

Decision 98-11-043 November 19, 1998

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of NOS Communications, Inc.,
U-5251-C, for Authority to Provide Local
Exchange Service on a Resale Basis.

Application 98-08-043
(Filed August 28, 1998)

O P I N I O N

ORIGINAL

I. Summary

NOS Communications, Inc. (U-5251-C) (applicant) seeks a certificate of public convenience and necessity (CPCN) under Public Utilities (PU) Code § 1001 for authority to provide resold local exchange telecommunications services as a competitive local carrier (CLC).¹ By this decision, we grant applicant authority to operate as a nonfacilities-based reseller of local exchange services in the service territories of Pacific Bell (Pacific) and GTE California Incorporated (GTEC).

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 and 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.96-04-049.

¹ A CLC is a common carrier that is issued a CPCN to provide local exchange telecommunications service for a geographic area specified by such carrier.

III. Overview of Application and Procedural Background

Applicant, a Maryland corporation qualified to do business in California, filed its application on August 28, 1998.

In its application, applicant requests authority to operate as a nonfacilities-based reseller of local exchange services within Pacific's and GTEC's service territories.

§ The California Environmental Quality Act 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. Since applicant states that it will not be constructing any facilities for the purpose of providing local exchange services, it can be seen with certainty that there is no possibility that granting this application will have an adverse impact upon the environment.

In Resolution ALJ 176-2999 dated September 3, 1998, the Commission preliminarily categorized this application as ratesetting, and preliminarily determined that hearings were not necessary. No protests have been received. Given this status, a public hearing is not necessary, and it is not necessary to alter the preliminary determinations made in Resolution ALJ 176-2999.

IV. Motion to File Under Seal

Concurrent with its application, applicant filed a motion for leave to file confidential information under seal. The confidential information consists of financial statements and the projected number of customers. Applicant represents that this information is highly sensitive and proprietary.

Applicant states grounds, under General Order (GO) 66-C and authority there cited, for the requested relief. The Commission has accepted similar data under seal in other proceedings. Applicant's motion is unopposed. A public hearing on the motion is not needed. We will grant applicant's motion.

V. 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.²

In an attempt to financially reorganize the company, NOS filed for Chapter 11 bankruptcy in 1995. *In re NOS Communications, Inc.*, (Bankr. C.D. Cal., Los Angeles Div., 95-12329SB). On October 2, 1995, the court issued the Confirmation of Debtor's Joint Plan of Reorganization. The Final Decree and Closure Order was entered September 29, 1997.

NOS represented in its application that it is now financially sound.

Applicant provided audited financial statements that demonstrate that it has the required cash. Applicant also represented that no carriers have required it to make deposits. Applicant is current on its user fee payments. We find that applicant has met our requirement that it possesses sufficient financial resources to undertake its proposed operations.

² The financial standards for certification to operate as a CLC are set forth in D.95-12-056, Appendix C, Rule 4.B.

VI. 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. Applicant supplied biographical information on its management which demonstrates that it has sufficient business expertise and training to operate as a communications reseller.

To further demonstrate its technical expertise and fitness to serve, 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 a telecommunications carrier that was sanctioned by the Federal Communications Commission (FCC) or any state regulatory agency for failure to comply with any regulatory statute, rule or order.

Applicant is currently authorized to operate as an interexchange reseller.

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

Commission staff also reviewed applicant's draft tariffs for compliance with Commission rules and regulations. The deficiencies are noted in Attachment B to this decision. In its compliance tariff filing, applicant is directed to correct these deficiencies as a condition of our granting approval of the tariffs.

VII. Conclusion

We conclude that the application conforms to our rules for certification as a CLC. Accordingly, we shall grant applicant a CPCN to resell local exchange service in the service territories of Pacific and GTEC, subject to compliance with the terms and conditions set forth herein.

Findings of Fact

1. Application (A.) 98-08-043 was filed on August 28, 1998.
2. A notice of the filing of the application appeared in the Daily Calendar on August 31, 1998.
3. By D.97-06-107, all interexchange carriers 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. 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.
5. There were no protests to this application.
6. A hearing is not required.
7. In prior decisions, the Commission authorized competition in providing local exchange telecommunications services within the service territories of Pacific and GTEC.
8. Applicant has a minimum of \$25,000 of cash or cash equivalent that is reasonably liquid and readily available to meet its start-up expenses.
9. No telecommunications carrier has required applicant to make deposits in order to provide the proposed service.
10. Applicant's management possesses the requisite technical expertise to provide resold local exchange services to the public.
11. No one associated with or employed by applicant was previously associated with or employed by a telecommunications carrier that was sanctioned by the FCC or any state regulatory agency for failure to comply with any regulatory statute, rule, or order.

12. 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.

13. 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.

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

15. 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.

16. Applicant holds a CPCN to operate as an interexchange reseller (U-5251-C).

17. Concurrent with its application, applicant filed a motion for leave to file under seal its bank statement and its projected number of customers.

18. Applicant states grounds under GO 66-C for the requested relief.

19. The Commission has accepted similar data under seal in other proceedings.

20. The motion is unopposed and no hearings are needed.

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, 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 R.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.

9. Applicant's motion to file its financial statements and its projected number of customers under seal should be granted.

O R D E R

IT IS ORDERED that:

1. A certificate of public convenience and necessity is granted to NOS Communications, Inc. (applicant) to operate as a reseller of competitive local exchange services, subject to the terms and conditions set forth below.

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

3. Applicant is authorized to file with this Commission tariff schedules for the provision of competitive local exchange services. Applicant may not offer competitive local exchange services until tariffs are on file. Applicant's initial filing shall be made in accordance with 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.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. 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-5251-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, including the requirement that CLCs shall place customer deposits in a protected, segregated, interest-bearing escrow account subject to Commission oversight.

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. Applicant's motion for leave to file under seal is granted to the extent set forth below.

22. The information which has been submitted under seal as an attachment to the motion, shall remain under seal for a period of one year from the date of this decision, and during that period shall not be made accessible or disclosed to anyone, other than Commission staff or signatory of a reasonable Nondisclosure and Protective Agreement, 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.

23. If applicant believes that further protection of this information is needed after one year, it may file a motion stating the justification for further withholding of 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 30 days before the expiration of this protective order.

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

25. This proceeding is closed.

This order is effective today.

Dated November 19, 1998 at San Francisco, California.

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

A.98-08-043 ALJ/JPO/jva

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 94102-3298

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 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.

ATTACHMENT A

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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

The list of deficiencies in Tariffs filed by NOS Communications, Inc., in Application (A.) 98-08-043 to be corrected in Tariff Compliance Filing.

1. Sample forms must be included with tariffs.
2. Sheet No. 9: A Service Area Map was omitted.
3. Sheet No. 68: Need to update the surcharge amount.
4. Sheet No.72, Rule 10.B: The statement relating to recovery of costs must be replaced 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."
5. Sheet No. 87, Rule 19.A: Delete the rule to serve all locations within 300 feet of its facilities, since it does not apply to resellers.

(END OF ATTACHMENT B)