

Decision 12-01-008 January 12, 2012

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Dollar Phone Enterprise Inc. dba DPE (U7136C) for a Certificate of Public Convenience and Necessity to Operate as a Provider of Resold Interexchange Service within the State of California.

Application 11-03-027
(Filed March 29, 2011)

DECISION GRANTING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO DOLLAR PHONE ENTERPRISE INC. d/b/a DPE

1. Summary

Dollar Phone Enterprise Inc., d/b/a DPE, is granted a certificate of public convenience and necessity pursuant to Pub. Util. Code § 1001 to provide resold interexchange service in the State of California, subject to the terms and conditions set forth below. The application is unopposed. We also grant the motion of Applicant to file certain confidential materials under seal.

This proceeding is closed.

2. Background

Dollar Phone Enterprise, Inc., d/b/a DPE (Applicant), a New York corporation authorized to operate in California as a foreign corporation, has applied for a certificate of public convenience and necessity (CPCN) authorizing the company to provide resold interexchange services in the state of California. Currently, Applicant holds a registration license authorizing operations as a

resold interexchange carrier in this state.¹ Applicant provides prepaid card plans that allow customers to pay a fixed dollar amount in advance for long distance telephone calls.

Applicant's principal place of business is located in Brooklyn, New York.

3. 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 provide its service through the use of existing facilities and network elements of other carriers and/or through its own facilities, installed in existing buildings and structures, and has no plans for constructing other facilities at this time. Therefore, it can be seen with certainty that there is no possibility that granting this application will have an adverse effect upon the environment. Applicant must file for additional authority, and submit to any required CEQA review, before it can construct facilities.

4. Financial Qualifications

To be granted an application for a CPCN, an applicant for authority to provide resold interexchange services must demonstrate that it has a minimum of \$25,000 of cash or cash equivalent to meet the firm's start-up expenses.² An applicant must also demonstrate that it has sufficient additional resources to

¹ In Decision (D.) 09-03-004, the Commission granted Applicant a registration license authorizing operations as a resold interexchange carrier in this state, pursuant to the Commission's expedited registration process. Applicant now wishes to obtain a CPCN.

² The financial requirement for non-dominant interexchange carriers (NDIEC) is contained in D.91-10-041.

cover all deposits required by local exchange carriers and/or interexchange carriers in order to provide the proposed service.³ Here, Applicant has provided financial documents demonstrating that it has satisfied these financial requirements.

5. Technical Qualifications

To be granted a CPCN for authority to provide resold interexchange services, applicants are required to make a reasonable showing of technical expertise in telecommunications or a related business.⁴ Applicant has submitted resumes for its key management team, which demonstrate that Applicant possesses sufficient experience and knowledge to operate as a telecommunications provider.

Applicant represents that no one associated with or employed by Applicant as an affiliate, officer, director, partner, or owner of more than 10% of Applicant was previously associated with any telecommunications carrier that filed for bankruptcy; has been found either civilly or criminally liable by a court of appropriate jurisdiction for a violation of § 17000 et seq., of the California Business and Professions Code or for any actions which involved misrepresentations to consumers, nor is currently under investigations for similar violations; or was sanctioned by the Federal Communications Commission or any state regulatory agency for failure to comply with any regulatory statute, rule or order.

³ For NDIECs, the requirement is found in D.93-05-010.

⁴ D.95-12-056 at Appendix C, Rule 4.A.

6. Tariffs

Commission staff reviewed Applicant's draft tariffs for compliance with Commission rules and regulations. The deficiencies are noted in Attachment A to this decision. Applicant must correct these deficiencies in its tariff compliance filing as a condition of our approval of its tariffs.

7. Map of Service Territory

To be granted a CPCN for authority to provide resold interexchange services, an applicant must provide a map of the service territories it proposes to serve.⁵ Applicant complied with this requirement.

8. Expected Customer Base

Since Applicant provides service through prepaid long distance cards that are sold through various retail distribution outlets, Applicant does not have presubscribed customers and cannot provide a meaningful projection of the number of California customers it expects to serve.

9. Conclusion

We conclude that the application conforms to our rules for authority to provide resold interexchange telecommunications services. Accordingly, we approve the application subject to the terms and conditions set forth herein.

10. Comments on Proposed Decision

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

⁵ D.95-12-056 at Appendix C, Rule 4.E.

11. Categorization and Need for Hearing

In Resolution ALJ 176-3273 dated May 5, 2011, the Commission preliminarily categorized this application as ratesetting, and preliminarily determined that hearings were not necessary. No protests have been filed. There is no apparent reason why the application should not be granted. Given these developments, a public hearing is not necessary, and it is not necessary to disturb the preliminary determinations.

12. Motion for Protective Order

Pursuant to Rule 11.4 of the Rules of Practice and Procedure, Applicant requests that the financial information and its expected customer base submitted in the application be kept under seal. Applicant represents that the information is proprietary and sensitive, and the information, if revealed, would place Applicant at an unfair business disadvantage. We have granted similar requests in the past and will do so here.

All sealed information should remain sealed for a period of two years after the effective date of this order. If Applicant believes that further protection of the sealed information is needed beyond the two years, Applicant shall comply with the procedure set forth in Ordering Paragraph 9.

13. Assignment of Proceeding

Catherine J.K. Sandoval is the assigned Commissioner and Myra J. Prestidge is the assigned Administrative Law Judge (ALJ) in this proceeding.

Findings of Fact

1. Notice of the application appeared in the Daily Calendar on April 21, 2011. A hearing is not required.

2. In prior decisions, the Commission authorized competition by carriers meeting specified criteria in providing resold interexchange telecommunications services within the service territories of the state of California.

3. Applicant has a minimum of \$25,000 of cash or cash equivalent that is reasonably liquid and readily available to meet its start-up expenses.

4. Applicant has sufficient additional cash or cash equivalent to cover any deposits that may be required by other telecommunications carriers in order to provide the proposed service.

5. Applicant possesses sufficient experience and knowledge to provide telecommunications services.

6. As part of its application, Applicant submitted a draft of its initial tariff that contained the deficiencies identified in Attachment A to this decision. Except for those deficiencies, its draft tariffs complied with the Commission's requirements.

7. Applicant will not be constructing any facilities.

8. Applicant has filed a motion for leave to file confidential financial information under seal.

Conclusions of Law

1. Applicant has the financial ability to provide the proposed service.

2. Applicant has sufficient technical expertise to operate as a telecommunications carrier.

3. Public convenience and necessity require that Applicant's resold interexchange services, authorized herein, be subject to the terms and conditions set forth herein.

4. Since Applicant will not be constructing any facilities, it can be seen with certainty that there will be no significant effect on the environment.

5. The application should be granted to the extent set forth below.
6. Applicant, once granted a CPCN, should be subject to the applicable Commission rules, decisions, General Orders, and statutes that pertain to California public utilities.
7. Applicant's initial tariff filing should correct the deficiencies in its draft tariffs as indicated in Attachment A to this decision.
8. Applicant's motion to file material under seal should be granted for two years. Material filed under seal should not be made accessible or disclosed to anyone other than the Commission and its staff, except upon further order or ruling of the Commission, the assigned Commissioner, the assigned ALJ, or the ALJ then designated as Law and Motion Judge.
9. If Applicant believes that further protection of the sealed information is needed beyond the two years, Applicant shall follow the procedure stated in Ordering Paragraph 7 below.
10. Because of the public interest in competitive local exchange services, the following order should be effective immediately.

O R D E R

IT IS ORDERED that:

1. A certificate of public convenience and necessity is granted to Dollar Phone Enterprise, Inc., d/b/a DPE, authorizing the company to operate as a resale provider of interexchange services in California, subject to the terms and conditions set forth below.
2. Dollar Phone Enterprise, Inc., d/b/a DPE, is authorized to file tariff schedules for the provision of resold interexchange services with the deficiencies noted in Attachment A corrected. Dollar Phone Enterprise, d/b/a DPE may not

offer services in this state until corrected tariffs are on file. The initial filing of Dollar Phone Enterprise, d/b/a/DPE must be made in accordance with General Order 96-B and the Telecommunications Industry Rules (Decision 08-09-019).

Dollar Phone Enterprise, Inc., d/b/a DPE, must comply with its tariffs.

3. 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.

4. The corporate identification number assigned to Dollar Phone Enterprise Inc., d/b/a DPE, U7136C, must be included in the caption of all original filings with this Commission, and in the titles of other pleadings filed in existing cases.

5. In addition to the requirements applicable to resold interexchange carriers included in Attachment B to this decision, Dollar Phone Enterprise, d/b/a DPE, must comply with the Commission's rules and regulations for resold interexchange carriers set forth in Decision 93-05-010 and Decision 90-08-032, as well as all other applicable Commission rules, decisions, General Orders, and statutes that pertain to California public utilities, subject to any exemptions granted in this decision.

6. Dollar Phone Enterprise, Inc., d/b/a DPE, is not authorized to construct facilities, except for installing switches in existing buildings.

7. All sealed information will remain sealed for a period of two years after the effective date of this order. After two years, all such information shall be made public. If Dollar Phone Enterprise, Inc., d/b/a DPE believes that further protection of sealed information is needed beyond two years, Dollar Phone Enterprise, Inc., d/b/a DPE, shall file a motion, no later than 30 days before the expiration of the two-year period granted by this order, stating the justification for further withholding of the sealed information from public inspection.

8. Application 11-03-027 is closed.

This order is effective today.

Dated January 12, 2012, at San Francisco, California.

MICHAEL R. PEEVEY

President

TIMOTHY ALAN SIMON

MICHEL PETER FLORIO

CATHERINE J.K. SANDOVAL

MARK J. FERRON

Commissioners

Attachment A

List of deficiencies in draft tariff submitted by Dollar Phone Enterprise, Inc., d/b/a DPE, in A. 11-03-027 in initial tariff compliance filing.

1. GO96B, Section 8.5.7, Definitions: Please provide clear and concise definitions of the principal terms used in tariffs needs to be printed.
2. Rule 2, Appendix B, D.95-07-054, Initiation of Service: Application procedure to obtain service is missing. Customer should be informed about the rates, charges, terms and conditions, within 10 days of initiating service.
3. GO96-B, 8.5.7, Item 4. Contracts: Please specify when a Contract is required for service and the terms and conditions for the same.
4. Rule 3, Appendix B, D.95-07-054, Special Information Required on Forms: Please include information regarding when to pay, period of service, late payment charge, how to pay, how to question the bill, network access for interstate calling and late payment information.
5. Rule 4, Appendix B, D.95-07-054, Establishment and Re-establishment of Credit:

Need to state credit cannot be denied for failure to provide social security number.

Need to state that deposits and/or cosigner may be used to provide acceptable credit history.
6. Rule 5, Appendix B, D.95-07-054, Deposits: If deposits are required, limits and interest on deposits must be specified. Limits on deposits to be no greater than twice the estimated average monthly bill. The interest rate will be added using the 3 month commercial paper rate published by the Federal Reserve Board.
7. Rule 6, Appendix B, D.95-07-054, Notices: Please provide information on notices. Notices are provided to customer for Rate information and change in ownership and notices received from customer for discontinuance of service by customers.
8. Rule 9, Appendix B, D.95-07-054, Issuance and Payment of Bills: Please note that the customer bill should have late payment date prominently displayed.

9. Rule 8, Item B, Appendix B, D.95-07-054, Disputed bills: Regarding the undisputed portion of the bill that is in dispute, it needs to be stated that it must be paid no sooner than 15 days from the date of presentation shown on the bill and that the service can be subject to disconnection if the company has notified the customer by written notice of such delinquency.
10. Rule 8, Item E, Appendix B, D.95-07-054, Disputed bills: The rule should specify that the company shall respond to CAB's request for information within 10 business days.
11. GO96B, 8.5.7, Item12, Information on Services and Promotional Offering: Please provide information to customer on promotional offerings and how to get information regarding the same including office hours, telephone number and email address for contacting the utility with requests for such information.
12. Rule 14, Appendix B, D.95-07-054, Privacy: Please provide rule on customer privacy. Telephone corporations are restricted from releasing non public customer information in accordance with PU Code Sections 2891 and 2893. CLCs are subject to calling record privacy rules set forth in Appendix B of D.92860 and 93361 and as modified by D.83-06-066, D.83-06-073 and D.83-09-061.
13. GO96B, Section 8.1.3, Please provide Company address in California or web URL where tariffs and cancelled sheets can be inspected.
14. D.05-07-054, Appendix B, Rule 6.B.(2).5, Please add procedure a customer may request for amortization of unpaid charges.
15. GO96B, Section 8.4, Please include Utility ID# on each tariff sheet.
16. Resolution T-16901: Fees and Surcharges, Your tariff must state that your fees and surcharges are in compliance with and concur with the tariff provision for fees and surcharge in AT&T California tariffs.

(END OF ATTACHMENT A)

ATTACHMENT B

REQUIREMENTS APPLICABLE TO COMPETITIVE LOCAL EXCHANGE CARRIERS AND INTEREXCHANGE CARRIERS

1. Applicant shall file, in this docket, a written acceptance of the certificate granted in this proceeding within 30 days of the effective date of this order.

2. Applicant is subject to the following fees and surcharges that must be regularly remitted. Per the instructions in Appendix E to Decision (D.) 00-10-028, the Combined California PUC Telephone Surcharge Transmittal Form must be submitted even if the amount due is \$0.

- a. The current 1.150% 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 Trust Administrative Committee Fund (Pub. Util. Code § 879; Resolution T-17071, dated March 1, 2007, effective April 1, 2007);
- b. The current 0.200% 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 Deaf and Disabled Telecommunications Program (Pub. Util. Code § 2881; D.98-12-073 and Resolution T-17127, dated December 20, 2007, effective January 1, 2008);
- c. The user fee provided in Pub. Util. Code §§ 431-435, which is either 0.180% of gross intrastate revenue (Resolution M-4819, dated June 7, 2007, effective July 1, 2007);
- d. The current 0.00% 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 § 739.3; D.96-10-066, pp. 3-4, App. B, Rule 1.C (Resolution T-17299, dated November 19, 2010, effective December 1, 2010);

- e. The current 0.300% 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.; D.07-12-054; Resolution T-17311, dated March 24, 2011, effective May 1, 2011);
- f. The current 0.000% 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 Advanced Services Fund (D.07-12-054); Resolution T-17248, dated December 17, 2009, effective January 1, 2010; and
- g. The current 0.079% 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-17142, dated April 24, 2008, effective June 1, 2008).

Note: These fees change periodically. In compliance with Resolution T-16901, December 2, 2004, Applicant should check the joint tariff for surcharges and fees filed by Pacific Bell Telephone Company (dba AT&T California) and apply the current surcharge and fee amounts in that joint tariff on end-user charges until further revised.

- 3. Applicant is a competitive local exchange carrier (CLEC). The effectiveness of its future tariffs is subject to the requirements of General Order 96-B and the Telecommunications Industry Rules (D.07-09-019).
- 4. Applicant is a nondominant interexchange carrier (NDIEC). The effectiveness of its future NDIEC tariffs is subject to the requirements of General Order 96-B and the Telecommunications Industry Rules (D.07-09-019).
- 5. Tariff filings shall reflect all fees and surcharges to which Applicant is subject, as reflected in 2 above.
- 6. Applicant shall file a service area map as part of its initial tariff.

7. Prior to initiating service, Applicant shall provide the Commission's Consumer Affairs Branch with the name and address of its designated contact person(s) for purposes of resolving consumer complaints. This information shall be updated if the name or telephone number changes, or at least annually.

8. Applicant shall notify the Director of the Communications Division in writing of the date that local exchange service is first rendered to the public, no later than five days after service first begins.

9. Applicant shall notify the Director of the Communications Division in writing of the date interLATA service is first rendered to the public within five days after service begins, and again within five days after intraLATA service begins.¹

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

11. In the event Applicant's books and records are required for inspection by the Commission or its staff, it 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 its office.

12. Applicant shall file an annual report with the Director of the Communications Division, in compliance with GO 104-A, on a calendar-year basis with the information contained in Attachment C to this decision.

¹ California is divided into ten Local Access and Transport Areas (LATAs), each containing numerous local telephone exchanges. Inter LATA describes services, revenues and functions relating to telecommunications originating within one LATA and terminating in another LATA. IntraLATA describes services, revenues and functions relating to telecommunications originating within a single LATA.

13. Applicant shall file an affiliate transaction report with the Director of the Communications Division, in compliance with D.93-02-019, on a calendar year basis using the form contained in Attachment D.

14. Applicant shall ensure that its employees comply with the provisions of Public Utilities (Pub. Util.) Code § 2889.5 regarding solicitation of customers.

15. 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 Communications Division in writing of its compliance.

16. If Applicant is 90 days or more late in filing an annual report, or in remitting the surcharges and fee listed in 2 above, the Communications Division shall prepare for Commission consideration a resolution that revokes Applicant's CPCN unless it has received written permission from the Communications Division to file or remit late.

17. Applicant is exempt from Commission Rules of Practice and Procedure 3.1(b).

18. Applicant is exempt from Pub. Util. Code §§ 816-830.

19. Applicant is exempt from the requirements of Pub. Util. Code § 851 for the transfer or encumbrance of property whenever such transfer or encumbrance serves to secure debt.

20. If Applicant decides to discontinue service or file for bankruptcy, it shall immediately notify the Communications Division's Bankruptcy Coordinator.

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.

(END OF ATTACHMENT B)

ATTACHMENT C ANNUAL REPORT

An original paper copy, and a machine-readable electronic copy, on a CD or floppy disk using Microsoft Word or a compatible format, shall be filed with the California Public Utilities Commission, 505 Van Ness Avenue, Room 3107, San Francisco, CA 94102-3298. The filing shall be made no later than March 31st of the year following the calendar year for which the annual report is submitted.

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

Required information:

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. The number and date of the Commission decision granting the Utility's CPCN.
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.
12. Cash Flow statement as of December 31st of the calendar year for which information is submitted, for California operations only.

For answers to any questions concerning this report, call (415) 703-1923.

(End of Attachment C)

**ATTACHMENT D
CALENDAR YEAR AFFILIATE TRANSACTION REPORT**

1. Each utility must list and provide the following information for each affiliated entity and regulated subsidiary that the utility had during the period covered by the annual Affiliate Transaction report.

- Form of organization (*e.g.*, corporation, partnership, joint venture, strategic alliance, etc.);
- Brief description of business activities engaged in;
- Relationship to the utility (*e.g.*, controlling corporation, subsidiary, regulated subsidiary, affiliate);
- Ownership of the utility (including type and percent ownership)
- Voting rights held by the utility and percent; and
- Corporate officers.

2. The utility must prepare and submit a corporate organization chart showing any and all corporate relationships between the utility and its affiliated entities and regulated subsidiaries in #1 above. The chart should have the controlling corporation (if any) at the top of the chart; the utility and any subsidiaries and/or affiliates of the controlling corporation in the middle levels of the chart and all secondary subsidiaries and affiliates (*e.g.*, a subsidiary that in turn is owned by another subsidiary and/or affiliate) in the lower levels. Any regulated subsidiary should be clearly noted.

3. For a utility that has individuals who are classified as “controlling corporations” of the competitive utility, the utility must only report under the requirements of #1 and #2 above any affiliated entity that either (a) is a public utility or (b) transacts any business with the utility filing the annual report excluding the provision of tariff services.

4. Each annual report must be signed by a corporate officer of the utility stating under penalty of perjury under the laws of the State of California (CCP 2015.5) that the annual report is complete and accurate with no material omissions.

5. Any required material that a utility is unable to provide must be reasonably described and the reasons the data cannot be obtained, as well as the efforts expended to obtain the information, must be set forth in the utility's annual Affiliate Transaction Report and verified in accordance with Section I-F of Decision 93-02-019.

6. Utilities that do not have affiliated entities must file, in lieu of the annual transaction report, an annual statement to the Commission stating that the utility had no affiliated entities during the report period. This statement must be signed by a corporate officer of the utility, stating under penalty of perjury under the laws of the State of California (CCP 2015.5) that the annual report is complete and accurate with no material omissions.

(END OF ATTACHMENT D)