

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking on the Commission's Own Motion to Revise the Simplified Registration Process for Non-dominant Interexchange Carriers Established by Decision 97-06-107.

FILED
PUBLIC UTILITIES COMMISSION
JULY 9, 2009
SAN FRANCISCO, CALIFORNIA
RULEMAKING 09-07-009

ORDER INSTITUTING RULEMAKING

Summary

By this order, the Commission initiates a proceeding to revise the requirements established by Decision (D.) 97-06-107 for registration of non-dominant interexchange carriers (NDIECs), including those that provide long distance, high-speed data services, operator services and prepaid debit card services.¹ This Order Instituting Rulemaking (OIR) is initiated in response to issues raised in the State Controller's 2007 Audit Report.² The questions we will consider are:

- 1) Should a performance bond be required as a condition of registration?

¹ The Commission's registration requirements do not apply to nonpublic utility providers of operator-assisted services specified in Public Utilities (Pub. Util.) Codes 741 and 741.1 or to prepaid debit card resellers that, pursuant to Pub. Util. Code 885(b), are not required to register.

² John Chiang, California State Controller, "California Public Utilities Commission - Report of Review, Fines and Restitution Accounting and Collection," August 2007.

- 2) Should registration certificates be granted for a limited duration, and should registrants be required to prove good standing as a condition for renewal or transfer of registration certificates?
- 3) Should fingerprints, criminal background checks and/or other showings be required for registration applicants?
- 4) Should registration applicants be subject to expanded fiscal and civil responsibility checks?
- 5) Should the nominal \$75 application fee be increased, and if so, by how much and why? Should we require a minimum annual user fee, and if so, how much should that annual fee be and why?
- 6) Should we rename the “registration Certificate of Public Convenience and Necessity” simply a “registration certificate” or “registration license,” in keeping with the more limited regulation contemplated in Pub. Util. Code § 885 and § 1013?

Current Registration Process

Presently, NDIECs, including those offering long-distance, high-speed data services, operator services and prepaid debit card services, submit a registration form to apply for a “registration Certificate of Public Convenience and Necessity” to provide inter-local access and transport area (LATA) and intra-LATA telecommunications services.³ The streamlined registration process was established by D.97-06-107, pursuant to the authority granted in Pub. Util. Code § 885 and § 1013.

A registration applicant must pay a fee of \$75 and may request an exemption from tariffing requirements but must comply with consumer protection rules adopted in D.98-08-031. No performance bond is required but

³ See D.97-06-107, 73 CPUC2d 288, 295, Conclusion of Law 1, Ordering Paragraph 1.

the applicant must affirm that no affiliate, officer, director, partner, or owner has filed for bankruptcy, or is being investigated or has been found either criminally or civilly liable for violations of specified sections of the California Business and Professions (B&P) Code or for any actions which involved misrepresentations to consumers. The applicant must also affirm that it has not been sanctioned by the Federal Communications Commission (FCC) or any other state regulatory agency, and must demonstrate that it has minimum financial assets (\$25,000 for a switchless reseller, and \$100,000 for a facilities-based carrier) to start operations.

Both the Docket Office and the Communications Division must review the registration application for completeness. If all requirements are met and no protest to the application is filed within 30 days after notice of the filing appears in the Commission's Daily Calendar, the Communications Division prepares an Executive Director Order granting the application.

Concerns of the State Controller's Office

In 2007, the State Controller's Office (SCO) completed an audit of the Commission's consumer protection enforcement activities. In its audit report, the SCO noted an increasing incidence of fraudulent or inappropriate practices among carriers in the telecommunications industry. The SCO commented that the Commission is slow in rendering decisions imposing fines and restitution, and found that it was inherently difficult for the Commission to collect fines and to make restitution to customers if the offending parties are no longer operating or have filed for bankruptcy. The SCO recommended that the Commission conduct more stringent background and financial viability reviews of individuals or companies registering with the Commission. The SCO also recommended that the posting of a performance bond be required for NDIEC registration, and noted that the registration fee itself (\$75) was "nominal."

The Commission carefully considered the SCO's concerns with regard to our NDIEC streamlined registration process, and responded that it would initiate a proceeding to address them. By this OIR, we are launching a proceeding to address issues raised in the SCO's audit report. We identify below the issues to be explored, and propose solutions. We seek comments from all parties on these proposals in this rulemaking.

Issues and Proposed Resolutions

1) *Should a performance bond be required?*

The SCO recommends that the Commission require applicants to post a performance bond prior to registration. Notwithstanding the language in Pub. Util. Code § 1013(e) that “[t]he commission shall require as a precondition to registration the procurement of a performance bond ...”, in D.97-06-107 we concluded that “[n]o performance bond is necessary to ensure payment of fees or taxes or to protect consumers.”⁴ This OIR will reconsider that conclusion.

In light of the legislative mandate, we ask parties not to comment on whether we should impose a bond requirement. Rather, we seek comment on what type of bond(s) registration applicants should be required to post. We also seek comment on the amount of the bond that should be posted. For example, should a performance bond be required similar to the bonding requirements established for video franchisees by D.07-03-014 or Electric Service Providers (ESP) by D.03-12-015? Video franchisees must post a minimum \$100,000 bond, and ESPs a \$25,000 bond. Comments should identify the activities and types of

⁴ *Id.*, Finding of Fact 9.

expenses a performance bond should cover, and how the size of the bond for registrants should be determined.

We also ask whether pre-paid debit card providers that are required to register pursuant to Pub. Util. Code § 885(a) should be subject to the same performance bond requirement as other NDIEC registrants that provide only long distance services.

2) *Should registration certificates be granted for a limited term, and registration renewal or transfer be based on demonstrated good standing?*

The SCO comments that it takes years for the Commission to investigate and penalize wrongdoing committed by registrants. We believe that requiring periodic renewal of registration certificates will help to more timely detect and limit or prevent wrongdoing by registrants, and seek comment on whether registration certificates should be granted for a limited duration, subject to periodic renewal, rather than remain in effect indefinitely. We also seek comment on our proposal to require registration applicants, as a condition of renewal or transfer, to make a showing of good standing.

We seek comment on our proposal to issue and renew registration certificates for a three-year period, and to require registrants to apply for certificate renewal prior to the expiration of a registration certificate. This proposal is similar to the renewal requirement currently applicable to charter-party carriers.

As part of the certificate renewal process, we propose to require registrants to demonstrate compliance with all Commission reporting, fee, and surcharge transmittals, have no record of criminal activities, citations, financial irregularities, etc., and to disclose any past or pending regulatory sanctions from

the FCC or another state regulatory agency. We also propose to apply these requirements to the transfer of any registration certificate.

We also seek comment on how currently registered NDIECs should be transitioned to limited duration registration certificates.

3) *Should fingerprints, criminal background checks and/or other showings be required from all registration applicants?*

The SCO recommends that we conduct more stringent background reviews of individuals and companies applying for registration. We seek comment on whether background checks should be required for NDIEC registrants that are similar to those conducted by the Commission for ESP registrants or household goods carriers. These background checks may include the submission of fingerprint records from applicants. We ask parties to comment on whether these background checks should be required for the officers and directors of registration applicants.

4) *Should applicants undergo expanded financial background and fiscal responsibility checks?*

The SCO recommends that the Commission conduct more stringent financial viability reviews of registration applicants. We propose to develop and implement appropriate means to permit Commission staff (including Commission attorneys or paralegals) to conduct relevant civil court and regulatory agency record reviews for bankruptcy or other penalties and sanctions. We seek comment on whether this requirement should be applied to the applicant's officers and directors.

We seek comment on our proposal to require resumes from officers and directors of registration applicants listing all employment. We also seek comment on our proposal to require an applicant to state whether it has been previously or is currently being investigated by any governmental agency, has

entered into any settlement agreements or made any voluntary payments in resolution of any action by any regulatory body, agency, or attorney general, or court and if/when the applicant has begun or will begin providing service in California.

5) *Should the application fee be increased from \$75? Should we require a minimum annual user fee payment?*

The SCO calls our current NDIEC registration application fee “nominal.” We note that this is the standard application filing fee for most applications with the Commission. However, in light of the SCO’s comments, we propose a fee similar to that required for household goods carrier applications. We propose to increase the registration application fee to \$500, and seek comment on this proposal. This increased application fee will help to offset the additional expense resulting from expanded background checks and reviews of civil and regulatory sanction records. If \$500 is not an appropriate registration application fee, we seek comment on what the registration application fee should be and why.

Currently all NDIEC registrants are required to pay a fee (user fee) to fund Commission regulatory activities, which is based on the carrier’s intrastate revenues. Carriers reporting no intrastate revenue, however, currently do not pay a user fee and, therefore, do not contribute to offsetting regulatory expenses. We seek comment on whether the Commission should establish a minimum annual user fee all NDIEC registrants. We propose a minimum annual user fee of \$100, and seek comment on whether this amount is appropriate. If \$100 is not an appropriate minimum annual user fee, we seek comment on what the minimum annual user fee should be and why.

6) *Should the “registration Certificate of Public Convenience and Necessity” be renamed a “registration certificate” or a “registration license”?*

While the SCO did not raise this question, we wish to reconsider our designation of the registration instrument as a “Certificate of Public Convenience and Necessity.” We note that Pub. Util. Code § 1013(a) does not require the Commission to issue CPCNs to registrants. Rather, Section 1013(a) states that a telephone corporation operating in California “shall either have a certificate of public convenience and necessity or be registered under this section ...” (emphasis added).

In establishing the registration process in D.97-06-107, we chose to designate the registration instrument a “CPCN.” In the years since implementation, this designation has created confusion for carriers and Commission staff. It will be less confusing to identify the registration instrument as a “registration certificate” or a “registration license.” By renaming the registration instrument, we will clearly distinguish the full-service CPCN, with its multitude of associated rules and regulations, from the more limited scope of the regulatory oversight contemplated in Pub. Util. Code § 1013. We seek comment on this proposal.

Scope of This Rulemaking

The issues identified above are best resolved by formal rulemaking. The results of this rulemaking proceeding may have important effects on some or all of California’s telecommunications users. Accordingly, we desire that this order be distributed to a wide range of potentially interested parties. NDIEC

registrants are named respondents.⁵ In addition, it will be sent to parties on the service list for R.00-02-004, our proceeding on Consumer Protection Rules. Although the rules changes we propose in this OIR are only directed to NDIEC registrants (D.97-06-107) at this time, we make all other telecommunications carriers respondents to this rulemaking so that they have notice that proposed changes adopted in this rulemaking may be extended in the future to competitive local exchange carriers (CLECs), NDIECs that, pursuant to Pub. Util. Code § 1001, obtained CPCNs through formal application, or others. We seek comments from all parties on the above six issues and on our proposals to address those issues. After initial service of this order, interested parties shall advise the Commission's Process Office of their interest in participating so a new service list can be developed for the proceeding. The assigned Commissioner, and the assigned ALJ acting with the assigned Commissioner's concurrence, will have ongoing oversight of the service list and may institute changes to the list or the procedures governing it as necessary.

Preliminary Scoping Memo

This rulemaking will be conducted in accordance with Article 6 of the Commission's Rules of Practice and Procedure. As required by Rule 7.3, this order includes a preliminary scoping memo as set forth below.

The issues to be considered in this proceeding are, as more fully described earlier in this order:

⁵ This rulemaking does not affect the CPCNs of NDIECs that, pursuant to Pub. Util. Code § 1001, obtained CPCNs to offer interexchange and local exchange services through the Commission's formal application process.

- 1) Should NDIEC registrants be required to post a performance bond? If so, what type and how much? What activities and types of expenses should a performance bond be required to cover? How should the size of the bond for registrants be determined? Should pre-paid debit card providers that are required to register pursuant to Pub. Util. Code § 885(a) be subject to the same performance bond requirement as other NDIEC registrants that provide only long distance services?
- 2) Should registration certificates be granted for a limited duration of three years or for some other limited period? Should registration applicants, as a condition of renewal or transfer, be required to make a showing to prove good standing?
- 3) Should fingerprint, criminal background checks and/or other showings be required for the officers and directors of registration applicants? If so, what should be required?
- 4) Should expanded fiscal and civil responsibility checks be performed? If so, what should they include? Should this requirement be applied to the applicant's officers and directors? Should resumes listing all employment be required from officers and directors? Should the applicant be required to state whether it has entered into any settlement agreements in resolution of any corrective action by any regulatory body, agency, or attorney general?
- 5) Should the application fee for registration be increased to \$500 or some other amount? If \$500 is not an appropriate application fee, what should the registration application fee be and why? Should the Commission establish a minimum \$100 annual user fee for NDIEC registrants? If \$100 is not an appropriate minimum annual user fee, what should the minimum annual user fee be and why?
- 6) Should the "registration CPCN" be renamed a "registration certificate" or "registration license"?

Pursuant to Rule 7.1(d), we preliminarily determine the category of this rulemaking proceeding to be quasi-legislative as the term is defined in Rule 1.3(d).

We do not anticipate that evidentiary hearings will be required. We do not intend to hold public participation hearings to gather input from the general public. If parties believe either is necessary they should so indicate in their comments, describing specifically the reasons evidentiary and/or public participation hearings are needed and, in the case of evidentiary hearings, describing the facts the party would present.

For purposes of meeting the scoping memo requirements and to expedite the proceeding, we establish the following schedule:

Day 1	Order Instituting Rulemaking issued
Day 16	Deadline for requests to be on service list
Day 35	Initial Comments filed and served
Day 49	Reply Comments filed and served
Day 180	Proposed interim decision
Day 200	Comments on proposed decision filed and served
Day 205	Reply comments on proposed decision filed and served
1 st Quarter 2010	Proposed decision on Commission agenda

The assigned Commissioner through his/her ruling on the scoping memo and subsequent rulings, and the assigned Administrative Law Judge (ALJ) by ruling with the assigned Commissioner's concurrence, may modify the schedule as necessary during the course of the proceeding. In no event do we anticipate this proceeding to require longer than 18 months from the issuance of the scoping memo to complete.

The assigned Commissioner will issue a ruling which determines the category, need for hearing, and schedule for this rulemaking, and designates the

principal hearing officer (Rule 13.2). The ruling, only as to category, may be appealed under the procedures in Rule 7.6.

Any person filing comments on an order instituting rulemaking shall state any objections to the preliminary scoping memo regarding the category, need for hearing, issues to be considered or schedule. (Rule 6.2.)

Parties and Service List

Within 15 days of the date of issuance of this order, any person or representative of an entity seeking to become a party to this rulemaking should send a request to the Commission's Process Office, 505 Van Ness Avenue, San Francisco, California, 94102 (or ALJ_Process@cpuc.ca.gov) to be placed on the official service list for this proceeding. Individuals seeking only to monitor the proceeding, but not participate as an active party may request to be added to the service list as "Information Only." The service list will be posted on the Commission's website: www.cpuc.ca.gov prior to the time comments are filed.

Any party interested in participating in this rulemaking who is unfamiliar with the Commission's procedures should contact the Commission's Public Advisor in Los Angeles at (213) 649-4782 or in San Francisco at (415) 703-7074, (866) 836-7875 (TTY - toll free) or (415) 703-5282 (TTY), or send an e-mail to public.advisor@cpuc.ca.gov.

The Commission has adopted rules for the electronic service of documents related to its proceedings, Commission Rule 1.10, available on our website at http://www.cpuc.ca.gov/PUBLISHED/RULES_PRAC_PROC/44887.htm. We will follow the electronic service protocols adopted by the Commission in Rule 1.10 for all documents, whether formally filed or just served.

This Rule provides for electronic service of documents, in a searchable format, unless the appearance or state service list member did not provide an

e-mail address. If no e-mail address was provided, service should be made by United States mail. In this proceeding, concurrent e-mail service to all persons on the service list for whom an e-mail address is available will be required, including those listed under "Information Only." Parties are expected to provide paper copies of served documents upon request.

E-mail communication about this case should include, at a minimum, the following information on the subject line of the e-mail: *R.[xx-xx-xxx] – OIR to Revise the Simplified Registration Process for NDIECs*. In addition, the party sending the e-mail should briefly describe the attached communication; for example, "Comments." Paper format copies, in addition to electronic copies, shall be served on the assigned Commissioner and the ALJ.

Ex Parte Communications

Pursuant to Rule 8.2 of the Commission's Rules of Practice and Procedure, *ex parte* communications are allowed without restriction or reporting in any quasi-legislative proceeding. Therefore, there are no restrictions or reporting requirements applied to this proceeding.

Therefore, **IT IS ORDERED** that:

1. A rulemaking is instituted on the Commission's own motion to revise requirements established by Decision 97-06-107 for registration of non-dominant interexchange carriers including those that provide long distance, high-speed data services, operator services and prepaid debit card services.
2. The issues to be considered are those set forth in the body of this order.
3. All Commission-regulated telecommunications carriers are made respondents in this proceeding.

4. This rulemaking is preliminarily determined to be a quasi-legislative proceeding as that term is defined in the Commission's Rules of Practice and Procedure, Rule 1.3(d).

5. This proceeding is preliminarily determined not to require evidentiary hearings.

6. The schedule for this proceeding is as set forth in the body of this order. The assigned Commissioner through his/her scoping memo and subsequent rulings, and the assigned Administrative Law Judge by ruling with the assigned Commissioner's concurrence, may modify the schedule as necessary during the course of the proceeding, provided that we do not anticipate this proceeding to require longer than 18 months to complete.

7. The Executive Director shall cause copies of this order to be served on respondents to the proceeding, and on those on the service lists for the following dockets: R.00-02-004.

8. After initial service of this order, a new service list for the proceeding shall be established following procedures set forth in this order. The assigned Commissioner, and the assigned Administrative Law Judge acting with the assigned Commissioner's

concurrence, shall have ongoing oversight of the service list and may institute changes to the list or the procedures governing it as necessary.

This order is effective today.

Dated July 9, 2009, at San Francisco, California.

MICHAEL R. PEEVEY
President
DIAN M. GRUENEICH
JOHN A. BOHN
RACHELLE B. CHONG
TIMOTHY ALAN SIMON
Commissioners