

APR 9 1998

Decision 98-01-016 April 9, 1998

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of Omniwerx, a general partnership, for a Certificate of Public Convenience and Necessity to Operate as a Reseller of Local Exchange, Interexchange (interLATA and intraLATA), and Wireless Telecommunications Services within the State of California.

ORIGINAL
Application 98-01-021
(Filed January 26, 1998)

O P I N I O N**I. Summary**

Omniwerx, a general partnership (applicant), seeks a certificate of public convenience and necessity (CPCN) under Public Utilities (PU) Code § 1001 for authority to provide nonfacilities-based resold local exchange, interexchange, and wireless telecommunications services. By this decision, we grant the authority requested for local exchange service subject to the terms and conditions set forth below. Omniwerx has previously been registered as an interexchange and wireless provider.

II. 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, Inc. (GTEC). Applicants that 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.95-12-056; and (3) the customer notification and education rules adopted in D.96-01-049.

III. Overview of the Application

Applicant, a California general partnership, filed Application (A.) 98-01-021 on January 26, 1998. There were no protests to the application. Applicant seeks authority

to provide nonfacilities-based resold interexchange service as a nondominant interexchange carrier (NDIEC), and local exchange services as a competitive local carrier (CLC) throughout Pacific's and GTEC's service territories. Applicant's inclusion of wireless service in this application requires no further action since it is already registered.

IV. Financial Qualifications of Applicant

To be granted a CPCN, an applicant for authority to provide nonfacilities-based local exchange service must demonstrate that it has a minimum of \$25,000 of cash or cash equivalent to meet the firm's start-up expenses.¹ To meet this requirement, applicant provided a letter from its bank that demonstrates that it has sufficient cash to meet this requirement.

An applicant seeking authority to provide local exchange service must also demonstrate that it has sufficient additional resources to cover all deposits required by local exchange carriers (LECs) and/or interexchange carriers (IECs).² Applicant represents that no telecommunications carrier will require it to make a deposit before service can be initiated.

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

V. Technical Qualifications of Applicant

Applicants for CLC authority are required to make a reasonable showing of technical expertise in telecommunications or a related business. To meet this requirement, applicant submitted biographical information on its key employees. This information indicates that applicant's employees possess sufficient experience and

¹ The \$25,000 requirement for CLCs is contained in D.95-12-056, Appendix C. The \$25,000 requirement for NDIECs is contained in D.91-10-041.

² The requirement for CLC applicants to demonstrate that they have additional financial resources to meet any deposits required by underlying LECs and/or IECs is set forth in D.95-12-056, Appendix C. For NDIECs, the requirement is found in D.93-05-010.

knowledge to operate as a telecommunications reseller. Applicant represents that no one associated with or employed by applicant as an affiliate, officer, director, partner, or owner of more than 10% of applicant was previously associated with an IEC that filed for bankruptcy or went out of business, or was sanctioned by the Federal Communications Commission or any state regulatory agency for failure to comply with any regulatory statute, rule or order.

We find that applicant is technically qualified to operate as a public utility.

VI. California Environmental Quality Act (CEQA)

CEQA requires the Commission as the designated lead agency to assess the potential environmental impact of a project in order that adverse effects are avoided, alternatives are investigated, and environmental quality is restored or enhanced to the fullest extent possible. Applicant declares that it will not be constructing any facilities for the purpose of providing interexchange or local exchange services. It can be seen with certainty that there is no possibility that granting this application will have an adverse effect upon the environment.

VII. Conclusion

We conclude that the application conforms to our rules for certification to provide competitive local exchange telecommunications service. Accordingly, we shall approve the application subject to the terms and conditions set forth herein.

Findings of Fact

1. Applicant filed A.98-01-021 on January 26, 1998, for authority to provide telecommunications services as both a CLC, an IEC, and a wireless reseller.
2. Notice of A.98-01-021 appeared in the Daily Calendar on January 28, 1998.
3. By D.98-03-001, applicant was granted a CPCN to provide resold interexchange service in California. Applicant is also registered as a wireless service provider.
4. By D.97-06-107, all IECs and CLCs are no longer required to comply with General Order 96A, subsections III.G(1) and (2), and Commission Rule of Practice and Procedure 18(b).

5. 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 beginning January 1, 1996, and resold local exchange services beginning March 31, 1996.

6. There were no protests to this application.

7. A hearing is not required.

8. In prior decisions, the Commission authorized competition in providing local exchange telecommunications services within the service territories of Pacific and GTEC.

9. Applicant has demonstrated 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 it will not be required to make deposits with other telecommunications carriers.

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

12. Applicant represented that no one associated with or employed by applicant as an affiliate, officer, director, partner, or owner of more than 10% of applicant was previously associated with an IEC that filed for bankruptcy or went out of business, or was sanctioned by the Federal Communications Commission or any state regulatory agency for failure to comply with any regulatory statute, rule, or order.

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. By D.95-12-057, as modified by D.97-01-015, CLCs are exempt from PU Code §§ 816-830.

16. By D.95-12-057, as modified by D.97-01-015, CLCs are exempted from the requirements of PU Code § 851 for the transfer or encumbrance of property whenever such transfer or encumbrance serves to secure debt.

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-16117 at 0.0% for 1998, effective February 19, 1998);
 - 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. The application should be granted to the extent set forth below.
6. 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.

7. 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.

8. 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 is granted to Omniwerx, a general partnership (U-5950-C) (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 and shall correct the deficiencies noted in Attachment B. 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.

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 is U-5950-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. 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 certificate of public convenience and necessity, unless the applicant has received the written permission of the Commission's Telecommunications Division to file or remit late.

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

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

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

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

22. This proceeding is closed.

This order is effective today.

Dated April 9, 1998, at San Francisco, California.

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

INFORMATION REQUESTED OF COMPETITIVE LOCAL CARRIERS

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 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 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 Omniwerx, in A.98-01-021 to be corrected in Tariff Compliance Filing.

1. On each tariff sheet, add and center the following words above the top horizontal line: "Competitive Local Carrier".
2. Sample forms must be included with the tariffs.
3. Sheet 9: Service area map has been omitted. You must include exchange maps or concur in the exchange maps of Pacific and/or GTEC.
4. Sheet 61, Rate Schedules: Since Omniwerx is offering residential service, it must offer Universal Lifeline Telephone Services (ULTS) and needs to add a complete ULTS tariff.
5. Sheet 96, Promotional Offerings: Each Promotional Offering must be approved by Advice Letter. There is no blanket authorization for promotions.
6. Need to list all CPUC mandated surcharges.

(END OF ATTACHMENT B)