

Decision **PROPOSED DECISION OF ALJ SMITH** (Mailed 7/10/2007)**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

CN Telecom Services, Inc. (U6016C), for authority to Discontinue Telecommunications Services in the State of California.

Application 07-02-002
(Filed February 1, 2007)

OPINION MODIFYING DECISION 07-04-042**Summary**

Decision (D.) 07-04-042 (Decision) authorized RCN Telecom Services, Inc. (RCN) to discontinue the provision of local exchange and interexchange services and cancelled its certificate of public convenience and necessity (CPCN), effective June 1, 2007. On June 26, 2007, RCN filed a petition to modify D.07-04-042 (Petition) in order to keep its California CPCN in effect until no later than March 13, 2008 for the limited purpose of continuing to provide wholesale telecommunications services to Astound Broadband, LLC (Astound).¹ In its Petition, RCN states unless it is authorized to provide service to Astound, local and long distance telephone and broadband services could be interrupted to Astound's California end user customers. This decision modifies D.07-04-042 to restore RCN's operating authority and condition expiration of RCN's CPCN

¹ Astound (U-6184-C) is authorized by D.05-10-039 to provide local, intraLocal Access Transport Area (LATA) toll and interexchange telecommunications services in California.

upon notification to the Commission by advice letter, effective upon approval by the Communications Division pursuant to General Order 96-B,² of its desire to relinquish its CPCN and to cancel its utility identification number.

Background

In August 2006, RCN sold its Northern California facilities and customer base to Astound.³ RCN filed Application (A.) 07-02-002 on February 1, 2007 requesting authority to discontinue providing local exchange, interexchange, and other wireline telecommunications services to its remaining customers in the Cities of Carson and Gardena. RCN requested expedited treatment of its application so that it could discontinue service on or before May 1, 2007.⁴ A.07-02-002 was unopposed.

D.07-04-042 authorized RCN to discontinue providing local exchange and interexchange services to its remaining California customers and designated Pacific Bell Telephone Company d/b/a AT&T California (Pacific Bell) as the default carrier for RCN's remaining customers who did not select another carrier. The Decision cancelled RCN's CPCN and utility identification number (U-6016-C), effective June 1, 2007.

On June 26, 2007, RCN filed its Petition in order to keep its CPCN in effect until no later than March 13, 2008 for the limited purpose of continuing to provide wholesale telecommunications services to Astound (Petition). RCN

² D.07-01-024, Appendix A, Rule 7.6.1.

³ RCN Telecom Services, Inc., Advice Letter 92 (effective December 20, 2006).

⁴ In coordination with the Commission's Communications Division, Applicant revised its exit date to June 1, 2007.

states unless it is authorized to provide service to Astound, local and long distance telephone and broadband services could be interrupted to Astound's California end user customers.

RCN already had Commission approval for the sale of its Northern California system to Astound when it filed A.07-02-002. RCN states that, when it filed A.07-02-002, it expected the transition of facilities and services to Astound to be completed by the time the Commission rendered a decision on the Application. RCN states that it closed the sale and executed a Transition Services Agreement (TSA) with Astound on March 13, 2007. RCN states that, although the TSA required RCN to provide telecommunications services to Astound until March 13, 2008, RCN and Astound expected the transition of underlying telecommunications services would be completed before RCN's authority expired.

RCN states that Astound recently notified it that additional time was needed to complete the transition of services to Astound. The transition of services from RCN to Astound required, among other things, that Astound establish its own interconnection agreement and migrate underlying services to that agreement, as well as moving certain back office functions from RCN systems to its own systems. Astound has experienced difficulties migrating circuits with which RCN interconnects with AT&T.

RCN states that, notwithstanding the efforts of the parties to complete the transition, the process is taking longer than expected. RCN states Astound has informed RCN that it needs RCN to continue providing service to Astound at least until the third quarter 2007. However, because the TSA obligates RCN to provide services to Astound until March 13, 2008, RCN requests that its CPCN remain in effect until notification by RCN to the Commission that it no longer

needs its CPCN. Specifically, RCN requests Ordering Paragraph 8 of D.07-04-042 be modified to state:

Upon written submission to the Commission by Applicant that service to all California customers has been discontinued, Applicant's utility identification number (U-6016-C) shall be cancelled and shall not be reissued.

Discussion

RCN is required to have a CPCN to provide telecommunications services in California. That authority was cancelled, at RCN's request, by D.07-04-042. Nevertheless, the transition of facilities and services to Astound has not yet been completed. Astound has experienced difficulties migrating those interconnection circuits, and the process is taking longer than expected. As a result, Astound is presently serving some end users through RCN circuits interconnected with AT&T. If RCN were to cease operating (i.e., disconnect the circuits interconnected with AT&T) before completing the transfer of its facilities and services, Astound's end user customers could be adversely affected. Nevertheless, RCN needs a CPCN to operate lawfully.

At the time D.07-04-042 was issued, RCN was in good standing with the Commission and voluntarily sought to discontinue telecommunications services in California. RCN cooperated closely with Commission staff in implementing the requirements of D.06-10-021, which, among other things, ensures an exiting competitive local exchange carriers' (CLECs) customers have the opportunity to migrate to another local exchange carrier without interruption of service. RCN also contacted the Commission when it determined it needed to authority until the transition of facilities and services to Astound was completed.

Were it not for RCN's own request to voluntarily discontinue providing local exchange and interexchange services to its remaining California customers and to relinquish its CPCN, RCN would still be authorized to operate. There is no reason why the Petition should be denied. Significant harm to public health or safety could result if RCN services to Astound were disrupted before completing the transition of facilities and services to Astound. However, RCN needs a CPCN to operate lawfully while facilities and services are being transferred to Astound. Therefore, its CPCN should be restored, and RCN should be allowed to notify the Commission when it is ready to have its CPCN cancelled.

Comments on Proposed Decision

The proposed decision in this matter was released for public review and comment on July 10, 2007. Pursuant to Pub. Util. Code § 311(g)(2) and Rule 14.6(b), all parties stipulated to a reduction of the public review and comment period. No comments were filed on the proposed decision.

Assignment of Proceeding

Rachelle B. Chong is the assigned Commissioner and Richard Smith is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. In August 2006, RCN sold its Northern California facilities and customer base to Astound (U-6184-C).
2. RCN filed A.07-02-002 on February 1, 2007 requesting authority to discontinue providing local exchange, interexchange, and other wireline telecommunications services to its remaining customers in the Cities of Carson and Gardena.
3. A.07-02-002 was unopposed.

4. D.07-04-042 authorized RCN to discontinue the provision of local exchange and interexchange services and cancelled its CPCN and utility identification number (U-6016-C), effective June 1, 2007.

5. On June 26, 2007, RCN filed a petition to modify D.07-04-042 (Petition) in order to reinstate its CPCN for the limited purpose of continuing to provide wholesale telecommunications services to Astound.

6. RCN already had Commission approval for the sale of its Northern California system to Astound when it filed A.07-02-002.

7. RCN is required to provide telecommunications services to Astound until March 13, 2008, pursuant to a TSA.

8. Astound has experienced difficulties migrating circuits through which RCN interconnects with AT&T, and the process is taking longer than expected.

9. RCN requests that its CPCN be reinstated until notification by RCN to the Commission that it no longer needs its CPCN.

10. If RCN were to cease operating before completing the transfer of its facilities and services, Astound's end user customers could be adversely affected.

11. At the time D.07-04-042 was issued, RCN was in good standing with the Commission and voluntarily sought to discontinue telecommunications services in California.

12. Were it not for RCN's own request to voluntarily discontinue providing local exchange and interexchange services to its remaining California customers and to relinquish its CPCN, RCN would still be authorized to operate.

13. Failure to grant the Petition could result in significant harm to public health or safety if RCN services to Astound were disrupted before completing the transition of facilities and services to Astound.

Conclusions of Law

1. RCN needs a CPCN to operate lawfully while facilities and services are being migrated to Astound (U-6184-C).
2. RCN's CPCN and utility identification number (U-6016-C) should be restored and RCN should be allowed to notify the Commission when it is ready to have its CPCN and utility identification number cancelled.
3. The Petition should be granted to ensure RCN operates lawfully and to prevent harm to Astound's end user customers.
4. D.07-04-042 should be modified restore RCN's CPCN and utility identification number and to permit notification by RCN to the Commission by advice letter, effective upon approval by the Communications Division pursuant to General Order 96-B, Rule 7.6.1, that it no longer needs its CPCN and utility identification number.

O R D E R**IT IS ORDERED** that:

1. RCN Telecom Services, Inc.'s Certificate of Public Convenience and Necessity and utility identification number are hereby restored.
2. Ordering Paragraph 8 of Decision (D.) 07-04-042 is deleted and replaced with the following:

"Applicant shall notify the Commission by advice letter, effective upon approval by the Communications Division pursuant to General Order 96-B, Rule 7.6.1, of its desire to relinquish its certificate of public convenience and necessity and to cancel Applicant's utility identification number (U-6016-C)."

3. All other provisions of D.07-04-042 are unchanged and shall remain in effect.

4. Application 07-02-002 is closed.

This order is effective today.

Dated _____, at San Francisco, California.