

Decision 00-02-020 February 3, 2000

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking on the Commission's Own Motion into Competition for Local Exchange Service.

Rulemaking 95-04-043  
(Filed April 26, 1995)

Order Instituting Investigation on the Commission's Own Motion into Competition for Local Exchange Service.

Investigation 95-04-044  
(Filed April 26, 1995)

(Petition No. 170)

**O P I N I O N**

By this decision, we grant Petition #170 of URJET Backbone Network, Inc. (URJET or Petitioner) for a certificate of public convenience and necessity (CPCN) as a competitive local carrier (CLC) to offer resold local exchange services within the territories of Pacific Bell (Pacific) and GTE California Incorporated (GTEC). In this order, we grant URJET limited facilities-based authority, restricted to the installation of equipment located on or within previously existing structure or buildings. Authority for expanded authority requiring construction beyond the limited scope granted herein shall require the filing of a new CPCN application.

**I. Background**

We initially established rules for entry of facilities-based CLCs in Decision (D.) 95-07-054. Under those procedures, we processed a group of candidates that filed petitions for CPCNs by September 1, 1995, and granted authority effective January 1, 1996, for qualifying CLCs to provide facilities-based competitive local

exchange service in the territories of Pacific and GTEC. We authorized CLCs seeking to provide resale-based services to begin operations on March 1, 1996. We further advised prospective entrants that any filings from non-qualifying CLCs, and any filing for CLC operating authority made after September 1, 1995, would be treated as standard applications and processed in the normal course of the Commission's business.

By D.96-12-020, effective January 1, 1997, we instituted quarterly processing cycles for granting CPCN authority for facilities-based CLCs in order to streamline the approval process for these particular carriers. Since we had been processing the environmental impact review required under the California Environmental Quality Act (CEQA) on a consolidated basis for groups of qualifying facilities-based CLCs, we concluded in D.96-12-020 that it would be more efficient and consistent to process other aspects of the CLC filings on a consolidated basis, as well. Accordingly, we directed that any CLC filing on or after January 1, 1997, for facilities-based CPCN authority was to make its filing in the form of a petition to be docketed in Investigation (I.) 95-04-044 that would be processed quarterly on a consolidated basis. CLCs seeking only resale authority continued to file individual applications.

## **II. Motion of URJET**

On January 11, 2000, URJET filed a motion requesting this Commission to give expedited consideration to its pending petition that was originally filed with this Commission on September 30, 1999, but not deemed actually filed by the Docket Office until October 22, 1999.<sup>1</sup> The result was that URJET's Petition was

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<sup>1</sup> This delay arose due to certain procedural filing deficiencies in the petition. URJET did not initially file a scoping memo (although one was promptly provided thereafter

*Footnote continued on next page*

deemed received too late for the third quarter 1999 batch. Thus, instead of being processed and granted in the December 6, 1999 order authorizing Third Quarter CPCN petitions (D.99-12-048), URJET's Petition was held for the Fourth Quarter 1999 batch, which is scheduled to be processed in March 2000.

If held to this period, URJET will not receive resale and limited facilities-based authority until nearly six months after the petition was originally filed. URJET argues that such a delay is unfair because its original petition was not materially defective, and even the immaterial defects were promptly corrected. URJET asserts it is managerially, financially and technically capable of providing resale and limited facilities-based telecommunications services to California consumers. As a result, URJET argues the three-month delay that will occur unless the Commission grants this motion will elevate form over substance by delaying URJET's entry into the market on the basis of minor filing matters that have long since been corrected.

No party opposes the motion. For the reasons stated by URJET, the motion for expedited treatment is granted.

### **III. CEQA Issues**

In accordance with CEQA provisions, the Commission must assess the potential environmental impact of a CLC's proposed operation in order to

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when the omission was noted); it filed a duplicate of its Original Foreign Business Authorization, rather than an original; and it filed a duplicate of its Articles of Incorporation, rather than a certified copy. Also, Commission staff asked for resubmission of pro forma income statements under seal of confidentiality given a lack of clarity regarding which documents were covered by URJET's request for confidentiality. URJET also did not include an Affidavit of Service until the Notice of Availability was served on parties on or about October 12 and 14, 1999. Subsequent URJET filings remedied all of these matters.

determine that adverse effects are avoided, alternatives are investigated, and environmental quality is restored or enhanced to the fullest extent possible. To achieve this objective, Rule 17.1 of the Rules of Practice and Procedure requires the proponent of any project subject to Commission approval to submit with the petition for approval of such project a Proponent's Environmental Assessment (PEA). The PEA is used by the Commission to focus on any impacts of the project which may be of concern, and to prepare the Commission's Initial Study to determine whether the project needs a Negative Declaration or an Environmental Impact Report.

Through the second quarter of 1999, the Commission staff's practice was to prepare a negative declaration covering all CLC petitioners filing for facilities-based CPCN authority during the previous quarter. The most recent negative declaration prepared by the Commission staff for CLC petitioners covered Petitions 141-153, which were filed during the second quarter of 1999.

Comments on the Negative Declaration were filed by various agencies.<sup>2</sup> The comments identified a number of issues regarding claimed deficiencies in the Negative Declaration. Based on a preliminary review of the claimed deficiencies, we concluded in D.99-10-025 that additional time would be required to adequately review, address, and resolve the various issues raised.

In D.99-10-025, we also noted that various CLC petitioners did not anticipate undertaking any new construction at least for their initial start-up operations. Instead, they intended to collocate their network equipment within

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<sup>2</sup> Comments were received from the following state agencies: Department of Justice, Parks and Recreation Resources Management Division, Business; Transportation and Housing Agency; Department of Transportation; and the Department of Fish and Game.

the existing structure of the central offices of the ILECs, and to provide service by purchasing an ILEC's existing local loop as an unbundled network element (UNE) under federal law. Because UNEs are considered "facilities" under federal law, a facilities-based CPCN is still necessary for a CLC to operate utilizing collocation UNEs. URJET acknowledges the Commission's treatment of environmental review of full facilities-based CPCN applications. To avoid delays arising from CEQA issues, URJET specifically seeks expedited and individualized consideration of the only portions of its CPCN Petition seeking resale authority and limited facilities-based service authority. URJET asserts that these forms of authority requires no negative declaration under CEQA.

We concluded in D.99-10-025 that under the limited definition of facilities-based service utilizing equipment installed in previously existing structures, no material adverse environmental impacts would result since no external construction would be involved. Accordingly, we granted limited "facilities-based" authority in this restricted manner to each of the Petitioners 141-153 without a negative declaration. In this decision, authority granted herein, URJET is prohibited from engaging in any construction of buildings, towers, conduits, poles, or trenches. We shall grant a similar limited facilities-based CPCN to URJET.

If, in the future, URJET seeks full facilities-based authority requiring a negative declaration, URJET shall be required to file a new CPCN application.

#### **IV. Review of URJET Petition**

URJET's petition has been reviewed for compliance with the certification-and-entry rules (Certification Rules) adopted in Appendices A and B of D.95-07-054 and subsequent decisions in R.95-04-043/I.95-04-044. The Certification Rules are intended to protect the public against unqualified or

unscrupulous carriers, while also encouraging and easing the entry of CLC providers to promote the rapid growth of competition.

Initially, Petitioner intends to provide competitive local and toll services to California consumers in GTEC and Pacific Bell territories utilizing a Class 5 switch that Petitioner will soon install and test in Los Angeles, California. Petitioner's services will utilize this switch and any other facilities-based or resold network elements that it may determine are necessary or economically prudent in furtherance of its telecommunications business. Petitioner may supplement this service with other resold services provided by ILECs, CLEC, and/or interexchange carriers. Later, Petitioner plans to expand to full facilities-based services by constructing new facilities as customer demand and network architecture dictate.<sup>3</sup> By its Motion, however, URJET does not seek expedited consideration of full facilities-based CPCN Authority.

URJET had to demonstrate that it possessed the requisite managerial qualifications, technical competence, and financial resources to provide facilities-based local exchange service. URJET was also required to submit proposed tariffs which conform to the consumer protection rules set forth in Appendix B of D.95-07-054. The Commission's Telecommunications Division (TD) has notified URJET as to outstanding tariff deficiencies. All outstanding tariff deficiencies must be corrected before URJET may otherwise begin to offer service.

As prescribed in Certification Rule 4.B.(1), prospective facilities-based CLCs must also show that they possess a minimum of \$100,000 in cash or cash-

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<sup>3</sup> Subject to the restrictions deferring full facilities-based authority as set forth in Section II.

equivalent resources. In order to demonstrate that it possesses the requisite financial resources, URJET submitted copies of recent financial statements of its parent company. Because the financial statements contain commercially sensitive information, the petitioners filed a motion for a limited protective order pursuant to General Order 66-C. We grant that motion as prescribed in our order below.

## **V. Conclusion**

Based upon our review, we conclude that URJET has satisfactorily complied with our certification requirements, subject to correcting any tariff deficiencies to be identified by TD staff, and satisfying the additional terms and conditions set forth in the ordering paragraphs below. Accordingly, we grant URJET authority to offer local exchange service utilizing resale of other carriers' services or unbundled network elements and equipment installed solely within or on existing buildings or structures within the territories of Pacific and GTEC. No negative declaration is necessary for this limited authority.

## **VI. Section 311(g)(2) – Uncontested/decision grants relief requested**

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Public Utilities Code § 311(g)(2), the otherwise applicable 30-day period for public review and comment is being waived.

## **Findings of Fact**

1. Petitioner filed its request in the third quarter of 1999 seeking a CPCN to provide competitive local exchange services in the territories of Pacific and GTEC.

2. In response to the Negative Declaration sent for public comment on July 30, 1999, covering Petitions 141-153, various public agencies filed comments challenging the Negative Declaration.

3. In D.99-10-025, the Commission found that further inquiry was required to resolve the CEQA issues raised by the filed comments of public agencies before full facilities-based authority could be considered for pending CLC petitions.

4. Prior Commission decisions authorized competition in providing local exchange telecommunications service within the service territories of Pacific, GTEC, for carriers meeting specified criteria.

5. URJET demonstrated that its present company has a minimum of \$100,000 in cash or cash equivalent reasonably liquid and readily available to meet its start-up expenses.

6. URJET's technical experience is demonstrated by supporting documentation which provides summary biographies of key management personnel.

7. By D.97-06-107, petitioners or applicants for CLC authority are exempt from Rule 18(b).

8. Exemption from the provisions of Public Utilities Code §§ 816-830 has been granted to other nondominant carriers. (*See, e.g.,* D.86-10-007 and D.88-12-076.)

9. The transfer or encumbrance of property of nondominant carriers has been exempted from the requirements of Public Utilities Code § 851 whenever such transfer or encumbrance serves to secure debt. (*See* D.85-11-044.)

10. The provision of local exchange telecommunications service by resale, or by the utilization of existing unbundled loops and electronic equipment located in existing indoor structures would not have a significant effect on the environment.



## Conclusions of Law

1. The motion of URJET for expedited treatment of its petition should be granted.
2. URJET has the financial ability to provide the proposed services, and has made a reasonable showing of technical expertise in telecommunications.
3. Public convenience and necessity require the granting of the petition for competitive local exchange authority sought by URJET subject to the terms, conditions, and restrictions set forth below.
4. URJET must submit a complete draft of its initial tariff that complies with the requirements established by the Commission that corrects any deficiencies identified by the TD and including prohibitions on unreasonable deposit requirements.
5. URJET is subject to:
  - a. The current 0.50% 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-16366, December 2, 1999);
  - b. The current 0.1.92% 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; Resolution T-16234, D.98-12-073, December 17, 1998);
  - c. The user fee provided in Pub. Util. Code §§ 431-435, which is 0.11% of gross intrastate revenue for the 1999-2000 fiscal year (Resolution M-4796.)
  - 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; Resolution T-16242 at 0.0% for 1999, December 3, 1998);

e. The current 2.6% 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, Resolution T-16365, December 2, 1999); 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, Resolution T-16374; effective December 16, 1999.)

6. Petitioner should be exempted from Rule 18(b).

7. Petitioner should be exempted from Sections 816-830 of the Public Utilities Code.

8. Petitioner should be exempted from Section 851 of the Public Utilities Code when the transfer or encumbrance serves to secure debt.

9. The Petitioner should be granted a CPCN for local exchange service utilizing resale of other carriers' service or unbundled network elements and equipment installed within existing structures subject to the terms, conditions, and restrictions set forth in the order below. Petitioners' request for full facilities-based authority is not addressed in this order.

10. 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.

**O R D E R**

**IT IS ORDERED** that:

1. A certificate of public convenience and necessity (CPCN), shall be granted to URJET Backbone Network, Inc., (URJET or petitioner) to provide competitive local exchange telecommunications services utilizing resale of other carriers' services or unbundled network elements and equipment installed solely within or on existing buildings and structures within the service territories of Pacific Bell and GTE California, Inc., contingent on compliance with the terms identified in this order. Authorization for full facilities-based authority involving construction work will require the filing a new application in conformance with California Environmental Quality Act (CEQA) requirements.

2. Petitioner shall file a written acceptance of the certificate granted in this proceeding prior to commencing service.

3. a. The petitioner is authorized to file with this Commission tariff schedules (incorporating corrections previously required by the Telecommunications Division staff) for the provision of prescribed competitive local exchange services. The petitioners may not offer these services until tariffs are on file, and until any applicable deficiencies as identified by the Commission's TD Division have been corrected. Petitioners' initial filing shall be made in accordance with General Order (GO) 96-A, excluding Sections IV, V, and VI, and shall be effective not less than one day after approval by the TD.

b. The petitioner is a competitive a local carrier (CLC). The effectiveness of each of its future tariffs is subject to the schedules set forth in Decision (D.) 95-07-054, Appendix A, § 4E:

A. "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, as defined in D.95-07-054, 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 Public Utilities (Pub. Util.) Code Section 876.”

4. The petitioner 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 TD. Tariff filings shall reflect all fees and surcharges to which

petitioners are subject, as described in Conclusion of Law 5. Petitioner is also exempt from GO 96-A Section III.G.(1) and (2), which require service of advice letters on competing and adjacent utilities, unless such utilities have specifically requested such service.

5. Petitioner shall file as part of its initial tariffs, after the effective date of this order and consistent with Ordering Paragraph 3, a service area map.

6. Prior to initiating service, petitioner shall provide the Commission's Consumer Services Division with the petitioner's designated contact persons for purposes of resolving consumer complaints and the corresponding telephone numbers. This information shall be updated if the names or telephone numbers change or at least annually.

7. Petitioner shall notify this Commission in writing of the date local exchange service is first rendered to the public within five days after service begins.

8. Petitioner shall keep its books and records in accordance with generally accepted accounting principles.

9. Petitioner shall each file an annual report, in compliance with GO 104-A, on a calendar-year basis using the information-request form developed by the Commission Staff and contained in Appendix A.

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

11. 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.

12. The corporate identification number assigned to Petitioner, U-6308-C, shall be included in the caption of all original filings with this Commission, and in the titles of other pleadings filed in existing cases.

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

14. Petitioner is exempted from the provisions of Pub. Util. Code §§ 816-830.

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

16. If petitioner is 90 days or more late in filing an annual report or in remitting the fees listed in Conclusion of Law 4, the Telecommunications Division shall prepare for Commission consideration a resolution that revokes that petitioner's CPCN, unless petitioner has received written permission from the Telecommunications Division to file or remit late.

17. It can be seen with certainty that no material adverse environmental impacts will result from the limited CPCN authority granted in this order.

18. Any additional environmental review found necessary under the CEQA for approval of full facilities-based CPCN authority for the petitioners in Appendix B shall be addressed through a separate CPCN application proceeding.

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

20. Petitioner 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.

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

22. Petitioner's motion for a limited protective order keeping designated documents containing financial and other operating information confidential is granted. Such documents will remain under seal for two years from today unless petitioner makes a timely request for extension of confidential treatment of its documents by filing a separate motion with good cause shown.

23. The petition of URJET is granted only on limited basis as set forth above. The motion of URJET for expedited treatment is granted.

This order is effective today.

Dated February 3, 2000, at San Francisco, California.

RICHARD A. BILAS  
President  
HENRY M. DUQUE  
JOSIAH L. NEEPER  
CARL W. WOOD  
LORETTA M. LYNCH  
Commissioners