

Decision 98-11-023 November 5, 1998

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Ex Parte Application of Pacific Bell (U 1001 C) To Amend Its Certificate of Public Convenience and Necessity to Resell Competitive Local Exchange Services Within the Local Exchange Service Territory of Roseville Telephone Company and Citizens Communications Co.

Application 98-09-019
(Filed September 10, 1998)

O P I N I O N

1. Summary

We amend Pacific Bell's certificate of public convenience and necessity to authorize nonfacilities based resale of local exchange telecommunications services in the service areas of Roseville Telephone Company and Citizens Telephone Company.

2. Regulatory Background

Decision (D.) 95-07-054, D.95-12-056, and D.97-06-107 establish procedures governing applications for authority to offer competitive local exchange services within the service territories of Pacific Bell (Pacific) and GTE California Incorporated (GTE). Applicants granted authority to provide competitive local exchange services must comply with various Commission rules, including: (1) consumer protection rules in Appendix B of D.95-07-054; (2) rules for local exchange competition in Appendix C of D.95-12-056; and (3) customer notification and education rules adopted in D.96-04-049. Pacific holds authority to provide facilities-based and resold local exchange services in the GTE service area pursuant to D.95-12-057, D.95-12-061, and D.96-02-072.

D.97-09-115 extends our local exchange competition rules to the service territories of Roseville Telephone Company (Roseville) and Citizens Telephone Company (CTC), subject to further inquiry into whether or not Pacific and GTE should be permitted to compete as competitive local exchange carriers (CLCs).¹

D. 98-01-024 resolves that inquiry, and permits Pacific and GTE to operate as CLCs in the territories of Roseville and CTC, subject to Pacific and GTE maintaining separate books and records of their CLC operations distinct from their operations as incumbent local exchange carriers in other service territories.

3. Application

Pursuant to D.97-09-115, D.98-01-024, and Article 1 of Chapter 5 of the Public Utilities (PU) Code (§ 1001 et. seq.), on September 10, 1998, Pacific (applicant) applied for an amendment to its CLC certificate of public convenience and necessity (CPCN). Applicant seeks authority to operate as a nonfacilities based reseller of local exchange telecommunications services in the service areas of Roseville and CTC.² Applicant is a California corporation.

The California Environmental Quality Act requires the Commission, as the designated lead agency, to assess the potential project environmental impact in order that adverse effects are avoided, alternatives are investigated, and environmental quality is restored or enhanced to the fullest extent possible. Because applicant seeks to provide services as a nonfacilities based reseller,

¹ A CLC is a common carrier authorized by its CPCN, or amendment to its CPCN, to provide local exchange telecommunications service within a specific geographic area.

² Also on September 10, 1998, Pacific applied for authority to amend its CPCN to provide facilities-based competitive local exchange services in the service territories of Roseville and Citizens. (Petition No. 120 in Investigation 95-04-044.) That application is subject to different environmental review than considered herein, and will be granted or denied by a separate decision.

applicant will not construct any facilities for the purpose of providing local exchange services. Therefore, it can be seen with certainty that there is no possibility that granting this application will have an adverse impact upon the environment.

Commission Resolution ALJ 176-3000, dated September 17, 1998, preliminarily categorized this application as ratesetting, and preliminarily determined that no hearing is necessary. No protests have been received. There is no apparent reason why the application should not be granted. Given these developments, a public hearing is not necessary, and there is no need to disturb the preliminary determinations.

Applicant avers that there are no matters to be reported under General Order (GO) 104-A (regarding material financial interests of specified persons). Applicant requests it be granted the same nondominant status the Commission routinely grants interexchange carriers (IECs), and requests it be granted the same exemptions from the PU Code and GO 96-A routinely granted other non-dominant interexchange carriers. We do so as provided below.

4. Financial Qualifications of Applicant

To be granted a CPCN for authority to resell local exchange service, an applicant must demonstrate that it has \$25,000 of cash or cash equivalent to meet the firm's start-up expenses. The applicant must also demonstrate that it has sufficient additional resources to cover all deposits required by other telecommunications carriers in order to provide service in California.³

³ The financial standards for certification to operate as a CLC are set forth in D.95-12-056, Appendix C, Rule 4.B.

Applicant provided its most recently available financial statements (10K report and 10Q report). Applicant says these reports and its track record demonstrate that Pacific has the financial resources necessary to carry out its responsibilities as a provider of resold local exchange services. We agree. The consolidated balance sheet in the 10Q report, for example, shows cash and cash equivalents of \$53 million as of March 31, 1998. Applicant does not state whether other carriers have, or will, require it to make deposits. Nonetheless, applicant's financial resources are more than adequate to satisfy any reasonable deposit requirements. We find that applicant meets our requirement that it possesses sufficient financial resources to undertake the proposed operations.

5. Technical Qualifications of Applicant

To be granted a CPCN for authority to resell local exchange service, an applicant must make a reasonable showing of technical expertise in telecommunications or a related business. In fulfillment of this requirement, applicant states that it has provided local exchange services, high speed digital transport services, and intraLATA services in California since 1906. Applicant says it uses state-of-the art equipment supplied by Lucent, Northern Telecom, and other vendors. Further, applicant supplies the names, titles, and job descriptions of its key officers.

We also often consider draft tariffs submitted with an application in assessing an applicant's technical qualifications. Applicant here proposes to extend its currently approved tariffs and rates for operating in GTE's territory to the Roseville and CTC service areas, with minor modifications shown in draft tariffs attached to the application. Applicant affirms it will follow appropriate Commission procedures if it seeks to change any rates or services in the Roseville and CTC service areas. Applicant's proposal and the draft tariffs are reasonable.

We find that applicant meets our requirement that it possesses adequate technical expertise to operate as a CLC.

6. Conclusion

We conclude that the application conforms to our rules for certification as a CLC. Accordingly, we grant applicant's request that its CPCN be amended to authorize the resale of local exchange services in the service territories of Roseville and CTC.

Findings of Fact

1. Application 98-09-019 was filed on September 10, 1998.
2. Notice of the application appeared in the Daily Calendar on September 15, 1998.
3. By D.97-06-107, all IECs and CLCs are no longer required to comply with GO 96-A, subsections III.G(1) and (2), and Commission Rule of Practice and Procedure 18(b).
4. D.95-07-054, D.95-12-056, D.95-12-057, and D.96-02-072 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. D.97-09-115 extended our adopted rules for local exchange competition to the service territories of Roseville and Citizens, subject to further inquiry into whether or not Pacific and GTB should be permitted to compete as CLCs. D.98-01-024 resolved that inquiry, permitting Pacific and GTB to operate as CLCs in the territories of Roseville and CTC, subject to Pacific and GTB maintaining separate books and records of their CLC operations distinct from their operations as incumbent local exchange carriers in other service territories.
5. Applicant holds authority to provide facilities-based and resold local exchange services in the GTB service area pursuant to D.95-12-057, D.95-12-061, and D.96-02-072.

6. There were no protests to this application.
7. A hearing is not required.
8. Applicant has a minimum of \$25,000 in cash or cash equivalent that is reasonably liquid and readily available to meet its start-up expenses, including any reasonable deposit requirements of other carriers.
9. Applicant's management possesses the requisite technical expertise to provide resold local exchange services to the public.
10. Applicant's proposed tariffs comply with requirements established by the Commission.
11. 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.
12. By D.95-12-057, as modified by D.97-01-015, CLCs are exempt from PU Code §§ 816-830.
13. 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 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 0.05% 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; set by Resolution T-16165, effective August 1, 1998).
5. The application should be granted to the extent set forth below.
6. Applicant 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. The certificate of public convenience and necessity of Pacific Bell (applicant) is amended to grant applicant authority to operate as a nonfacilities based reseller of competitive local exchange services in the service areas of Roseville Telephone Company (Roseville) and Citizens Telephone Company (CTC), subject to the terms and conditions set forth below.

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

3. Applicant is authorized to file with this Commission tariff schedules for the provision of competitive local exchange services in the Roseville and CTC service areas consistent with those attached to its application. Applicant may not offer these 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 Sections IV, V, and VI. The tariff shall be effective not less than one day after tariff approval by the Commission's Telecommunications Division. Applicant shall comply with the provisions in its tariffs.

4. Applicant is a competitive local exchange carrier (CLC), and nondominant interexchange carrier (NDIEC) for the purpose of the services authorized herein. 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. 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. 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.

8. Applicant shall notify the Commission in writing of the date that local exchange service is first rendered to the public in either or both the Roseville and Citizens service territories. The notice shall be provided no later than five days after local exchange service first begins in each service territory.

9. 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 and, pursuant to Ordering Paragraph 1 of D.98-01-024, shall keep separate books and records of its CLC operations, in conformance with the Uniform System of Accounts, which shall be distinct from the books and records of its incumbent local exchange carrier operations.

10. 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.

11. 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.

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

13. The amendment to the certificate granted herein, 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.

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. 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.

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

17. 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, including the requirement that CLCs shall place customer deposits in a protected, segregated, interest-bearing escrow account subject to Commission oversight.

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

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

20. This proceeding is closed.

This order is effective today.

Dated November 5, 1998, at San Francisco, California.

RICHARD A. BILAS

President

P. GREGORY CONLON

JESSIE J. KNIGHT, JR.

HENRY M. DUQUE

JOSIAH L. NEEPER

Commissioners

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TO: ALL COMPETITIVE LOCAL CARRIERS

Article 5 of the Public Utilities Code grants authority to the California Public Utilities Commission to require all public utilities doing business in California to file reports as specified by the Commission on the utilities' California operations.

A specific annual report form has not yet been prescribed for California Competitive Local Carriers. However, you are hereby directed to submit an original and two copies of the information requested in Attachment A no later than March 31st of the year following the calendar year for which the annual report is submitted.

Address your report to:

California Public Utilities Commission
Financial Reports, Room 3251
505 Van Ness Avenue
San Francisco, CA 94102-03298

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 questions 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 of 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)