

Decision 00-06-015 June 8, 2000

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

In the Matter of the Application of Maxcess, Inc.  
for a Certificate of Public Convenience and  
Necessity to Provide Resold and Facilities-Based  
Local Exchange and Interexchange  
Telecommunications Services Within California.

Application 00-02-034  
(Filed February 22, 2000)

**O P I N I O N**

**I. Summary**

Maxcess, Inc., (applicant) seeks a certificate of public convenience and necessity (CPCN) under Pub. Util. Code § 1001 for authority to provide facilities-based and resold local exchange and interexchange telecommunications services. By this decision, we grant the authority requested subject to the terms and conditions set forth below.

**II. Background**

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

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<sup>1</sup> California is divided into 10 Local Access and Transport Areas (LATAs) of various sizes, each containing numerous local telephone exchanges. "InterLATA" describes services, revenues, and functions that relate to telecommunications originating in one LATA and terminating in another. "IntraLATA" describes services, revenues, and functions that relate to telecommunications originating and terminating within a single LATA.

Subsequently, by D.94-09-065, we authorized competitive 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 Telecommunications Company of California, Inc. (CTC).

### **III. Overview of the Application**

Applicant, a Florida corporation, filed Application 00-02-034 on February 22, 2000. There were no protests to the application. Applicant seeks authority to provide facilities-based and resold interexchange service as a nondominant interexchange carrier (NDIEC), and local exchange service as a competitive local carrier (CLC) throughout Pacific's, GTEC's, RTC's and CTC's service territories.

### **IV. Procedural Matters**

In Resolution ALJ 176-3034, dated March 2, 2000, 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.

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

#### **V. Financial Qualifications of Applicant**

To be granted a CPCN, an applicant for authority to provide facilities-based local exchange and/or interexchange services must demonstrate that it has a minimum of \$100,000 of cash or cash equivalent to meet the firm's start-up expenses.<sup>2</sup> In addition, an applicant must demonstrate that it has sufficient additional resources to cover all deposits that may be required by other carriers in order to provide the proposed services. Applicant provided a bank statement that demonstrates that it has sufficient cash to meet these requirements.

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

#### **VI. 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 management. This biographical information demonstrates that applicant possesses sufficient experience and knowledge to operate as a telecommunications provider. Applicant represented that no one associated with or employed by applicant as an affiliate, officer, director, partner, or owner

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<sup>2</sup> The financial requirement for CLCs is contained in D.95-12-056, Appendix C.

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 provider.

### **VII. 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 represented that, with the exception of switching equipment to be installed in existing buildings or structures, it will not be constructing any facilities for the purpose of providing interexchange or local exchange services. Therefore, it can be seen with certainty that there is no possibility that granting this application will have an adverse effect upon the environment.

By this decision, applicant is authorized to install switching equipment in existing buildings or structures. It is not authorized to construct other facilities. It must request additional authority, and submit to any required CEQA review, in order to do so.

### **VIII. 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. Notice of the application appeared in the Daily Calendar on February 28, 2000.
2. No protests have been filed.
3. A hearing is not required.
4. 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.
5. In D.94-09-065, the Commission authorized competitive intraLATA services effective January 1, 1995, for carriers meeting specified criteria.
6. In prior decisions the Commission authorized competition in providing local exchange telecommunications service within the service territories of Pacific, GTEC, RTC and CTC.
7. In D.95-07-054, D.95-12-056, D.95-12-057, and D.96-02-072, the Commission authorized CLCs meeting specified criteria to offer facilities-based services effective January 1, 1996, and resale services effective March 31, 1996.
8. Applicant has a minimum of \$100,000 of cash or cash equivalent that is reasonably liquid and readily available to meet its start-up expenses.
9. Applicant has sufficient additional cash or cash equivalent to cover any deposits that may be required by other carriers in order to provide the proposed service.
10. Applicant possesses the requisite experience and knowledge to provide telecommunications services.

11. Applicant will not be constructing any facilities, other than switching equipment to be installed in existing buildings or structures, for the purposes of providing interexchange or local exchange service.

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 those deficiencies, applicant's draft tariffs complied with the requirements established by the Commission.

13. 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.)

14. 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.)

15. 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 Rule 18(b) of the Commission's Rules of Practice and Procedure.

### **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 and interexchange services to be provided by applicant, subject to the terms and conditions set forth herein.

4. Applicant 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 0.281% 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-16379, April 20, 2000);
- 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; set by Resolution T-16380 at 0.0% for 2000, January 20, 2000);
- 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 (Pub. Util. Code § 739.30; D.96-10-066, pp. 3-4, App. B, Rule 1.C; set by Resolution T-16380 at 0.0% for 2000, January 20, 2000);
- 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-16374, effective December 16, 1999).

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, other than switching equipment to be installed in existing buildings or structures, 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 95-04-043 shall be subject to sanctions including, but not limited to, revocation of its CLC certificate.

12. 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 (CPCN) is granted to Maxcess, Inc. (applicant) to operate as a facilities-based and resale provider 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 within the service territories of Pacific Bell, GTE California Incorporated, Roseville



Telephone Company, and Citizens Telecommunications 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 and interexchange services with the deficiencies noted in Attachment B corrected. Applicant may not offer services until tariffs are on file. Applicant's initial filing shall be made in accordance with General Order (GO) 96-A, excluding Sections IV, V, and VI. The tariff shall be effective not less than one 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). The effectiveness of its future NDIEC tariffs is subject to the schedules set forth in Ordering Paragraph 5 of D.90-08-032 (37 CPUC2d 130 at 158), as modified by D.91-12-013 (42 CPUC2d 220 at 231) and D.92-06-034 (44 CPUC2d 617 at 618):

"5. All NDIECs are hereby placed on notice that their California tariff filings will be processed in accordance with the following effectiveness schedule:

- "a. Inclusion of FCC-approved rates for interstate services in California public utilities tariff schedules shall become effective on one (1) day's notice.
- "b. Uniform rate reductions for existing services shall become effective on five (5) days' notice.
- "c. Uniform rate increases, except for minor rate increases, for existing services shall become effective on thirty (30) days' notice, and shall require bill inserts, a message on the bill itself, or first class mail notice to customers of the pending increased rates.
- "d. Uniform minor rate increases, as defined in D.90-11-029, for existing services shall become effective on not less than five (5) working days' notice. Customer notification is not required for such minor rate increases.

- "e. Advice letter filings for new services and for all other types of tariff revisions, except changes in text not affecting rates or relocations of text in the tariff schedules, shall become effective on forty (40) days' notice.
- "f. Advice letter filings merely revising the text or location of text material which do not cause an increase in any rate or charge shall become effective on not less than five (5) days' notice."

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. 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.

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

11. 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.

12. Applicant shall keep its books and records in accordance with the Generally Accepted Accounting Principles.

13. 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.

14. 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.

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

16. 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-6344-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 CPCN, 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 is authorized to install switching equipment in existing buildings or structures.

27. Except as authorized above, applicant is not authorized to construct facilities, and must file an application to amend its CPCN in order to do so.

28. Applicant shall send a copy of this decision to concerned local permitting agencies no later than 30 days from the date of this order.

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

30. This application is closed.

This order is effective today.

Dated June 8, 2000, at San Francisco, California.

LORETTA M. LYNCH

President

HENRY M. DUQUE

JOSIAH L. NEEPER

RICHARD A. BILAS

CARL W. WOOD

Commissioners

**INFORMATION REQUESTED OF COMPETITIVE LOCAL CARRIERS  
AND INTEREXCHANGE CARRIERS**

**TO: ALL COMPETITIVE LOCAL CARRIERS AND INTEREXCHANGE  
CARRIERS**

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

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

Address your report to:

California Public Utilities Commission  
Auditing and Compliance Branch, Room 3251  
505 Van Ness Avenue  
San Francisco, CA 94102-3298

Failure to file this information on time may result in a penalty as provided for in §§ 2107 and 2108 of the Public Utilities Code.

If you have any question concerning this matter, please call (415) 703-1961.

**ATTACHMENT A**

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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 of 2**

List of deficiencies in tariffs filed by Maxcess, Inc. in A.00-02-034 to be corrected in the tariff compliance filing.

1. Competitive local rates and services should be included under the Schedule 1-T. The CLC needs to transfer all the rules found in Schedule 2-T into Schedule 1-T. Use the Schedule 2-T for interexchange rates and services.
2. Every schedule sheet should be ruled showing a rectangular space approximately 7 inches wide and 8-¾ inches long so as to leave a margin of approximately 1-1/8 inches at the top and bottom of the sheet, and a binding margin of at least 1-1/8 inches at the left of the sheet. Refer to GO 96-A page 4, and Exhibit A-1.
3. On every schedule sheet, modify the contents under the bottom margin to conform to GO 96-A. Refer to GO 96-A page 4-5, and Exhibit A-1.
4. Sheet No. iii - Table of Contents: Error on the numbering of the pages. "PBX Trunk Service-Pacific Bell Service Area" begins on page 39, not page 29.
5. Sheet No. iv- Table of Contents: Remove the words "Intercarrier Arrangements," "Switched Access Service," and "Interconnection and Termination of Traffic" from the table of contents. The company does not have such services in the CLC tariff.
6. Sheet 32 and 37: Include the following corrected Income Limitation for Residential Lifeline Service.

<u>Household size</u>	<u>Income Limitation</u>
1-2	\$17,750
3	20,910
4	25,090
Each Additional	4,180

These income limits are effective until May 31, 2000.

7. Sheet 58: Include the following corrected surcharges and taxes:

<u>Effective</u>	<u>ULTS</u>	<u>CRS/CDFS</u>	<u>CHCF-A</u>	<u>CHCF-B</u>	<u>CTF</u>
01/01/00	0.500%	0.281%	0.000%	2.600%	0.05%

**ATTACHMENT B**

**Page 2 of 2**

8. Sheet 3, Rule 3: Include the 2<sup>nd</sup> paragraph from Rule 2 of Appendix B of D.95-07-054 in the CLC tariff.
9. Sheet 4, Rule 3B: Incomplete rule on Blocking Access to 900 And 976 Information Services. Refer to Rule 15 of Appendix B of D.95-07-054.
10. Sheet 8, Rule 7A2: The CLC shall state that in the event a customer requests service in addition to basic service, the average bill will reflect the aggregate services requested by the customer. Refer to Rule 5 of Appendix B of D.95-07-054.
11. Sheet 9, Rule 7B1: The CLC must state that it cannot require advance payments for usage.
12. Sheet 10, Rule 8B: Include Rule 6A.(2) from Appendix B of D.95-07-054 in the CLC tariff.
13. Sheet 18, Rule 10: In line 3 of the Disputed Bill rule, the CLC shall state that subscriber's service may be subject to disconnection if the CLC has notified the customer by written notice of such delinquency and impending termination. Refer to Rule 8B from Appendix B of D.95-07-054. Also, include Rule 8E and 8G from Appendix B of D. 95-07-054 in the CLC tariff.
14. Sheet 23, Rule 15: The CLC must concur with Pacific Bell or GTEC's Limitation of Liability regarding credit interruptions of less than 24 hours. Refer to D.95-12-057.
15. Include a rule on how the CLC will provision telephone directories to business and residential customers.
16. The CLC must have a demarcation tariff or concur in another company's tariff.
17. Include sample forms in the CLC tariff.

**(END OF ATTACHMENT B)**