

Decision 03-10-054 October 16, 2003

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

In the Matter of the Application of Consolidated Communications Operator Services, Inc. for Registration as an Interexchange Carrier Telephone Corporation Pursuant to the Provisions of Public Utilities Code Section 1013.

Application 03-01-038  
(Filed January 31, 2003)

**O P I N I O N**

**I. Summary**

Consolidated Communications Operator Services, Inc. (Applicant), seeks to register as a limited facilities-based interexchange carrier for the State of California. For the reasons set out below, we decline to process it as an application for registration and treat it instead as an application for a Certificate of Public Convenience and Necessity (CPCN). After review of the Application and supplemental information provided by Applicant, we grant the Application for a CPCN.

**II. Background**

Applicants for authority to offer telecommunications services within the State of California are generally obligated to obtain a CPCN pursuant to the provisions of Pub. Util. Code §§ 1001 *et seq.* However, applicants who meet the

requirements for registration contained in Pub. Util. Code § 1013<sup>1</sup> may qualify for an exemption from the more lengthy CPCN application process.

The Application for registration was initially reviewed by staff of the Commission's Telecommunications Division. They questioned whether Applicant was entitled to use the registration procedure and forwarded the Application to the Administrative Law Judge Division for further consideration. On May 15, 2003, the Application was assigned to Commissioner Loretta M. Lynch and Administrative Law Judge (ALJ) Karl J. Bemederfer.

On June 26, 2003, in response to a request from the then-assigned ALJ for additional financial information, Applicant filed a supplement to the Application, consisting of a balance sheet and income statement for its parent corporation, Consolidated Communications, Inc. (CCI), dated as of March 31, 2003.

---

<sup>1</sup> California Pub. Util. Code § 1013 reads in relevant part as follows:

- (a) The commission may by rule or order, partially or completely, exempt certain telecommunications services offered by telephone and telegraph corporations from the certification requirements of Section 1001 and instead subject them to registration as the commission may determine...*
- (d) Prior to designating any telephone corporation for registration status, the commission shall adopt rules to do both of the following:*
  - (1) Verify the financial viability of the corporation.*
  - (2) Verify that the officers of the corporation have no prior history of committing fraud on the public.*

Our rules implementing these statutory instructions require that applicants demonstrate compliance by themselves and officers, directors, general partners, affiliates or 10% or greater shareholders.

### **III. Discussion**

We concur with staff of the Telecommunications Division that Applicant is not entitled to registration under § 1013 and that the Application should be treated as an application for a CPCN. In reaching this conclusion, we have considered the statutory requirements and Applicant's responses to items in the registration form.

Section 1013 was adopted as an exception to Pub. Util. Code §§ 1000 *et seq.* for the benefit of existing telecommunications companies that would otherwise certainly qualify for a CPCN and whose intended operations within California do not involve activities that would require environmental review. The purpose of this section was to make it easier and quicker for competitors to enter the California telecommunications market. Section 1013 was not intended as a way to avoid Commission review of an applicant's qualifications, especially if there are questions about those qualifications.

In order to qualify for registration as a telecommunications company under § 1013, an applicant must demonstrate, among other things, that none of its officers and directors has held a similar position with an interexchange carrier that filed for bankruptcy. If an applicant is unable to make these demonstrations, the application for registration must be treated as an application for a CPCN.

#### **A. Officer of Bankrupt Telecommunications Company**

In its response to Item 7 on the Registration Application, Applicant checked "Not True" and wrote as follows:

"Richard Lumpkin, a director of the applicant, was Vice Chair of the Board and a director of McLeodUSA, Inc., a telecommunications company which filed for bankruptcy protection in January 2002 and emerged from bankruptcy in April 2002. Mr. Lumpkin resigned his position at McLeodUSA, Inc. on April 6, 2002."

Applicant indicates that it was formed in part to acquire certain assets and businesses of McLeodUSA Telecommunications Services, Inc., an affiliate of McLeodUSA, Inc., including assets used for the provision of operator services for which a CPCN is being sought.

Applicant is a wholly owned indirect subsidiary of Consolidated Holdings, inc., a holding company with various telecommunications subsidiaries, including Illinois Consolidated Telephone Company (ICTC), a local exchange carrier located in Mattoon, Illinois. ICTC has been providing service, including operator services, in central Illinois for over 108 years. In 1988, Consolidated formed Applicant as an operator services subsidiary. In 1997, Applicant was acquired by McLeodUSA, Inc. In December 2002, following the conclusion of the McLeodUSA bankruptcy discussed above, Applicant was re-acquired by Consolidated Holdings, Inc.

Mr. Lumpkin's involvement with McLeodUSA, Inc. makes it impossible to process the Application as an application for registration under § 1013. Instead, we consider whether Applicant meets the requirements for a CPCN as an interexchange carrier. We have already noted that Applicant meets the financial viability standard, which is the same for registrants as it is for applicants.<sup>2</sup> Other requirements for issuance of a CPCN are as set out in the following sections.

## **B. Financial Qualifications**

To be granted a CPCN, an application for authority to provide facilities-based interexchange services must demonstrate that it has a minimum of \$100,000 cash or cash equivalent to meet the firm's start-up expenses. An

---

<sup>2</sup> Financial requirements are set forth in Decision (D.) 95-12-056, Appendix C.

applicant must also demonstrate that it has sufficient additional resources to cover all deposits required by local exchange carriers or interexchange carriers in order to provide the proposed service.<sup>3</sup> As noted above, Applicant has provided financial statements of its parent, CCI, dated as of March 31, 2003. Applicant is a newly formed, wholly owned direct subsidiary of CCI, a solvent, well-capitalized company. The financial statements of CCI and its relationship to Applicant together satisfy the financial requirements, including any required deposits.

### **C. Technical Qualifications**

Applicants for a CPCN are required to make a reasonable showing of technical expertise in telecommunications or a related business. Applicant is a sister corporation of ICTC, a local exchange carrier located in Mattoon, Illinois. ICTC has been providing phone service, including operator service, in central Illinois for more than 100 years. Applicant has provided biographical data on its officers that demonstrate that it possesses sufficient experience and knowledge to operate as an interexchange carrier and provider of operator services.

### **D. 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 shall correct these deficiencies in its tariff compliance filing as a condition of our approval of its tariffs.

---

<sup>3</sup> The financial requirement for interexchange carriers is found in D.91-10-041. The requirement that applicants must demonstrate that they have additional financial resources to meet any required deposits is found in D.93-05-010.

**E. 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 the adverse effects are avoided, alternatives are investigated, and environmental quality is restored or enhanced to the fullest extent possible. Applicant represents that it will not be constructing any switches or other telecommunications facilities in the State of California and will provide operator services through existing facilities located in Mattoon, Illinois. 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 other than equipment to be installed in existing buildings or structures.

**F. Categorization and Need for Hearings**

In Resolution ALJ 176-3107 dated February 13, 2003, the Commission preliminarily categorized this application as ratesetting, and preliminarily determined that hearings were not necessary. No protests have been received. 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.

**IV. Comments on Draft 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.

## **V. Conclusion**

We conclude that the Application conforms to our rules for authority to provide competitive interexchange telephone services. Accordingly, we shall approve the Application subject to the terms and conditions set forth herein.

## **VI. Assignment of Proceeding**

Loretta M. Lynch is the Assigned Commissioner and Philip Weismehl is the assigned ALJ in this proceeding.

## **Findings of Fact**

1. Notice of the Application appeared in the Daly Calendar on February 5, 2003.
2. No protests have been filed.
3. A hearing is not required.
4. In prior decision, the Commission authorized competition, by carriers meeting specified criteria, in the provision of interexchange services within the State of California.
5. Applicant has a minimum of \$100,000 of cash or cash equivalent that is reasonably liquid and readily available to meet its start-up expenses.
6. 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.
7. Applicant possesses sufficient experience and knowledge to provide telecommunications services.
8. 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.

9. Applicant will not be constructing facilities to provide telecommunications services.

**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 interexchange services 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. Because of the public interest in competitive interexchange 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 Consolidated Communications Operator Services, Inc. (Applicant) to operate as a provider of interexchange services, subject to the terms and conditions set forth below.

2. Applicant is authorized to provide interexchange services throughout the state.

3. Applicant is authorized to file tariff schedules for the provision of interexchange services with the deficiencies noted in Attachment A corrected. Applicant's initial filing shall be made in accordance with General Order (GO) 96-A, excluding Sections IV, V, and VI. The tariff shall be effective not less than one day after tariff approval by the Commission's Telecommunication Division. Applicant shall comply with its tariffs.

4. 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.

5. The corporate identification number assigned to Applicant, U-6831-C, shall be included in the caption of all original filings with this Commission, and in the titles of other pleadings filed in existing cases.

6. Applicant shall comply with all applicable rules adopted in the Local Exchange Competition proceeding (Rulemaking 95-04-043/Investigation 95-04-044), as well as all other applicable Commission rules, decisions, GOs, and statutes that pertain to California public utilities, subject to the exemptions granted in this decision.

7. Applicant shall comply with the requirements applicable to non-dominant interexchange carriers included in Attachment B to this decision.

8. Applicant is not authorized to construct facilities, other than equipment to be installed in existing building or structures.

9. This application is closed.

This order is effective today.

Dated October 16, 2003, at San Francisco, California.

MICHAEL R. PEEVEY  
President  
CARL W. WOOD  
LORETTA M. LYNCH  
GEOFFREY F. BROWN  
SUSAN P. KENNEDY  
Commissioners

**ATTACHMENT A**

**Page 1**

List of deficiencies in tariffs filed by Consolidated Communications Operator Services, Inc. in A.03-01-038 to be corrected in its tariff compliance filing.

1. Sect. 2.7 Contracts made with customers setting rates and charges that deviate from the tariffs shall be filed as advice letters. The customer's name may be confidential information.
2. Sects. 2.9.1 and 2.18 According to PU Code Section 736, the customer has 3 years to dispute his/her bill. Tariff language must not negate this.
3. Sect. 2.9.7 The surcharge rates need to be updated. Please check the CPUC website for the latest rates.
4. Sect. 2.10 If customer is referred to Sect. 2.11 for advance payments information, then that section should state that the company may collect as much as one month's estimated or historical usage as an advance payment.
5. Sect. 2.12 This section should also state that there will be at least seven day written notice for termination for failure to timely pay the customer bill.
6. Sect. 3.1 Note that this page refers to the Minnesota PUC. It should be changed to the California PUC.

**(END OF ATTACHMENT A)**

**ATTACHMENT B**

**REQUIREMENTS APPLICABLE TO COMPETITIVE LOCAL EXCHANGE CARRIERS AND NON-DOMINANT 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 fee and surcharges that must be regularly remitted per the instructions in Appendix E to D.00-10-028. The Combined California PUC Telephone Surcharge Transmittal Form must be submitted even if the amount due is zero:
  - a. The current 1.20% 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-16689, April 17, 2003);
  - b. The current 0.047% surcharge applicable to all intrastate services except for those excluded by D.94-09-065, as modified by D.95-02-050, to fund the California Relay Service and Communications Devices Fund (Pub. Util. Code § 2881; D.98-12-073 and Resolution T-16747, June 5, 2003);
  - c. The user fee provided in Pub. Util. Code §§ 431-435, which is 0.11% of gross intrastate revenue (Resolution M-4807);
  - 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 § 739.3; D.96-10-066, pp. 3-4, App. B, Rule 1.C; set by Resolution T-16702 at 0.210%, April 17, 2003);
  - e. The current 2.70% 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-16690, April 17, 2003); and

- f. 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 California Teleconnect Fund (D.96-10-066, p. 88, App. B, Rule 8.G, Resolution T-16748, May 22, 2003).
3. Applicant is a nondominant interexchange carrier (NDIEC). The effectiveness of its future NDIEC tariffs is subject to the schedules set forth in Ordering Paragraph 5 of D.90-08-032 (37 CPUC2d 130 at 158), as modified by D.91-12-013 (42 CPUC2d 220 at 231) and D.92-06-034 (44 CPUC2d 617 at 618):

“Paragraph 5. All NDIECs are hereby placed on notice that their California tariff filings will be processed in accordance with the following effectiveness schedule:

- a. Inclusion of FCC-approved rates for interstate services in California public utilities tariff schedules shall become effective on one (1) day’s notice.
- b. Uniform rate reductions for existing services shall become effective on five (5) days’ notice.
- c. Uniform rate increases, except for minor rate increases, for existing services shall become effective on thirty (30) days’ notice, and shall require bill inserts, a message on the bill itself, or first class mail notice to customers of the pending increased rates.
- d. Uniform minor rate increases, as defined in D.90-11-029, for existing services shall become effective on not less than five (5) working days’ notice. Customer notification is not required for such minor rate increases.
- e. Advice letter filings for new services and for all other types of tariff revisions, except changes in text not affecting rates or relocations of text in the tariff schedules, shall become effective on forty (40) days’ notice.

f. Advice letter filings merely revising the text or location of text material which do not cause an increase in any rate or charge shall become effective on not less than five (5) days' notice."

4. Applicant may deviate from the following provisions of GO 96-A:
  - (a) paragraph II.C.(1)(b), which requires consecutive sheet numbering and prohibits the reuse of sheet numbers; and
  - (b) paragraph II.C.(4), which requires that "a separate sheet or series of sheets should be used for each rule." Tariff filings incorporating these deviations shall be subject to the approval of the Commission's Telecommunications Division. Tariff filings shall reflect all fees and surcharges to which Applicant is subject, as reflected in 2 above.
5. Applicant shall file a service area map as part of its initial tariff.
6. Prior to initiating service, Applicant shall provide the Commission's Consumer Services Division with the name and phone number 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.
7. Applicant shall notify this Commission 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.<sup>4</sup>

---

<sup>4</sup> California is divided into ten Local Access and Transport Areas (LATAs), each containing numerous local telephone exchanges. InterLATA 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.

8. Applicant shall keep its books and records in accordance with the Generally Accepted Accounting Principles.
9. 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.
10. Applicant shall file an annual report, in compliance with GO 104-A, on a calendar-year basis with the information contained in Attachment C to this decision.
11. Applicant shall file an affiliate transaction report with the Director of the Telecommunications Division, in compliance with Decision (D.) 93-02-019, on a calendar year basis using the form developed by Commission Staff and contained in Attachment D.
12. Applicant shall ensure that its employees comply with the provisions of Public Utilities (Pub. Util.) Code § 2889.5 regarding solicitation of customers.
13. Within 60 days of the effective date of this order, Applicant shall comply with Pub. Util. Code § 708, Employee Identification Cards, and notify the Director of the Telecommunications Division in writing of its compliance.
14. 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 Commission's Telecommunications Division shall prepare for Commission consideration a resolution that revokes Applicant's CPCN unless it has received written permission from the Telecommunications Division to file or remit late.
15. Applicant is exempt from General Order 96-A, subsections III.G(1) and (2), and Commission Rule of Practice and Procedure 18(b).

16. Applicant is exempt from Pub. Util. Code §§ 816-830.
17. 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.
18. 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 and two copies shall be filed with the California Public Utilities Commission, 505 Van Ness Avenue, Room 3107, San Francisco, CA 94102-3298, 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 §§ 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.

For answers to any questions concerning this report, call (415) 703-2883.

**(END OF ATTACHMENT C)**

**ATTACHMENT D**  
**CALENDAR YEAR AFFILIATE TRANSACTION REPORT**

1. Each utility shall 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;
- Corporate officers.

2. The utility shall 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 #1 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 tariffed 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)**