

Decision PROPOSED DECISION OF ALJ MOOSEN (Mailed 8/12/2014)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of NMG Telecom LLC for a Certificate of Public Convenience and Necessity to Provide Resold and Limited Facilities Based Local Exchange and Interexchange Telecommunications Services within California.

Application 13-02-027
(Filed February 26, 2013)

DECISION DISMISSING THE APPLICATION WITHOUT PREJUDICE AND GRANTING THE MOTION FOR LEAVE TO FILE CONFIDENTIAL MATERIAL UNDER SEAL

Summary

On February 26, 2013, NMG Telecom LLC (NMG) filed an application with the Commission for a certificate of public convenience and necessity (CPCN) to operate as a limited facilities based local exchange and interexchange carrier within the State of California. Also on February 26, 2013, NMG filed a Motion for Leave to File Confidential Material under Seal, requesting that the Commission issue a protective order to treat NMG financial records as confidential information.¹

¹ See Motion for Leave to File Confidential Material under Seal: Confidential Material Attached and Filed under Seal as Exhibit 6 (Financial Information).

An initial ruling to obtain additional information was issued on July 25, 2013. Following review of NMG's response submitted on August 5, 2013, the initial application and information filed under seal, a second ruling was issued on April 24, 2014 directing NMG to file a compliance report providing complete information necessary for the Commission to review NMG's application. The filing was to include the documents necessary for the Commission to reach a decision on the application, including but not limited to, statements showing that NMG's funds exceeded \$100,000 plus deposits required by the existing utilities that NMG would be using; a statement of the amount of deposits needed to pay existing carriers in order to operate or \$25,000 if the exact amount was not known,² draft tariffs that comply with the Commission's rules and regulations, additional professional technical qualifications,³ and clarification as to whether NMG was requesting non-dominant carrier status. To date, NMG has not filed financial and other documentation that meets the Commission's requirements for limited facilities-based carriers or provided adequate information regarding the amount of any deposits that must be paid to other telecommunications carriers in order to provide service in California.

² The financial requirement for Competitive Local Exchange Carriers is contained in D.95-12-056, Appendix C. The financial requirement for Non-Dominant Interexchange Carriers (NDIEC) is contained in D.91-10-041.

The requirement for Competitive Local Carrier applicants to demonstrate that they have additional financial resources to meet any deposits required by underlying Local Exchange Carriers and/or IECs is set forth in D.95-12-056, Appendix C. For NDIECs, the requirement is found in D.93-05-010.

³ D.95-12-056 at Appendix C, Rule 4.A.

This decision grants the NMG's Motion for Confidential Information to remain under seal and allows for confidential treatment of Exhibit 6. This decision dismisses NMG's Application without prejudice to refile at a later date.

Comments on Proposed Decision

The proposed decision of the ALJ in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and procedure. No comments were filed.

Categorization and Need for Hearing

In Resolution ALJ 176-3311 dated March 21, 2013, the Commission preliminarily categorized this application as ratesetting, and preliminarily determined that hearings were not necessary. No protests have been received. A public hearing is not necessary, and it is not necessary to disturb the preliminary determinations.

Assignment of Proceeding

Catherine J.K. Sandoval is the assigned Commissioner and Irene K. Moosen is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. On April 24, 2014, the ALJ requested that NMG supplement its application with additional information by May 8, 2014 in a Compliance Report pursuant to the ALJ Ruling.
2. To date, NMG has failed to file its Compliance Report as directed.
3. In its Motion for Leave to File Confidential Material under Seal filed with its initial application, NMG sought confidential treatment of Exhibit 6 pursuant to General Order 66-C.

Conclusions of Law

1. NMG has failed to provide the information required by the Commission in this proceeding.
2. The record should be closed and the Application dismissed without prejudice.
3. NMG's Motion to file Exhibit 6 of its application materials under seal has stated good cause and should be granted.

O R D E R

IT IS ORDERED that:

1. NMG Telecom LLC's Motion for Leave to File Confidential Material Filed under Seal is granted. Exhibit 6 of Application 13-02-027 shall remain under seal for three years and shall not be made accessible or disclosed to anyone other than the Commission and its staff except on the further order or ruling of the Commission, the assigned Commissioner, the assigned Administrative Law Judge (ALJ), the Assistant Chief ALJ, the Chief ALJ, or the ALJ then designated as Law and Motion Judge.
2. Application 13-02-027 is dismissed without prejudice.
3. Application 13-02-027 is closed.
4. If NMG Telecom LLC believes it is necessary to keep the confidential data in Exhibit 6 under seal for an additional period, NMG Telecom LLC shall file a new motion to file confidential information under seal at least 30 days before the expiration of this grant of confidentiality.

This order is effective today.

Dated _____, at San Francisco, California.