

Decision \_\_\_\_\_

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

In the Matter of the Application of Frontier Communications of America, Inc. for Registration as an Interexchange Carrier Telephone Corporation Pursuant to the Provisions of Public Utilities Code Section 1013 and D.97-06-107.

Application 01-06-048  
(Filed June 28, 2001)

**O P I N I O N****I. Summary**

Frontier Communications of America, Inc. (Applicant) seeks a certificate of public convenience and necessity (CPCN) under Pub. Util. Code § 1001 for authority to resell interexchange telecommunications services. By this decision, we grant authority to operate as an interexchange reseller subject to the terms and conditions set forth below.

**II. Background**

By Decision (D.) 84-01-037 (14 CPUC2d 317 (1984)) and later decisions, we authorized competitive interLocal Access and Transport Areas (LATAs) services for carriers meeting specified criteria.<sup>1</sup> However, we limited the authority conferred to interLATA service; and we subjected the applicants to the condition

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<sup>1</sup> California is divided into ten Local Access and Transport Areas of various sizes, each containing numerous local telephone exchanges. "InterLATA" describes services, revenues, and functions that relate to telecommunications originating in one LATA and terminating in another. "IntraLATA" describes services, revenues, and functions that relate to telecommunications originating and terminating within a single LATA.

that they not hold themselves out to the public as providing intraLATA service. Subsequently, by D.94-09-065, we authorized competitive intraLATA interexchange services effective January 1, 1995, for carriers meeting specified criteria.

### **III. Overview of the Application**

Applicant, a Delaware corporation, filed this application on June 28, 2001. Applicant seeks authority to provide resold interexchange service as a nondominant interexchange carrier (NDIEC) throughout California.

Applicant's principal place of business is located at 180 South Clinton Avenue, Rochester, New York 14646-0500.

### **IV. Procedural Matters**

In Resolution ALJ 176-3067, dated July 12, 2001, 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 approved. Given these developments, a public hearing is not necessary, and it is not necessary to alter the preliminary determinations.

### **V. 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.

### **VI. California Environment 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. Since Applicant will not be constructing

any facilities for the purpose of providing interexchange services, it can be seen with certainty that there is no possibility that granting this application will have an adverse impact upon the environment. Applicant will have to file for additional authority before it can construct facilities.

## **VII. Financial Qualifications**

To be granted a CPCN, an applicant for authority to resell 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. An applicant must also demonstrate that it has sufficient additional resources to cover all deposits required by other telecommunications carriers in order to provide the proposed service. Applicant represented that no deposits will be required by any telecommunications carrier in order to provide the proposed service. In addition, Applicant provided a performance bond that demonstrates that it has sufficient cash to satisfy the financial requirements.

We find that Applicant has met our requirement that it possesses sufficient financial resources to fund its operations.

## **VIII. Technical Expertise**

Applicants for NDIEC authority are required to make a reasonable showing of technical expertise in telecommunications or a related business. Applicant provided biographies of its management that demonstrate that it possesses sufficient expertise 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 or went out of business, or was sanctioned by the Federal

Communications Commission or any state regulatory agency for failure to comply with any regulatory statute, rule, or order.

### **IX. Tariffs**

Commission staff reviewed Applicant's draft tariffs, and found them to be in compliance with Commission rules and regulations.

### **X. Conclusion**

We conclude that the application conforms to our rules for certification to resell interexchange telecommunications services. Accordingly, we shall grant resale authority subject to the terms and conditions set forth herein.

### **Findings of Fact**

1. Notice of this application appeared in the Daily Calendar on July 2, 2001.
2. No protests have been filed.
3. A hearing is not required.
4. In prior Commission decisions, the Commission authorized competition in providing interexchange service by carriers meeting specified criteria.
5. 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.
6. No deposits are required by other telecommunications carriers in order for Applicant to provide the proposed service.
7. Applicant possesses sufficient experience and knowledge to provide telecommunications services.
8. Applicant's draft tariff, submitted as part of its application, complied with the Commission's requirements.
9. Exemption from the provisions of Pub. Util. Code §§ 816-830 has been granted to other NDIECs and CLCs. (*See, e.g.*, D.86-10-007, D.88-12-076, D.97-01-015, and D.96-05-060.)

10. The transfer or encumbrance of property of nondominant carriers has been exempted from the requirements of Pub. Util. Code § 851 whenever such transfer or encumbrance serves to secure debt. (*See* D.85-11-044, D.97-01-015, and D.96-05-060.)

11. By D.97-06-107, all interexchange carriers are no longer required to comply with General Order (GO) 96-A, subsections III.G(1) and (2), and Rule 18 (b) of the Commission's Rules of Practice and Procedure.

12. Applicant will not be constructing facilities.

### **Conclusions of Law**

1. Applicant has the financial ability to provide the proposed service.
2. Applicant has made a reasonable showing of technical expertise in telecommunications.
3. Public convenience and necessity require that Applicant's interexchange services be subject to the terms and conditions set forth herein.
4. Applicant is subject to:
  - a. The current 1.45% 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 (Pub. Util. Code § 879; Resolution T-16594, October 10, 2001);
  - b. The current 0.481% 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-16504, March 27, 2001);
  - c. The user fee provided in Pub. Util. Code §§ 431-435, which is 0.11% of gross intrastate revenue for the 2000-2001 fiscal year (Resolution M-4800);

- 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-16589 at 0.300%, October 10, 2001);
  - e. The current 1.47% 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-16585, October 10, 2001); and
  - f. 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 Teleconnect Fund (D.96-10-066, p. 88, App. B, Rule 8.G; set by Resolution T-16584, October 10, 2001).
5. Since Applicant will not be constructing any facilities, it can be seen with certainty that there will be no significant effect on the environment.
6. The application should be granted to the extent set forth below.
7. Applicant should be exempted from Pub. Util. Code § 851 when the transfer or encumbrance serves to secure debt.
8. Applicant should be exempted from Pub. Util. Code §§ 816-830.
9. Because of the public interest in 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 Frontier Communications of America, Inc. (Applicant) to resell interexchange services subject to the terms and conditions set forth below.
2. Applicant is not authorized to construct facilities.

3. Applicant shall file a written acceptance of the certificate granted in this proceeding.

4. Applicant is authorized to file with this Commission tariff schedules for the provision of interexchange services. Applicant may not offer services until tariffs are on file. 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 1 day after tariff approval by the Commission's Telecommunications Division. Applicant shall comply with the provisions in its tariffs.

5. 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):

- “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.”

6. Applicant may deviate from the following provisions of GO 96-A:

(a) paragraph II.C.(l)(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 Conclusion of Law 4.

7. Applicant shall file as part of its initial tariff, after the effective date of this order and consistent with Ordering Paragraph 4, a service area map.

8. Prior to initiating service, Applicant shall provide the Commission’s Consumer Services Division with its designated contact person(s) for purposes of resolving consumer complaints and the corresponding telephone number. This information shall be updated annually or if the name or telephone number changes.

9. 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 of when intraLATA service begins.

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, Applicant shall either produce such records at the Commission's offices or reimburse the Commission for the costs incurred in having its staff travel to Applicant's office.

12. Applicant shall file an annual report, in compliance with GO 104-A, on a calendar-year basis using the information request form contained in Attachment A to this decision.

13. Applicant shall ensure that its employees comply with the provisions of Pub. Util. Code § 2889.5 regarding solicitation of customers.

14. 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.

15. The corporate identification number assigned to Applicant is U-6655-C which shall be included in the caption of all original filings with this Commission, and in the titles of other pleadings filed in existing cases.

16. 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.

17. Applicant is exempted from the provisions of Pub. Util. Code §§ 816-830.

18. Applicant is exempted from Pub. Util. Code § 851 for the transfer or encumbrance of property, whenever such transfer or encumbrance serves to secure debt.

19. If Applicant is 90 days or more late in filing an annual report or in remitting the fees listed in Conclusion of Law 4, the Commission's Telecommunications Division shall prepare for Commission consideration a

resolution that revokes its CPCN unless it has received written permission from the Commission's Telecommunications Division to file or remit late.

20. Applicant shall comply with the Commission's rules and regulations for NDIECs set forth in D.93-05-010 and D.90-08-032, 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.

21. Applicant is not authorized to construct facilities.

22. This application is closed.

This order is effective today.

Dated \_\_\_\_\_, at San Francisco, California.

**INFORMATION REQUESTED OF INTEREXCHANGE CARRIERS**

TO: ALL INTEREXCHANGE TELEPHONE UTILITIES

Article 5 of the Public Utilities Code grants authority to the California Public Utilities Commission to require all public utilities doing business in California to file reports as specified by the Commission on the utilities' California operations.

A specific annual report form has not yet been prescribed for the California interexchange telephone utilities. However, you are hereby directed to submit an original and two copies of the information requested in Attachment A no later than March 31st of the year following the calendar year for which the annual report is submitted.

Address your report to:

California Public Utilities Commission  
Auditing and Compliance Branch, Room 3251  
505 Van Ness Avenue  
San Francisco, CA 94102-3298

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

If you have any question concerning this matter, please call (415) 703-1961.

**ATTACHMENT A****INFORMATION REQUESTED OF INTEREXCHANGE TELEPHONE UTILITIES**

To be filed with the California Public Utilities Commission, 505 Van Ness Avenue, Room 3251, San Francisco, CA 94102-3298, no later than March 31st of the year following the calendar year for which the annual report is submitted.

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. Commission decision number granting operating authority and the date of that decision.
  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.

**(END OF ATTACHMENT A)**