

Decision 99-05-022 May 13, 1999

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of Williams Communications, Inc., dba Vyvx, Inc., a Delaware Corporation, for a Certificate of Public Convenience and Necessity to Provide InterLATA and IntraLATA Telecommunications Services Within the State of California.

Application 98-12-037
(Filed December 31, 1998)

INTERIM OPINION

I. Summary

Williams Communications, Inc. dba Vyvx, Inc. (applicant) seeks a certificate of public convenience and necessity (CPCN) under Pub. Util. Code § 1001 for authority to provide facilities-based and resold interexchange telecommunications services. By this interim decision, we grant authority to operate as a reseller subject to the terms and conditions set forth below. Facilities-based authority will be addressed in a subsequent decision.

II. Background

By Decision (D.) 84-01-037 (14 CPUC2d 317 (1984)) and later decisions, we authorized interLocal Access and Transport Areas (LATAs) entry generally.¹ 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

¹ California is divided into ten Local Access and Transport Areas 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.

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.

III. Overview of the Application

Applicant, a Delaware corporation, filed Application (A.) 98-12-037 on December 31, 1998. There were no protests to the application. Applicant seeks authority to provide facilities-based and resold interexchange service as a nondominant interexchange carrier (NDIEC) throughout California.

IV. Procedural Matters

In Resolution ALJ 176-3008, dated January 20, 1999, 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.

On May 6, 1999, applicant filed comments supporting the draft decision. No changes have been made to the draft decision.

V. Comments on Draft Interim Decision

The draft interim decision of Administrative Law Judge O'Donnell in this matter was mailed to the parties in accordance with Pub. Util Code § 311(g) and Rule 77.1 of the Rules of Practice and Procedure. The applicant, the only party, stipulated to a reduction of the 30-day comment period to 10 days.

VI. Financial Qualifications of Applicant

To be granted a CPCN, an applicant for authority to provide facilities-based 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.² To meet this requirement, applicant provided a copy of its parent company's Securities and Exchange Commission Form 10-K and a guarantee by its parent company, Williams Holdings of Delaware, that demonstrate that it has sufficient cash to meet this requirement.

An applicant seeking authority to provide 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). 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.

VII. Technical Qualifications of Applicant

Applicants for NDIEC 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 key employees. This biographical information demonstrates that applicant's employees possess sufficient experience and knowledge to operate as an NDIEC.

On October 8, 1998, the Virginia State Corporation Commission (VSCC) issued Order No. 981010337 which fined Vyvx of Virginia (VOV), a subsidiary of applicant, \$197,000. The order found that VOV had constructed facilities prior to receiving the necessary authority from VSCC. All but \$22,000 was suspended pending VOV not violating any VSCC rule or order, or any statute of the State of Virginia for a 5-year period. VOV's certificate to provide interexchange services

² The requirement is \$25,000 for resale only. In this case, applicant satisfied the higher requirement even though this decision only grants resale authority.

was not revoked as proposed by VSCC staff. VOV is currently appealing the order to the Virginia Supreme Court.

We have no reason to believe that applicant has performed any unauthorized construction in California at this time. We do not believe that the actions of applicants subsidiary warrant denial of this application. However, we expect applicant not to begin construction or facilities-based operations until after its application is approved. This decision does not constitute such approval.

Commission staff reviewed applicant's draft tariffs for compliance with Commission rules and regulations. No deficiencies were found.

We find that applicant is technically qualified to operate as an NDIEC.

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 will offer the interexchange service proposed in its application utilizing fiber optic cable facilities which it will primarily either erect or install in or on existing structures. Applicant represented that most of the proposed construction qualifies for a categorical exemption as minor alternations of existing utility structures involving negligible expansion of use beyond existing uses and that the proposals were exempt because it could be seen with certainty that there was no possibility that the proposals would have a significant effect on the environment. Applicant submitted an environmental assessment because some of the proposed construction will require the construction of new conduits or poles either within existing utility rights-of-way or other rights-of-way (such as roads).

Given the nature of applicant's proposed construction, it is possible that applicant's proposals may have an effect on the environment. Therefore, we have undertaken a CEQA review of the proposals. The CEQA review is part of the requirement to obtain a CPCN as a facilities-based provider. We can, however, authorize operations on a resale only basis because no facilities owned by the applicant would be involved and, therefore, there would be no effect on the environment.³ We will do so here. After the CEQA review is complete, we will address facilities-based operations.

Conclusion

We conclude that the application conforms to our rules for certification to resell interexchange telecommunications services. Accordingly, we shall grant resale authority subject to the terms and conditions set forth herein.

Findings of Fact

1. Applicant filed A.98-12-037 on December 31, 1998, for authority to provide telecommunications services as NDIEC.
2. Notice of A.98-12-037 appeared in the Daily Calendar on January 11, 1999.
3. No protests have been filed.
4. A hearing is not required.
5. 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.

³ Applicant holds indefeasible rights of use of facilities owned by other certified carriers. Use of these facilities pursuant to an indefeasible right of use is permitted under the resale authority granted herein.

6. In D.94-09-065, the Commission authorized competitive intraLATA services effective January 1, 1995, for carriers meeting specified criteria.

7. Applicant has demonstrated that it has a minimum of \$100,000 of cash or cash equivalent that is reasonably liquid and readily available to meet its start-up expenses.

8. Applicant has represented that no deposits are required by other telecommunications carriers in order to provide the proposed service.

9. Applicant possesses the requisite experience and knowledge to manage a telephone utility.

10. As part of its application, applicant submitted a draft of its initial tariff which complied with the requirements established by the Commission.

11. 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.)

12. 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.)

13. By D.97-06-107, all interexchange carriers and CLCs are no longer required to comply with General Order (GO) 96-A, subsections III.G(1) and (2), and Commission Rules of Practice and Procedure 18(b).

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 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. Applicant should be granted a CPCN to operate as an interexchange reseller to the extent set forth below.
8. Because of the public interest in interexchange services, the following order should be effective immediately.

INTERIM ORDER

IT IS ORDERED that:

1. A certificate of public convenience and necessity is granted to Williams Communications, Inc. dba Vyvx, Inc. (applicant) to provide resold interexchange services subject to the terms and conditions set forth below.

2. Applicant shall not construct facilities or provide facilities-based interexchange service until authorized to do so by a further order.

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 resold interexchange services. 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 1 day after tariff approval by the Commission's Telecommunications Division. Applicant shall comply with the provisions in its tariffs.

5. 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."

6. 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.

7. 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.

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 or if the name or telephone number changes.

9. Applicant shall notify this Commission in writing of the date interLocal Access and Transport Areas (LATA) service is first rendered to the public within five days after service begins and again within five days of when intraLATA service begins.

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

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 Pub. Util. Code § 2889.5 regarding solicitation of customers.

14. 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.

15. The corporate identification number assigned to applicant is U-6146-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 Pub. Util. Code § 708, Employee Identification Cards, and notify the Director of the Telecommunications Division in writing of its compliance.

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

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

19. 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.

20. 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.

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

22. The application is granted, to the extent set forth above.

This order is effective today.

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

RICHARD A. BILAS
President
HENRY M. DUQUE
JOSIAH L. NEEPER
Commissioners

INFORMATION REQUESTED OF INTEREXCHANGE CARRIERS

TO: ALL INTEREXCHANGE TELEPHONE UTILITIES

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 INTEREXCHANGE TELEPHONE UTILITIES

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)