

Decision 99-05-028 May 13, 1999

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
MOHAVE COOPERATIVE SERVICES,
INC., an Arizona Corporation, for a
Certificate of Public Convenience and
Necessity to Provide Competitive Local
Exchange Services and Interexchange
Services.

ORIGINAL

Application 98-12-024
(Filed December 24, 1998)

O P I N I O N

I. Summary

Mohave Cooperative Services, Inc. (Applicant) sought a certificate of public convenience and necessity (CPCN) under Pub. Util. Code § 1001 for authority to provide nonfacilities-based resold local exchange and interexchange telecommunications services. Applicant also seeks an exemption from filing interexchange tariffs. 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

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.

that they not hold themselves out to the public as providing intraLATA service. Subsequently, by D.94-09-065, we authorized competitive intraLATA 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. By D.97-09-115, we extended coverage of our adopted rules for local exchange competition to the service territories of Roseville Telephone Company (RTC) and, Citizens Telephone Company of California, Inc. (CTC).

III. Overview of the Application

Applicant, an Arizona corporation, filed Application (A.) 98-12-024 on December 24, 1998. There were no protests to the application. Applicant sought 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 GTEC's, and CTC's service territories. Applicant also requested an exemption from filing NDIEC tariffs.

IV. Procedural Matters

In Resolution ALJ 176-3007, dated January 7, 1999, the Commission preliminarily categorized this application as ratesetting, and preliminarily determined that hearings were not 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 it is not necessary to disturb the preliminary determinations.

V. Comments on Draft Decision

This is an uncontested matter, in which the decision grants the relief requested. Accordingly, pursuant to Pub. Util. Code Section 311(g), the otherwise applicable 30-day period for public review and comment is being waived.

VI. 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 an audited financial statement that demonstrated 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 represented 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 possesses sufficient financial resources to fund its operations.

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.

VII. 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 president. This biographical information demonstrates that applicant possesses sufficient experience and 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 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 CLC and NDIEC reseller.

VIII. 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.

IX. NDIEC Tariffing Exemption

In this application, applicant requests an exemption from filing NDIEC tariffs.

By D.96-09-098, D.96-12-033, and D.97-06-107, the Commission took the steps to implement its authority to exempt specified classes of

telecommunications carriers from §§ 454, 489, 491, and 495 of the Public Utilities Code and the requirement to file tariffs. Corresponding to any request for an exemption from the tariffing requirement is an obligation to be subject to the Consumer Protection Rules adopted in D.96-09-098, as modified from time to time.

Applicant is wholly-owned by Mohave Electric Cooperative, Inc., an Arizona non-profit corporation. Applicant will not have significant market power and will be subject to the Consumer Protection Rules. Therefore, we have no reason to believe that there will be improper cross-subsidization or anticompetitive behavior by applicant. We will grant the request.

X. Request for Confidentiality

Applicant requested that the financial information filed on February 19, 1999 be filed under seal. It represented that the information is proprietary and sensitive. The information, if revealed, would place applicant at an unfair business disadvantage. We have granted similar requests in the past and will do so here.

XI. Conclusion

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.98-12-024 on December 24, 1998, for authority to provide telecommunications services as both a CLC and an NDIEC.
2. Applicant requested an exemption from the NDIEC tariff filing requirements.

3. Notice of the application appeared in the Daily Calendar on January 5, 1999.
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 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 operate in the service territories of Pacific and GTEC. By D.97-09-115 coverage was extended to the service territories of RTC and CTC.
9. 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.
10. No deposits are required by LECs or IECs in order for applicant to provide the proposed service.
11. Applicant possesses the requisite experience and knowledge to manage a telephone utility.
12. Applicant will not be constructing any facilities for the purposes of providing interexchange or local exchange service.
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 those deficiencies, applicant's draft tariffs complied with the requirements established by the Commission.

14. There is no improper cross-subsidization or anticompetitive behavior in connection with the proposed NDIEC services.

15. Exemption from the provisions of Pub. Util. Code §§ 816-830 has been granted to other NDIECs and CLCs. (See, e.g., D.86-10-007, D.88-12-076, D.97-01-015, and D.96-05-060.)

16. The transfer or encumbrance of property of nondominant carriers has been exempted from the requirements of Pub. Util. Code § 851 whenever such transfer or encumbrance serves to secure debt. (See D.85-11-044, D.97-01-015, and D.96-05-060.)

17. 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 Rules of Practice and Procedure 18(b).

18. Applicant requested that the financial information filed on February 19, 1999 be kept under seal.

19. Public disclosure of the financial information submitted with this application would place applicant at an unfair business disadvantage.

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 that applicant's competitive local exchange and interexchange services be subject to the terms and conditions set forth herein.
4. Applicant is subject to:
 - a. The current 0.0% 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 (Pub. Util. Code § 879; Resolution T-16245, December 3, 1998);

- b. The current 0.192% 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 (Pub. Util. Code § 2881; D.98-12-073 and Resolution T-16234, December 17, 1998);
 - c. The user fee provided in Pub. Util. 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 (Pub. Util. Code § 739.30; D.96-10-066, pp. 3-4, App. B, Rule 1.C; set by Resolution T-16242 at 0.0% for 1999, December 3, 1998);
 - e. The current 3.8% 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., Resolution T-16244, December 3, 1998); 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. Applicant should be exempted from Pub. Util. Code §§ 816-830.
 6. Applicant should be exempted from Pub. Util. 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. Applicant's initial tariff filing should correct the deficiencies in its draft tariffs as indicated in Attachment B to this decision.

11. Any CLC which does not comply with our rules for local exchange competition adopted in Rulemaking (R.) 95-04-043 shall be subject to sanctions including, but not limited to, revocation of its CLC certificate.

12. Applicant should be exempted from filing NDIEC tariffs.

13. Applicant's request to file its financial information under seal should be granted for two years.

14. Because of the public interest in competitive local exchange and interexchange 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 Mohave Cooperative Services, Inc. (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 is authorized to provide local exchange service in the territories of GTE California Incorporated and Citizens Telephone Company of California, Inc.

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

4. Applicant is authorized to file with this Commission tariff schedules for the provision of competitive local exchange services with the deficiencies noted in Attachment B corrected. Applicant may not offer 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 1 day after tariff approval by the Commission's Telecommunications Division. Applicant shall comply with the provisions in its tariffs.

5. 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 Pub. Util. Code Section 876."

6. Applicant is a nondominant interexchange carrier (NDIEC).
7. 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.
8. 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.
9. Applicant is exempted from the NDIEC tariffing requirements and shall abide by the consumer protection rules adopted in D.96-09-098, as modified from time to time.
10. 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 or if the name or telephone number changes.
11. 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.
12. 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.
13. Applicant shall keep its books and records in accordance with the Generally Accepted Accounting Principles.

14. 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.

15. 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.

16. Applicant shall ensure that its employees comply with the provisions of Pub. Util. Code § 2889.5 regarding solicitation of customers. 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.

17. The corporate identification number assigned to applicant is U-6149-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.

18. Within 60 days of the effective date of this order, applicant shall comply with Pub. Util. Code § 708, Employee Identification Cards, and notify the Director of the Telecommunications Division in writing of its compliance.

19. Applicant is exempted from the provisions of Pub. Util. Code §§ 816-830.

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

21. 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 written permission from the Commission's Telecommunications Division to file or remit late.

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

23. 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)).

24. 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.

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

26. Applicant's request to have the financial information, filed on February 19, 1999, kept under seal is granted for two years from the effective date of this decision. During that period it 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.

27. 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.

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

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

30. This proceeding is closed.

This order is effective today.

Dated May 13, 1999, at San Francisco, California.

RICHARD A. BILAS

President

HENRY M. DUQUE

JOSIAH L. NEEPER

Commissioners

A.98-12-024 ALJ/JPO/jva

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 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)

ATTACHMENT B

Page 1

The following are the deficiencies to the proposed tariffs of Mohave Cooperative Services, Inc.:

1. **Revise each tariff sheet to comply with the California Public Utilities Commission's (CPUC) tariff format, (i.e., name and complete address of the utility on the top left hand side of each tariff sheet, Advice Letter No. on the bottom left hand side of each tariff sheet, etc.). Check with the Tariff Section of the Telecommunications Division for the appropriate format.**
2. **Page 3, Explanation of Symbols. Comply with General Order No. 96-A for the appropriate symbols and their descriptions.**
3. **Page 5, Application of Tariff. Competition in the provision of local telephone service is authorized only in the service areas of Pacific Bell, GTEC, Citizens and Roseville Telephone Companies. Clearly indicate the service areas where the company proposes to provide local telephone service.**
4. **Page 6, Definitions. Include the CPUC adopted definitions for: (1) Major Rate Increase, and (2) Minor Rate Increase. See Appendix A, Page 2, of Decision 95-07-054 for these definitions and other definitions that may apply to the company's tariffs.**
5. **Page 8, Features of Basic Line Service. Briefly describe each feature.**
6. **Page 10, Discontinuance of Service. Rule 6 of Decision 95-07-054 provides that notice of service discontinuance by customers may be either verbal or written and that customers may notify the company of their desire to discontinue service on or before the date of disconnection. (1) Revise tariff Section 3.2.5 to comply with Rule 6 of Decision 95-07-054; and (2) add tariff language to fully comply with the other provisions of Rule 6.**
7. **Page 11, Deposits and Advance Payments. Revise tariff language to comply with Rule 5 (Deposits) of Decision 95-07-054. A competitive local exchange telephone service provider may require advance payments in addition to deposits. However, advance payments may apply only to nonrecurring charges or first month's recurring rate which must be credited on the customer's first bill; advance payments cannot be based on usage.**

ATTACHMENT B

Page 2

8. Page 12, Billing and Payment. (1) State the company's charge for handling dishonored customer's check. (2) adopt either Pacific Bell's or GTEC's tariffs for limitations of liability. The liability tariffs of these companies are appended to Decision 95-12-057.
9. Page 14, Prohibited Uses. Revise tariff to show the name of CPUC instead of Arizona.
10. Page 15, Notices and Communications. (1) Include language on rate information notice. See Rule 6 of Decision 95-07-054. (2) Change the statute of limitations to three years consistent with the provisions of Section 736 of the California Public Utilities Code.
11. Page 16, Attorneys' Fees. Change language to read as follows: "The non-prevailing party may be liable for reasonable court costs and attorneys' fees as determined by the CPUC or by the court."
12. Page 17, Promotions, etc. (1) Include language to indicate that each promotional offering by the company shall be filed with CPUC for approval. (2) Show the rates for the different services. Clarify if the company proposes to provide services to residential and/or business customers. The company does not have to provide residential services; but if it chooses to do so, the company must include language and rates for Universal Lifeline Telephone Service (ULTS), including language on income limitations for ULTS.
13. Include tariffs on the following: (1) information required on forms, (2) disputed bills, (3) non-published service, (4) demarcation points, (5) applicable California surcharges, (6) pro-rating of bills, (7) bills past due, (8) change of service provider, (9) privacy, (10) blocking access to 900 and 976 information services, (11) service area map, and (12) sample forms. (See Appendix B of Decision 95-07-054).

(END OF ATTACHMENT B)