

Decision 14-11-004 November 6, 2014

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

Order Instituting Rulemaking to Revise the Certification Process for Telephone Corporations and the Registration Process for Wireless Carriers.

Rulemaking 11-11-006  
(Filed November 10, 2011)

**DECISION ADDRESSING REVISIONS TO THE INSTRUCTIONS FOR THE FINANCIAL REQUIREMENTS ESTABLISHED BY DECISION 10-09-017 FOR REGISTRATION OF NON-DOMINANT INTEREXCHANGE CARRIERS AND CLOSING THE RULEMAKING**

**Summary**

This decision revises an instruction for the registration process for non-dominant interexchange carriers (NDIECs) established by Decision (D.) 10-09-017. In Attachment C to D.10-09-017, we adopted a list of instruction that defined, among other things, the items that an applicant must provide that demonstrate its financial ability to provide service in California. We find that the instruction attached thereto, and in use since then, did not clearly effectuate our stated intent as set forth in our previous decisions that established the registration process for NDIECs. Therefore, we clarify the instruction in order to remove ambiguities.

**1. Background**

The Commission initiated this Order Instituting Rulemaking to revise the processes for telephone corporations seeking or holding Certificates of Public Convenience and Necessity (CPCN), and wireless carriers seeking or holding a Wireless Identification Registration. CPCN authority is obtained through a

formal application process pursuant to Pub. Util. Code § 1001, while non-dominant interexchange carriers (NDIECs) are allowed to utilize a streamlined registration process to obtain authority to operate in California. In Decision (D.) 10-09-017, as modified by D.11-09-026, the California Public Utilities Commission (Commission) adopted revisions to the compliance requirements for new applicants seeking registration and existing NDIEC registrants, including imposition of performance bonds, increased background review of applicants, increased application fees, and annual user fees.<sup>1</sup> The Commission revised the registration requirements to address concerns raised by the State Controller's 2007 Audit Report (Audit Report) concerning carrier fitness and financial responsibility. One of the items of carrier's financial responsibility is the demonstration that:

Applicant has a minimum of (a) \$25,000 in the case of a switchless reseller OR (b) \$100,000 in the case of a facilities based applicant, in each case reasonably liquid and available to meet the firm's first-year expenses, including deposits required by local exchange carriers or interexchange carriers or (c) has profitable interstate operations to generate the required cash flow.

The requirement to demonstrate financial responsibility dates back to earlier Commission decisions adopting new rules for a Competitive Local Exchange Carriers (CLECs), which demonstrated a concern that a new CLEC applicant "possesses the requisite managerial qualifications, financial resources, and technical competence to provide local exchange telecommunications services."<sup>2</sup> To prove sufficient financial resources, facilities-based applicants were required to demonstrate that they possess a minimum of \$100,000 in cash;

---

<sup>1</sup> D.13-05-035, at 5.

non-facilities-based applicants were required to demonstrate that they possess a minimum of \$25,000 in cash. This requirement has not changed, and continues to apply to applicants who apply for registration either pursuant to Pub. Util. Code § 1001 or § 1013.

Pursuant to D.95-12-056, applicants who have profitable interstate operations may meet the minimum financial requirement by submitting an audited balance sheet and income statement demonstrating sufficient cash flow.<sup>3</sup> New applicants are permitted to use any of the following financial instruments to satisfy the applicable unencumbered cash requirements established by D.95-12-056:

- a. Cash or cash equivalent, including cashier's check, sight draft, performance bond proceeds, or traveler's checks;
- b. Certificate of deposit or other liquid deposit, with a reputable bank or other financial institution;
- c. Preferred stock proceeds or other corporate shareholder equity, provided that use is restricted to maintenance of working capital for a period of at least twelve (12) months beyond certification of the applicant by the Commission;
- d. Letter of credit, issued by a reputable bank or other financial institution, irrevocable for a period of at least twelve (12) months beyond certification of the applicant by the Commission;
- e. Line of credit or other loan, issued by a reputable bank or other financial institution, irrevocable for a period of at least twelve (12) months beyond certification of the applicant by the Commission, and payable on an interest-only basis for the same period;

---

<sup>2</sup> D.95-12-056, at 163.

<sup>3</sup> D.95-12-056, Appendix C.

- f. Loan, issued by a qualified subsidiary, affiliate of applicant, or a qualified corporation holding controlling interest in the applicant, irrevocable for a period of at least twelve (12) months beyond certification of the applicant by the Commission, and payable on an interest-only basis for the same period;
- g. Guarantee, issued by a corporation, copartnership, or other person or association, irrevocable for a period of at least twelve (12) months beyond certification of the applicant by the Commission;
- h. Guarantee, issued by a qualified subsidiary, affiliate of applicant, or a qualified corporation holding controlling interest in the applicant, irrevocable for a period of at least twelve (12) months beyond the certification of the applicant by the Commission.

In a subsequent effort to shorten the registration process, the Commission adopted a short-form application with instructions.<sup>4</sup> The intent was not to change the financial responsibility requirements, but merely to provide a “streamlined” process, as evidenced by the fact that the \$100,000/\$25,000 unencumbered cash requirement remained unchanged. The instruction sheet adopted by D.97-10-106 contained the following Instruction, which pertained to the encumbered cash requirement:

Attach applicant's audited balance sheet for the most recent fiscal year, an unaudited balance sheet as of the most recent fiscal quarter, a bank statement as of the month prior to the date of filing the application, or a third-party undertaking to provide the required amounts on behalf of applicant. If the balance sheet shows current liabilities in excess of current assets or negative equity, explain how applicant will be able to maintain sufficient liquidity for its first year of operations.

---

<sup>4</sup> D.97-06-107, Attachment A.

While this instruction streamlined the form, the instruction did not clearly state that the applicant is required to provide three items: 1) an audited balance sheet from the last year; 2) an unaudited balance sheet from the last quarter, and 3) a bank statement from the last month, in order to demonstrate financial responsibility.

In D.10-09-017, we revisited several aspects of the NDIEC short-form registration; however, the Instruction relating to the unencumbered cash requirement was not intended to be among the aspects of the registration form that were to be changed. Nevertheless, it appears that a very minor change was inserted and inadvertently adopted without discussion. The Instruction was slightly altered to read:

Attach audited balance sheet for the most recent fiscal year and an unaudited balance sheet as of the most recent fiscal quarter, a bank statement as of the month prior to the date of filing the application, or a third-party undertaking to provide the required amounts on behalf of applicant. If the balance sheet shows current liabilities in excess of current assets or negative equity, explain how applicant will be able to maintain sufficient liquidity for its first year of operations. (Emphasis added.)

The addition of an “and” (underlined in the text above) did not serve to demonstrably improve the clarity of the instruction. The instruction still did not clearly state what the applicant is required to provide.

## **2. Discussion**

As a result of the language adopted for the financial responsibility instruction described above, certain new applicants using the NDIEC or CPCN registration forms have been submitting a bank statement from one previous month to demonstrate compliance with Question 9 relating to the financial

resources of the applicant.<sup>5</sup> Apparently, applicants were not aware of D.95-12-056. A one-month bank statement is clearly insufficient to demonstrate the ongoing financial resources of the applicant, and does not comport with our intent as previously stated.

As described above, the existing registration form instruction (even after it was slightly altered) is difficult to understand and potentially subject to differing interpretations. It is important that the forms and instructions clearly convey the Commission's intent. Therefore, we direct the Commission's Communication Division to develop clear instructions and forms for applicants, in this case instructions, relating to the financial responsibility requirement for applicants that reflects our intent as set forth in D.95-12-056, and authorize the Director of Communications Division to approve said instructions, to ensure consistency with our stated intent.

We expect these instructions to clearly state that applicants who have profitable interstate operations may meet the minimum financial requirement by submitting all of these three items: 1) an audited balance sheet for the previous year; 2) an unaudited balance sheet for the previous quarter; and 3) a bank statement as of the month prior to the date of filing the application, in order to demonstrate sufficient cash to satisfy the requirements. Applicants who do not have profitable existing operations (e.g., applicants who are new) must meet the financial requirements through the use any of the financial instruments listed above to satisfy the applicable unencumbered cash requirements as discussed in D.95-12-056.

---

<sup>5</sup> See, e.g., Application 13-04-018, Administrative Law Judge (ALJ) Ruling dated November 7, 2013, requiring applicant to file a response to information request within 15 days.

After approval by the Director of Communications Division, the newly drafted instruction should be posted on the Commission's Communications Division website and these will be applied prospectively to new applications or applications pending but not yet approved. We will not require existing applicants in good standing to submit new financial information.

### **Closing Rulemaking**

By this decision, we close the instant Rulemaking 11-11-006. This rulemaking was opened to revise the certification process for telephone corporations and the registration process for wireless carriers. The purposes for this proceeding have been satisfied, and there is no reason why the proceeding cannot be closed.

### **Assignment of Proceeding**

Catherine J.K. Sandoval is the assigned Commissioner and Katherine Kwan MacDonald is the assigned ALJ in this proceeding.

### **Comments on Proposed Decision**

The proposed decision 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 or reply comments were filed in response to the proposed decision. Minor changes have been made to correct typographical errors and for greater clarity.

### **Findings of Fact**

1. Applicants for NDIEC CPCNs have been submitting a one-month bank statement in order to satisfy the requirement to show financial responsibility by demonstrating that the applicant maintains sufficient unencumbered cash.

2. Submission of a one-month bank statement is insufficient to demonstrate the ongoing financial responsibility of an applicant's existing operations.

3. The existing registration form instruction lacks clarity and is difficult to understand. As a result, the instruction is potentially subject to differing interpretations.

4. The purposes for which this proceeding was opened have been satisfied.

### **Conclusions of Law**

1. D.95-12-056 requires that new CLEC applicants possess the requisite managerial qualifications, financial resources, and technical competence to provide local exchange telecommunications services.

2. To prove sufficient financial resources, facilities-based applicants are required to demonstrate that they possess a minimum of \$100,000 in unencumbered cash; non-facilities-based applicants are required to demonstrate that they possess a minimum of \$25,000 in unencumbered cash.

3. Pursuant to D.95-12-056, applicants who have profitable interstate operations may meet the minimum financial requirement by submitting an audited balance sheet together with an income statement demonstrating sufficient cash flow.

4. This requirement has not changed, and continues to apply to applicants who apply for registration either pursuant to Pub. Util. Code § 1001 or § 1013.

5. D.10-09-017 revisited several aspects of the NDIEC short-form registration; however, the Instruction relating to the unencumbered cash requirement was not intended to be among the aspects of the registration form that were to be changed.

6. The instructions for applicants should be revised to clearly reflect our intent as set forth in D.95-12-056.



7. The reasons for this proceeding having been addressed, the proceeding is closed.

## **O R D E R**

### **IT IS ORDERED** that:

1. The California Public Utilities Commission's Communication Division is directed to develop clear instructions for non-dominant interexchange carrier applicants that reflect our intent as set forth in Decision 95-12-056. Specifically the Communications Division shall revise the instruction relating to the financial responsibility requirement for non-dominant interexchange carrier applicants for that reflects our intent as set forth in Decision 95-12-056 within 90 days of issuance of this decision.

2. The revised instructions shall clearly state that applicants who have profitable interstate operations may meet the minimum financial requirement by submitting all of these three items: 1) an audited balance sheet for the previous year; 2) an unaudited balance sheet for the previous quarter; 3) and a bank statement as of the month prior to the date of filing the application, in order to demonstrate sufficient cash to satisfy the requirements.

3. The revised instructions shall clearly state that applicants who do not have profitable existing operations (e.g., applicants who are new) must meet the financial requirements through the use any of the financial instruments listed above to satisfy the applicable unencumbered cash requirements as ordered in Decision 95-12-056.

4. The Director of Communications Division is authorized to approve instructions consistent with Decision 95-12-056.

5. The newly drafted instruction approved by the Director of the Communications Division shall be posted on the Commission's Communications Division website and applied prospectively to new applications or applications pending but not yet approved

6. Rulemaking 11-11-006 is closed.

This order is effective today.

Dated November 6, 2014, at Bakersfield, California.

MICHAEL R. PEEVEY

President

MICHEL PETER FLORIO

CATHERINE J.K. SANDOVAL

CARLA J. PETERMAN

MICHAEL PICKER

Commissioners