Exempt IEC and may deny or disconnect service if a deposit is not paid as required in Rule 6.

RULE 14 - LIMITATION OF LIABILITY OF EXEMPT IEC

The Exempt IEC shall not be liable for consequential damages or for any failure of performance due to causes beyond its control, including, without limitation to, acts of God, fires, floods or other catastrophes, national emergencies, insurrections, riots or wars, strikes, lockouts, work stoppage or other labor difficulties, and any order, regulation or other action of any governing authority or agency thereof.

RULE 15 - PRIVACY OF CUSTOMERS

Exempt IECs are restricted from releasing nonpublic customer information in accordance with PU Code Sections 2891, 2891.1, and 2893. For each new customer, and on an annual basis for continuing customers, Exempt IECs shall provide in writing a description of how the carrier handles the customer's private information and a disclosure of any ways that such information might be used or transferred that would not be obvious to the customer. Exempt IECs are subject to the credit information and calling record privacy rules set forth in Appendix B of Decision Nos. 92860 and 93361, except as modified by Decision Nos. 83-06-066, 83-06-073, and 83-09-061.

COM/JXX
RULE 16 - VENUE

To protect customers against the practice of Exempt IEC's obtaining out-of-state small claims court default judgments arising from alleged payment defaults, a Exempt IEC shall bring an action for collection of any charge only in the county in which the customer resides or, in the case of a business customer, has its principal place of business within the State of California. Every registrant shall consent to venue for actions brought by a customer in the county in which the customer resides or has its principal place of business within the State of California.

RULE 17 - EMPLOYEE IDENTIFICATION

Each Exempt IEC shall cause any employee to be issued an identification card if the employee requests entry in the course of employment into any building or structure on the premises of the customer, and shall require the employee to present such card as required by PU Code Section 708. Each Exempt IEC shall cause each employee to identify himself or herself at the request of any applicant or customer in a telephone conversation with his or her first and last name or a unique employee number.

RULE 18 - FEES AND SURCHARGES

Each Exempt IEC 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-15801, October 5, 1995);
- C. The user fee provided in PU Code §§ 431-435, which is 0.11% of gross intrastate revenue for the 1996-1997 fiscal year (Resolution 4782); and
- D. The current 0.27% 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 (PU Code § 739.30; Resolution T-15826, December 20, 1995).

The Executive Director of the Commission is authorized to amend this Rule from time to time to conform to subsequent resolutions of the Commission.

ATTACHMENT B

Page 1

List of deficiencies in tariffs filed by Focal Communications Corporation of California in A. 97-07-028 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. The tariff sheets used in the tariff schedules does not comply with our rule on construction of tariff schedules for filing. Please refer to General Order (G.O.) 96-A, page 4 and see exhibits A1 to 4.
4. A Service Area Map was omitted.
5. Original page 4: Symbols used do not conform with General Order (G.O.) 96-A.
6. Original page 5: Application of Tariff needs to be more specific as to services provided. Also need to include a preliminary statement indicating where the company intends to offer local exchange service. Only Pacific Bell, GTEC, Roseville and Citizen's service areas are open to competition.
7. Page 3 of Section 2: Modify rule 2.1.3.B to clarify that 7 days written notice will be given by the company prior to disconnection.
8. Page 2 of Section 2: Rule 2.1.3.A , minimum service period of one month violates customer's right to give notice of discontinuance on or before the date of disconnection. Rule 2.1.3.B states that customers wishing to obtain service may be required to enter into written service orders. Company cannot require a written service orders because rule 2 of Appendix B of D. 95-07-054 provides that service may be initiated based on written or oral agreement between the CLC and the customer. Also customers who wish to disconnect service cannot be required to give 30 days written notice, per rule 6.B.1 of Appendix B of D. 95-07-054. Also need to replace 2.1.3.C with the following language, " The non-prevailing party may be liable for reasonable court costs and attorney fees as determined by the CPUC or by the courts".
9. Page 4-6 of Section 2, 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 & C respectively.
10. Page 17 of Section 2: Rule 2.5.1: Advance payments cannot be required for usage. It is allowed only on non-recurring charges and 1st month's recurring charges.

ATTACHMENT B

Page 2

11. Page 18 of Section 2: Rule 2.5.2 on deposits needs to be changed to fully comply with Rule 5 in Appendix B of D. 95-07-054. Deposits are based on twice the average monthly bill for the class of service requested. Rule 2.5.2.C must be changed to reflect that the deposit balance must be returned within 30 days after discontinuance of service or after 12 months of service whichever comes first. However, no interest shall be given if the customer has received a minimum of two notices of disconnection in a 12-month period. Also interest on deposits is set at 3 month commercial paper rate published by the Federal Reserve Board under rule 5 of Appendix B.
12. Page 20 of Section 2: Modify rule 2.6.3.A to show that 7 days written notice will be given by the company prior to disconnection for non-payment, not 24 hours. Also to discontinue or suspend service due to customers insolvency is discriminatory and violates the company's obligation to serve. This clause may be replaced with a requirement for, or an increase in deposit in the case of a customer's filing of bankruptcy. Also delete rule 2.6.3 G the company cannot require payment of future charges when it discontinues service to the customer.
13. Page 21 of Section 2: Need to delete rule 2.6.4 . Customers who wish to disconnect service cannot be required to give 30 days written notice , per rule 6.B.1 of Appendix B of D. 95-07-054.
14. Page 22 of Section 2: rule 2.6.5.A , indicates applications for service are non-cancelable unless the company otherwise agrees. This appears to violate Rule 6.B.1 of Appendix B which allows a customer to provide verbal or written notice of service termination.
15. Page 31 of Section 2, Notices : Need to modify rule 2.12.C to clarify that notice of intent to discontinue service from the customer to the company may be verbal.
16. Section 3 - 13 : Need to provide actual rates for types of services offered. Also need to indicate if the company intends to offer both business and residential service . If you intend to offer residential service then you must provide ULTS service. The ULTS service must be tarified.
17. Page 4 of Section 13: Individual case basis (ICB) Arrangements and Promotional Offerings must be submitted by Advice Letter on a case by case basis. There is no blanket authority for ICB arrangements and Promotional Offerings.
18. The company must include a demarcation tariff or concur in another carrier's tariff.
19. Include all of the information set forth in Special Information Required on Forms as shown in rule 3 of Appendix B in D. 95-07-054.
20. Need to list all CPUC mandated surcharges.

21. Per D. 95-12-057, the tariff must be revised to state which provider the company will use to administer the Deaf and Disabled Equipment Distribution Program.
22. Include a statement on customer privacy per Appendix B, rule 14.
23. Include statement on change of service provider per Appendix B, rule 11.

(END OF ATTACHMENT B)