

Decision 98-07-028 July 2, 1998

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of Choctaw Communications, L.C. for a Certificate of Public Convenience and Necessity to Offer Resold Local Exchange and Interexchange Telecommunications Services in the State of California.

Application 98-01-023
(Filed January 6, 1998)

ORIGINAL

O P I N I O N

I. Summary

Choctaw Communications, L.C. (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 and interexchange telecommunications services. By this decision, we grant the authority requested subject to the terms and conditions set forth below.

II. Background

By Decision (D.) 84-01-037 (14 CPUC2d 317 (1984)) and later decisions, we authorized interLATA entry generally.¹ However, we limited the authority conferred to interLATA service; and we subjected the applicants to the condition that they not hold themselves out to the public as providing intraLATA service.

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.

Subsequently, by D.94-09-065, we authorized competitive intral.ATA interexchange services effective January 1, 1995, for carriers meeting specified criteria.

In D.95-07-054 and D.95-12-056, we authorized the filing of applications for authority to offer competitive local exchange service within the territories of Pacific Bell (Pacific) and GTE California Incorporated (GTEC). Applicants who are granted authority to provide competitive local exchange service must comply with various rules, 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.96-04-049.

III. Overview of the Application

Applicant, a Texas limited liability company, filed Application (A.) 98-01-023 on January 6, 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 served a copy of its application upon Pacific, GTEC, and its CLC and NDIEC competitors.

IV. Financial Qualifications of Applicant

To be granted a CPCN, an applicant for authority to provide nonfacilities-based local exchange and/or interexchange services must demonstrate that it has a minimum of \$25,000 of cash or cash equivalent to meet the firm's start-up

expenses.² To meet this requirement, applicant provided financial documents including a bank statement that demonstrate that it has sufficient cash to meet this requirement.

An applicant seeking authority to provide local exchange or interexchange services must also demonstrate that it has sufficient additional resources to cover all deposits required by local exchange carriers (LECS) and/or interexchange carriers (IECs).³ Applicant represents that it will be making no deposits with any telecommunications carriers.

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

Applicant requests that the bank statement submitted by a letter dated April 1, 1998, be filed under seal. Applicant says that revealing this information would place it at an unfair business disadvantage. On January 29, 1998, an Administrative Law Judge's (ALJ) ruling granted applicant's motion to file the financial information submitted with this application under seal for one year. The bank statement submitted by letter dated April 1, 1998, provides further detail on the financial information originally submitted with the application and filed under seal. Therefore, we will grant this request for the period ending January 29, 1999.

² 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.

³ 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.

V. Technical Qualifications of Applicant

Applicants for NDIEC and 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 biographical information demonstrates that applicant's employees possess sufficient experience and knowledge to operate as a telecommunications reseller. Applicant represents that no one associated with or employed by applicant as an officer, director, partner, or owner of more than 10% of applicant was previously associated with an NDIEC 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

In Resolution ALJ 176-2986, dated February 4, 1998, the Commission preliminarily categorized this proceeding as ratesetting, and preliminarily determined that hearings were not necessary. No protests have been received. A scoping ruling was issued March 12, 1998 that confirmed the category and no need for hearings.

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

Findings of Fact

1. Applicant filed A.98-01-023 on January 6, 1998, for authority to provide telecommunications services as both a CLC and an IEC.
2. Applicant served its application and a Notice of Availability of the exhibits to its application on all telephone corporations with which applicant is likely to compete.
3. Notice of A.98-01-023 appeared in the Daily Calendar on January 28, 1998.
4. No protests have been filed.
5. A hearing is not required.
6. In prior Commission decisions, competition in providing interLATA telecommunications services was authorized, but those offering such services were generally barred from holding out to the public the provision of intraLATA service.
7. In D.94-09-065, the Commission authorized competitive intraLATA services effective January 1, 1995, for carriers meeting specified criteria.
8. In prior decisions the Commission authorized competition in providing local exchange telecommunications service within the service territories of Pacific and GTEC.
9. In 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 offer facilities-based services effective January 1, 1996, and resale services effective March 31, 1996.

10. 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.

11. Applicant has represented that no deposits are required by LECs or IECs in order to provide the proposed service.

12. Applicant possesses the requisite experience and knowledge to manage a telephone utility.

13. Applicant represented that no one associated with or employed by applicant as an officer, director, partner, or owner of more than 10% of applicant was previously associated with an NDIEC 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.

14. Applicant represents that it will not be constructing any facilities for the purposes of providing interexchange or local exchange service.

15. As part of its application, applicant submitted a draft of its initial tariff which complied with the requirements established by the Commission.

16. Exemption from the provisions of PU Code §§ 816-830 has been granted to other NDIECs and CLCs. (See, e.g., D.86-10-007, D.88-12-076, and D.96-05-060.)

17. The transfer or encumbrance of property of nondominant carriers has been exempted from the requirements of PU Code § 851 whenever such transfer or encumbrance serves to secure debt. (See D.85-11-044 and D.96-05-060, Ordering Paragraph 15.)

18. By D.97-06-107, all interexchange carriers and CLCs are no longer required to comply with General Order 96-A, subsections III.G(1) and (2), and Commission Rule of Practice and Procedure 18(b).

19. Applicant requests that the bank statement submitted by letter dated April 1, 1998, be filed under seal, since its release would put applicant at an unfair business disadvantage.

20. On January 29, 1998, an ALJ ruling granted applicant's motion to file financial information submitted with this application under seal for one year.

21. The bank statement submitted by letter dated April 1, 1998, provides more detail on the financial information approved for filing under seal by the ALJ ruling of January 29, 1998.

Conclusions of Law

1. Applicant has the financial ability to provide the proposed service.
2. Applicant has made a showing of business expertise sufficient to operate as a telecommunications reseller.
3. Public convenience and necessity require that competitive local exchange and interexchange 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 1998-1999 fiscal year (Resolution M-4789);
 - 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. Applicant should be exempted from PU Code §§ 816-830.

6. Applicant should be exempted from PU Code § 851 when the transfer or encumbrance serves to secure debt.

7. Since applicant will not be constructing any facilities, it can be seen with certainty that there will be no significant effect on the environment.

8. The application should be granted to the extent set forth below.

9. Applicant, once granted a certificate of public convenience and necessity 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. Because of the public interest in competitive local exchange and interexchange services, the following order should be effective immediately.

12. The bank statement submitted by letter dated April 1, 1998, should be kept under seal until January 29, 1999, consistent with the ALJ ruling of January 29, 1998.

O R D E R

IT IS ORDERED that:

1. A certificate of public convenience and necessity is granted to Choctaw Communications, L.C. (applicant) to operate as a nonfacilities-based reseller of competitive local exchange and interexchange 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 and interexchange services. Applicant may not offer 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. The tariff shall be effective not less than 1 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 carrier (CLC). The effectiveness of its future CLC tariffs is subject to the schedules set forth in Appendix C, Section 4.E 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 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 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 filing 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.

"(6) Contracts shall be subject to GO 96-A rules for NDIECs, except interconnection contracts.

"(7) CLCs shall file tariffs in accordance with PU Code Section 876."

5. Applicant is a nondominant interexchange carrier (NDIEC). The effectiveness of its future NDIEC 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."

6. 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.

7. 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.

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 within 5 days after local exchange service begins.

10. Applicant shall notify this Commission in writing of the date interLATA service is first rendered to the public within five days after service begins and again within five days of when intraLATA service begins.

11. 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.

12. 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.

13. 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.

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

15. 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.

16. The corporate identification number assigned to applicant is U-6008-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.

17. 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.

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

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

20. 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.

21. Applicant shall comply with the consumer protection rules contained in Appendix B of D.95-07-054.

22. Applicant shall comply with the Commission's rules and regulations for local exchange competition contained in D.95-07-054, D.95-12-056, and other Commission decisions, including the requirement that CLCs shall place customer deposits in a protected, segregated, interest-bearing escrow account subject to Commission oversight (D.95-12-056, Appendix C, Section 4.F.(15)).

23. Applicant shall comply with the Commission's rules and regulations for NDIECs set forth in D.93-05-010, D.90-08-032, and other Commission decisions.

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

25. Applicant's request to have the bank statement submitted by letter dated April 1, 1998, kept under seal is granted until January 29, 1999, and during that period shall not be made accessible or disclosed to anyone other than the 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 Law and Motion Judge.

26. If the applicant believes that further protection of the information kept under seal is needed, it may file a motion stating the justification for further withholding of the information from public inspection, or for such other relief as the Commission rules may then provide. This motion shall be filed no later than one month before the expiration date.

27. Applicant shall send a copy of this decision to concerned local permitting agencies not later than 30 days from the date of this order.

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

29. This proceeding is closed.

This order is effective today.

Dated July 2, 1998, at San Francisco, California.

RICHARD A. BILAS
President

P. GREGORY CONLON

JESSIE J. KNIGHT, JR.

HENRY M. DUQUE

JOSIAH L. NEEPER

Commissioners

ATTACHMENT A

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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

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INFORMATION REQUESTED OF 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. 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)