

Decision 99-10-025 October 7, 1999

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 Nos. 141, 142, 143,
144, 145, 146, 147, 148
149, 150, 151, 152 and 153)

O P I N I O N

By this decision, we grant the petitions for certificates of public convenience and necessity (CPCN) as competitive local carriers (CLCs) to offer resold local exchange services within the territories of Pacific Bell (Pacific), GTE California Incorporated (GTEC), Roseville Telephone Company (RTC), and Citizens Telephone Company (CTC), for those petitioners as set forth in Appendix B of this decision, subject to the terms and conditions included herein. We also grant petitioners' requests for intrastate interLocal Access and Transport Areas (interLATA) and intraLATA authority on a statewide basis as designated in Appendix B. We defer granting full facilities-based local exchange authority at this time pending resolution of environmental issues as discussed in Section II below. In this order, we grant only limited facilities-based authority restricted to the use of equipment located within previously existing structures.

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 nonqualifying 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.

On September 24, 1997, we adopted D.97-09-115 in which we extended the coverage of our adopted rules for local exchange competition to include the service territories of California's two midsize local exchange carriers (MSLECs), RTC and CTC. In that decision, we also authorized candidates seeking CLC CPCN authority within the MSLECs' territories to immediately begin making filings following the applicable entry rules previously adopted in D.95-07-054 and subsequent decisions. Specifically, requests for CLC CPCN authority for

facilities-based service were to be filed in the form of a petition docketed in I.95-04-044, while resellers have sought authority through applications. In D.98-01-055, we approved the first group of petitions for facilities-based CPCNs to offer local exchange service within the MSLEC territories.

In this decision, we approve CPCNs for those facilities-based CLCs which filed petitions during the second quarter of 1999 and satisfied all applicable rules for certification as established in Rulemaking (R.) 95-04-043. The Petitioners identified in Appendix B will be authorized to begin offering service upon the filing of tariffs and compliance with the terms and conditions set forth in this order.

II. CEQA Review

We have reviewed the petitions for compliance with CEQA. CEQA requires the Commission 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. To achieve this objective, Rule 17.1 of the Commission's Rules 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 prepare the Commission's Initial Study to determine whether the project needs a Negative Declaration or an Environmental Impact Report (EIR).

Based on its assessment of the facilities-based petitions and PEAs, the Commission staff prepared a Negative Declaration and Initial Study generally describing the facilities-based Petitioners' projects and their potential environmental effects. The Negative Declaration prepared by the Commission

staff is considered a Mitigated Negative Declaration (MND). This means that, although the initial study identified potentially significant impacts, revisions which mitigate the impacts to a less than significant level have been agreed to by the Petitioners. (Pub. Res. Code § 21080(c)(2).)

A. Results of the Negative Declaration

On July 30, 1999, the Negative Declaration and Initial Study were sent to various city and county planning agencies, as well as public libraries throughout the state for review and comment by August 30, 1999. The Commission staff prepared a public notice which announced the preparation of the draft negative declaration, the locations where it was available for review, and the deadline for written comments. The public notice was advertised in newspapers throughout the state. The draft Negative Declaration was also submitted to the Governor's Office of Planning and Research where it was circulated to affected state agencies for review and comment.

Comments on the Negative Declaration were filed by various agencies.¹ The comments have identified a number of issues regarding claimed deficiencies in the Negative Declaration. The issues raised in filed comments include questions concerning the adequacy of petitioners' project descriptions, the claimed "piecemeal" nature of the projects presented, and other related concerns. Based on a preliminary review of the claimed deficiencies identified in comments, we conclude that additional time will be required to adequately

¹ 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 Department of Fish and Game filed a motion on July 29, 1999, for leave to intervene in the proceeding. There is no opposition. The motion is granted.

review, address, and resolve the various issues raised in the filed comments on the Negative Declaration. Until these issues are resolved the Negative Declaration cannot be finalized and approved.

Until the Negative Declaration can be finalized, the CEQA requirements for certification of the petitioners' projects remain unsatisfied, and granting of full facilities-based local exchange authority to the petitioners identified in Appendix B must be deferred. We shall direct our staff to expeditiously undertake the necessary steps to review the claimed deficiencies in the Negative Declaration and to notify the CLC petitioners concerning any additional information required to rectify deficiencies in the project descriptions and any related information required to finalize the Negative Declaration. Once the identified deficiencies can be resolved, and a revised Negative Declaration can be presented for our consideration, we will at that time reconsider the pending requests of the petitioners for full facilities-based local exchange authority.

In comments in response to the draft decision, various CLC petitioners have pointed out that at least for their initial start up operations, they do not anticipate undertaking any new construction. Instead, they intend to collocate their network equipment within the existing structure of the central offices of the ILECs, and to provide service by purchasing the 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 purchasing UNEs. Thus, the CLCs argue that the deficiencies identified in the negative declaration should not prevent the Commission from granting such limited facilities-based authority at this time where no construction is involved.

Late filed comments were submitted on October 4, 1999, by Cmetric, Inc. (Cmetric).

Cmetric generally supports the requests of other Petitioners who have asked to be granted facilities-based local exchange authority on the condition that such Petitioners agree to undertake no new construction in public rights-of-way until the environmental issues raised in the Draft Decision are resolved by this Commission.

Cmetric claims, however, its circumstances are unique in that Cmetric is planning to provide an innovative data access service that is not otherwise available, and Cmetric's business plan relies in part on the imminent construction of particular projects in partnership with other carriers, public utilities, municipalities, and others.

Specifically, Cmetric requests that it be authorized to provide facilities-based local exchange services in the following circumstances: (1) by using existing facilities of other carriers, public utilities, municipalities, or railroads; (2) by undertaking minimal construction for which it can be seen with certainty that there is no possibility that the activity may have a significant effect on the environment (i.e., service that requires construction entirely within existing buildings, structures, conduit, etc.); (3) by obtaining authority to conduct specific, planned, and imminent projects for specified routes and delineated geographic areas pursuant to the Commission's Environmental Impact Report (EIR) process; and/or (4) by partnering with other existing certificated carriers, public utilities, municipalities, or railroads that would construct any necessary facilities in the public rights-of-way pursuant to their existing authority.

Concurrent with its late-filed comments, Cmetric also filed a Motion for Permission to Submit Late-Filed Comments pursuant to Rules 77.5 and 45. Cmetric's motion is granted.

We agree 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, for purposes of this decision, we shall grant each of the petitioners "facilities-based" authority in this restricted manner only. Under the limited authority granted herein, the CLC petitioners are prohibited from engaging in any construction of buildings, towers, conduits, poles, or trenches pending resolution of the environmental issues related to the negative declaration as identified above. The authorization for full facilities-based authority involving actual construction shall be deferred pending resolution of the alleged deficiencies identified in the negative declaration pursuant to CEQA.

We appreciate the concerns raised by Cmetric as to the business risk to its investment as a result of the timing uncertainties in resolving outstanding CEQA issues. We shall seek to resolve these issues in the most expeditious manner possible. We shall also consider ways to prioritize the environmental review and approval of carriers' more time-sensitive projects for specific routes and geographic areas.

We cannot at this time, however, authorize Cmetric to conduct "specific, planned, and imminent projects for specified routes and delineated geographic areas" on a contingent basis. Under the law, we must assess whether an EIR or Negative Declaration is required for the projects proposed by Cmetric. Only after proper compliance with CEQA can we approve the projects and grant the related facilities-based authority sought by Cmetric. Likewise, we cannot simply grant Cmetric authority to engage in construction activities through a partnership arrangement with other certificated carriers. Whether Cmetric engages in construction directly or indirectly through an agent or partner, the

environmental impacts of the resulting construction must be studied and appropriately mitigated.

In the meantime, we will grant the petitioners' requests for authority to provide interexchange services and local exchange services utilizing resale of other carriers' services or unbundled network elements and equipment installed solely within existing structures.

B. Required Payment of CEQA Deposit

Commission Decision 97-04-046 stipulates that all petitioners for CLC authority must submit with their filing an initial payment of \$2000 to cover CEQA costs. The \$2000 payment is used to cover the Commission's costs for preparing and publishing the Mitigated Negative Declaration for each qualifying petitioner, as required by CEQA law. As of the date of this order, the Commission has received payment of the required \$2000 deposit from each of the CLCs, as identified in Appendix B.

III. Review of CPCN Petitions

A. Overview

The CLC petitions have been reviewed for compliance with the certification-and-entry rules (Rules) adopted in Appendices A and B of D.95-07-054 and subsequent decisions in R.95-04-043/I.95-04-044. Consistent with our goal of promoting a competitive market as rapidly as possible, we are granting authority to all of the facilities-based CLCs that filed during the second quarter of 1999 and met the Rules. The 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.

Petitioners had to demonstrate that they possessed the requisite managerial qualifications, technical competence, and financial resources to provide facilities-based local exchange service. Petitioners were also required to submit proposed tariffs which conform to the consumer protection rules set forth in Appendix B of D.95-07-054. In response to a notice of tariff deficiencies, the various petitioners submitted tariff corrections. Except for the outstanding deficiencies noted in Appendix C, the petitioners' proposed tariffs are found to be satisfactory with no deficiencies noted.

As prescribed in Rule 4.B.(1), prospective facilities-based CLCs must also show that they possess a minimum of \$100,000 in cash or cash-equivalent resources, as defined in the Rules. In order to demonstrate that they possess the requisite financial resources, petitioners submitted copies of recent financial statements. Because the financial statements contain commercially sensitive information, the petitioners filed motions for limited protective orders to restrict the financial statements and related documents containing commercially sensitive information from public disclosure pursuant to General Order (GO) 66-C. We grant those motions as prescribed in our order below.

Based upon our review, except for the unresolved CEQA issues noted above, we conclude that each of the Petitioners identified in Appendix B, has satisfactorily complied with our certification requirements for entry, including the consumer protection rules set forth in D.95-07-054, subject to correcting any tariff deficiencies in Appendix C, and satisfying the additional conditions set forth in the ordering paragraphs below. Accordingly, we herein grant these Petitioners authority to offer local exchange service utilizing resale of other carriers' services or unbundled network elements and equipment located solely within existing structures within the territories of Pacific and GTEC and, where requested, within the CTC and RTC territories. We also grant the

statewide inter- and intraLATA authority as requested. With respect to full-facilities-based local authority, petitioners request shall be deferred pending resolution of outstanding CEQA issues and finalization of the Negative Declaration, as noted above.

Pursuant to D.97-09-115, CLC resale authority within the RTC and CTC territories was authorized to become effective on or after April 1, 1998. As we stated in D.97-09-115, until the time that tariffed wholesale discount rates are adopted for RTC and CTC, individual CLCs certificated to resell local service within the CTC/RTC territories may enter into negotiations with each of the MSLECs to seek agreement on an interim wholesale discount rate. Disputes over the terms of resale arrangements may be submitted to the Commission for arbitration pursuant to the provisions of Section 252(b)(1) of the Telecommunication Act of 1996 and Commission Resolution ALJ-174.

B. Motion of DSLnet

DSLnet Communications, LLC ("DSLnet"), attempted to file a petition (# 142) for CLC local exchange authority on March 31, 1999, with the intention of being included in the Commission's quarterly "batch" review of such petitions filed during the first quarter of 1999. However, DSLnet subsequently learned that, due to certain confusion surrounding whether DSLnet's Petition was complete for purposes of the Commission's review, the Commission did not technically accept DSLnet's petition until April 13, 1999. As a result, it was too late for DSLnet's Petition to be included in the Commission's quarterly review process for such petitions filed during the first quarter of 1999, at least to the extent DSLnet seeks facilities-based authority.

Nonetheless, in order to allow DSLnet to initiate competitive telecommunications service in California as soon as possible, DSLnet filed a

motion on May 4, 1999, asking the Commission to: (1) immediately consider the portion of DSLnet's Petition seeking authority to resell local exchange telecommunications services, and (2) consider the portion of DSLnet's Petition seeking facilities-based authority in the Commission's quarterly review process for Petitions filed during the second quarter of 1999.

No party objected to the motion of DSLnet. We thus approved the request of DSLnet for consideration of the resale portion of its petition in the first quarterly review period of 1999 to be reasonable, granting DSLnet resale-only authority at that time.

Due to the timing requirements relating to the Mitigated Negative Declaration, DSLnet's request for facilities-based was deferred to the current quarter. We therefore have reviewed the facilities-based portion of the DSLnet petition, and find that it has met our requirements subject to resolution of outstanding CEQA issues noted above.

IV. Comments on Draft Decision

The draft decision of the ALJ 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. Comments were filed between September 21 and September 25, 1999. We have taken the comments into consideration as appropriate in finalizing the decision.

Findings of Fact

1. Thirteen petitioners filed requests for the second quarter of 1999 seeking a CPCN to provide competitive local exchange services in the territories of various California incumbent local exchange carriers as set forth in Appendix B.

2. One of the petitioners, DLSnet, attempted to file during the first quarter, but the filing was not actually docketed until April 13, 1999. DSLnet thus had its

request for CLC resale authority considered as part of the first quarterly group of CLCs for calendar year 1999, and is having its request for facilities-based authority being considered in the current second quarterly group.

3. Although no formal protests to the CLC petitions have been filed, various public agencies filed comments challenging the Negative Declaration regarding compliance with CEQA. Further inquiry is required to resolved these CEQA issues before full facilities-based authority can be considered.

4. By prior Commission decisions, we authorized competition in providing local exchange telecommunications service within the service territories of Pacific, GTEC, RTC, and CTC for carriers meeting specified criteria.

5. The Petitioners listed in Appendix B have demonstrated that each of them has a minimum of \$100,000 in cash or cash equivalent reasonably liquid and readily available to meet its start-up expenses.

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

7. Except as noted in Appendix C, Petitioners have each submitted a complete draft of their initial tariff which complies with the requirements established by the Commission, including prohibitions on unreasonable deposit requirements.

8. Commission D.97-04-046 stipulates that all petitioners for CLC authority must submit with their filing an initial payment of \$2,000 to cover the Commission's costs for preparing and publishing the Mitigated Negative Declaration pursuant to CEQA.

9. Each of CLCs, as identified in Appendix B, has submitted the required \$2,000 CEQA deposit as of the date of this order.

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

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

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.)

13. 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. Each of the Petitioners listed in Appendix B has the financial ability to provide the proposed services, and has made a reasonable showing of technical expertise in telecommunications.

2. Public convenience and necessity require the competitive local exchange services to be offered by Petitioners for resale subject to the terms, conditions, and restrictions set forth below.

3. Each Petitioner 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; 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 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, Resolution T-16165; August 1, 1998).
- 4. Petitioners should be exempted from Rule 18(b).
 - 5. Petitioners should be exempted from Pub. Util. Code §§ 816-830.
 - 6. Petitioners should be exempted from Pub. Util. Code § 851 when the transfer or encumbrance serves to secure debt.
 - 7. The Negative Declaration cannot be finalized at this time due to outstanding challenges by members of the public which remain to be resolved.
 - 8. Each of the Petitioners must agree to, and is required to, carry out any specific mitigation measures adopted in the Mitigated Negative Declaration (MND), once it is finalized, in compliance with CEQA.
 - 9. The Petitioners should be granted CPCNs for interexchange service and 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 should be deferred pending resolution of alleged deficiencies in the Negative Declaration.

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 each of the Petitioners listed in Appendix B (Petitioners) to permit each of them to provide competitive local exchange telecommunications services utilizing resale of other carriers' services or unbundled network elements and equipment installed solely within existing structures within the service territories as noted in Appendix B and, as a statewide nondominant interexchange carrier (NDIEC), as noted in Appendix B, contingent on compliance with the terms identified in Appendix B and in the remainder of this order. Authorization for full facilities-based authority involving construction work is deferred pending resolution of outstanding CEQA issues raised pursuant to comments on the Negative Declaration.

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

3. a. The Petitioners are authorized to file with this Commission tariff schedules for the provision of competitive local exchange, intraLATA (Local Access Transport Area) toll and intrastate interLATA services, as applicable. The Petitioners may not offer these services until tariffs are on file, and until any applicable deficiencies as noted in Appendix C 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 Telecommunications Division.

b. The Petitioners are competitive local carriers (CLCs). The effectiveness of each of their 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 Petitioners 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 Petitioners are subject, as described in Conclusion of Law 3. Petitioners are 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. Each 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, each 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. Where applicable, each 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. The same procedure shall be followed for the authorized intraLATA and interLATA services, where applicable.

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

9. Petitioners 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. Petitioners 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 each Petitioner, as set forth in Appendix B, 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, each 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. Each Petitioner is exempted from the provisions of Pub. Util. Code §§ 816-830.

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

17. The Mitigated Negative Declaration, including the Mitigation Monitoring Plan, shall be finalized and adopted in a subsequent decision.

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

19. Petitioners shall comply with the Commission's rules for local exchange competition in California that are set forth in Appendix C of D.95-12-056, including the requirement that CLCs shall place customer deposits in a protected, segregated, interest-bearing escrow account subject to Commission oversight.

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

21. Petitioners' respective motions for a limited protective order keeping designated documents containing financial and other operating information confidential are granted. Such documents will remain under seal for one year from today unless a petitioner makes a timely request for extension of confidential treatment of its documents by filing a separate motion with good cause shown.

22. The petitions listed in Appendix B are granted only as set forth above.

23. The motion of the Department of Fish and Game for leave to intervene in the proceeding is granted.

24. The motion of Cmetric to accept late-filed comments is granted.

This order is effective today.

Dated October 7, 1999, at Los Angeles, California.

RICHARD A. BILAS
President
HENRY M. DUQUE
JOSIAH L. NEEPER
JOEL Z. HYATT
CARL W. WOOD
Commissioners

APPENDIX A

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**TO: ALL COMPETITIVE LOCAL CARRIERS AND 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.

APPENDIX A

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Information Requested of California Competitive Local Carriers and 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:
 - 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 APPENDIX A)

APPENDIX B

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LISTING OF PETITIONERS GRANTED CPCN AUTHORITY

Requested Authority
Granted

Name of Petitioner	Petition No.	Utility U-No.	Local Exchange ²		Statewide Inter/Intra- LATA
			Facilities-based	Resale	
1. Com Express, Inc. ³	141	U-6231-C	X	X	
2. DSLNET Communications, LLC ⁴	142	U-6169-C	X		
3. International Telcom, Ltd. ²	143	U-5964-C	X	X	X

² Full facilities-based approval for each of the 13 petitioners is being deferred pending resolution of outstanding CEQA issues as discussed in II.A of the decision. Local exchange authority granted herein is limited to local exchange resale service and local exchange service utilizing unbundled network elements and equipment located solely within existing structures. Unless otherwise indicated, the authorized local exchange service territory of each CLC petitioner is limited to the ILEC service territories of Pacific, GTEC, RTC, and CTC.

³ The authorized local exchange territory for this carrier is limited to the ILEC service territories of Pacific and GTEC.

⁴ The resale portion of the DSLnet petition was approved during the previous quarterly review period.

APPENDIX B

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LISTING OF PETITIONERS GRANTED CPCN AUTHORITY

Requested Authority
Granted

Name of Petitioner	Petition No.	Utility U-No.	Local Exchange ²		Statewide Inter/Intra- LATA
			Facilities-based	Resale	
1. Com Express, Inc. ³	141	U-6231-C	X	X	
2. DSLNET Communications, LLC ⁴	142	U-6169-C	X		
3. International Telecom, Ltd. ²	143	U-5964-C	X	X	X

² Full facilities-based approval for each of the 13 petitioners is being deferred pending resolution of outstanding CEQA issues as discussed in II.A of the decision. Local exchange authority granted herein is limited to local exchange resale service and local exchange service utilizing unbundled network elements and equipment located solely within existing structures. Unless otherwise indicated, the authorized local exchange service territory of each CLC petitioner is limited to the ILEC service territories of Pacific, GTEC, RTC, and CTC.

³ The authorized local exchange territory for this carrier is limited to the ILEC service territories of Pacific and GTEC.

⁴ The resale portion of the DSLnet petition was approved during the previous quarterly review period.

APPENDIX B

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LISTING OF PETITIONERS GRANTED CPCN AUTHORITY

Requested Authority
Granted

Name of Petitioner	Petition No.	Utility U-No.	<u>Local Exchange</u> ⁵ Facilities-based		Statewide Inter/Intra-LATA
			Resale		
4. J.W.E., Corp.	144	U-6233-C	X	X	X
5. Intellectual Operator Services, Inc.	145	U-5168-C	X	X	X
6. Cmetric, Inc.	146	U-6234-C	X	X	X
7. JATO Operating Two Corp. 2	147	U-6235-C	X	X	
8. Teligent, Inc. 3 ⁶	148	U-5803-C	X	X	
9. 2 nd Century Communications, Inc.	149	U-6236-C	X	X	X
10. Universal Access, Inc.	150	U-6237-C	X	X	X
11. Wilshire Connection, LLC	151	U-6238-C	X	X	X
12. ReFlex Communications, Inc.	152	U-6230-C	X	X	
13. Allied Riser of California, Inc.	153	U-6239-C	X	X	X

(END OF APPENDIX B)

⁵ Full facilities-based approval for each of the 13 petitioners is being deferred pending resolution of outstanding CEQA issues as discussed in II.A of the decision. Local exchange authority granted herein is limited to local exchange resale service and local exchange service utilizing unbundled network elements and equipment located solely within existing structures. Unless otherwise indicated, the authorized local exchange service territory of each CLC petitioner is limited to the ILEC service territories of Pacific, GTEC, RTC, and CTC.

⁶ The previously authorized territory for Teligent is extended by this order to cover that of RTC and CTC.

APPENDIX C

Page 1 of 3

List of Deficiencies to Petition No. 142 filed by DSLnet Communications, LLC to be corrected in Tariff Compliance Filing.

Include sample forms.

1. Need to include all CPUC mandated surcharges in the tariff.
2. Per D.95-12-057, the tariff must be revised to state which provider the company will use to administer the Deaf and Disabled Equipment Distribution Program.
3. Sheet 40: An interruption period begins when the company is aware of it not when the user reports it.
4. Sheet 47, Change of Service Provider: Include tariff language on the applicable penalty or fine for violation of rule on change of service provider. (See Rule 11, Appendix B of Decision 95-07-054.)
5. Sheet 50: Each Promotional Offerings must be tarified before it is offered to customers and filed according to G.O. 96-A.

Corrected tariff sheets with sidebars indicating changes must be provided for the following items:

1. Need to delete Advice Letter No.1 from the draft tariff sheets. The company's compliance tariff will be the Advice Letter filing.
2. Sheet 8-T: Update the surcharge amounts for California Relay Service and Communications Device Fund to 0.192%, California High Cost Fund B to 3.8%, California Teleconnect Fund to 0.05% and Universal Lifeline service to 0.0%.
3. Sheet 17-T, rule 2.3, Backbilling: Decision 86-12-025 provides for a five month backbilling for collect calls, credit card and third party calls.
4. Sheet 19-T, rule 3.1 says that carrier will provide all residential customers with information regarding the Universal Lifeline Program. This language is contradictory to Sheet 5-T, Preliminary Statement and Sheet 15-T, Description of Service which says that service is provided to business customers. Please clarify the applicability of each tariff and eliminate any contradictions. Also rule 3.4 indicates applications for service are noncancellable unless the company otherwise agrees. This violates Rule

APPENDIX C

Page 2 of 3

- 6.B.1 of Appendix B which allows a customer to notify the company of their desire to discontinue service on or before the date of disconnection.
5. Sheet 24-T, rule 7.1: Advance payments cannot be required for usage. It is allowed only on non-recurring charges and 1st month's recurring charges. Also, rule 7.2.1 states "the deposit will not exceed an amount equal to three months charges for a service or facility which has a minimum payment of one month." Per Rule 5 of Appendix B of D. 95-07-054 deposit shall be no greater than twice the estimated monthly bill for the class of service applied for.
 6. Sheet 25-T, rule 7.2.D: The interest on deposits is to be set at the 3-month commercial paper rate published by the Federal Reserve Board, under Rule 5 of Appendix B.
 7. Sheet 26-T, rule 7.4.A must be changed to reflect that the deposit balance must be returned within 30 days after discontinuance of service, not 30 days following rendition of the final bill.
 8. Sheet 32-T, rule 10.B : Statement relating to costs must be replaced with the following language "The non-prevailing party may be liable for reasonable court costs and attorney fees as determined by the CPUC or by the court."
 9. Sheet 37-T, rule 13.B, an interruption period begins once the company is aware of it not when the customer reports it.
 10. Sheet 54-T, rule 23: Per D. 95-12-057, the tariff must be revised to state which provider the company will use to administer the Deaf and Disabled Distribution Program.
 11. The company must include its own Switched Access Tariff or concur in another carrier's tariff.

APPENDIX C
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List of deficiencies in tariffs filed by Wilshire Connection, LLC in I.95-04-044
Petition 151.

1. Sheet 8 - Place a map of intended service territory here.
2. Sheet 10 #4 - Use actual rates, not rate ranges.
3. Sheet 15 - Same as Item 2 above.
4. Sheet 17 - Same as Item 2 above.
5. Sheet 32 B3 - Include provisions for paying interest on deposits when returned to customers. The rate is that of current 3-month commercial paper.
6. Sheet 33 B5 2nd Line - After the word "agreement" add the words, "or 12 months, whichever comes first."
7. Sheet 37 - Expand Rule 9 to give a fuller description of the dispute procedure, including contacting Consumer Affairs Branch, depositing disputed amount there, etc.
8. Sheet 39 B1 - Discontinuance of service for nonpayment of bills requires 7 days written prior notice.
9. Sheet 47 A - Wilshire's limitation of liability needs to be \$10,000 to be consistent with the PacBell tariff.

(END OF APPENDIX C)

APPENDIX A

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**TO: ALL COMPETITIVE LOCAL CARRIERS AND 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.

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LISTING OF PETITIONERS GRANTED CPCN AUTHORITY

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			Facilities-based	Resale	
1. Com Express, Inc. ³	141	U-6231-C	X	X	
2. DSLNET Communications, LLC ⁴	142	U-6169-C	X		
3. International Telcom, Ltd. ²	143	U-5964-C	X	X	X

² Full facilities-based approval for each of the 13 petitioners is being deferred pending resolution of outstanding CEQA issues as discussed in II.A of the decision. Local exchange authority granted herein is limited to local exchange resale service and local exchange service utilizing unbundled network elements and equipment located solely within existing structures. Unless otherwise indicated, the authorized local exchange service territory of each CLC petitioner is limited to the ILEC service territories of Pacific, GTEC, RTC, and CTC.

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