

JUN 26 1997

Decision 97-06-107 June 25, 1997

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Rulemaking on the Commission's Own Motion to Establish a Simplified Registration Process for Non-Dominant Telecommunications Firms.

R.94-02-003
(Filed February 3, 1994)

Investigation on the Commission's Own Motion to Establish a Simplified Registration Process for Non-Dominant Telecommunications Firms.

ORIGINAL
I.94-02-004
(Filed February 3, 1994)

OPINION

Background

On February 3, 1994, the Commission issued its Order Instituting Rulemaking (OIR)/Order Instituting Investigation (OII) which noticed parties that the Commission would be seeking comments "on how the Commission could streamline the regulatory process for nondominant telephone corporations under existing legal requirements" in a schedule to be issued by the assigned administrative law judge (ALJ). (R.94-02-003/I.94-02-004, at p. 16.) The Commission subsequently held a public participation hearing on April 7, 1994, regarding the enabling legislation pending before the California Legislature (AB 3767, Andal), but did not follow through with a ruling seeking comments under Ordering Paragraph 6 as AB 3767 had not yet been enacted by the Legislature.

In 1995, the California Legislature enacted Chapter 809 giving the Commission authority to exempt telecommunications services or companies from §§ 454, 489, 491, and 495 of the Public Utilities (PU) Code. That law required the Commission to adopt consumer protection rules:

"(b)efore implementing procedures to allow telephone corporations to apply for the exemption of certain telecommunications services from the tariffing requirements of Sections 454, 489, 491, and 495 and no later September 30, 1996..." (PU Code § 495.7(c).)

On August 29, 1996, the ALJ issued a Ruling Inviting Comments which asked "...interested parties to file and serve comments on the consumer protection regulations attached to this order..." (Ruling at p. 2.)

Parties filed comments on the proposed Consumer Protection Regulations on September 16, 1996, and on September 20, 1996, the Commission issued an interim opinion (D.96-09-098) adopting Consumer Protection Regulations.

On December 9, 1996, the Commission ordered (D.96-12-033) a delay, until July 1, 1997, for the tariff exemption of nondominant interexchange carriers (NDIEC) because it believed that:

"many NDIECs are contemplating applications for CLC authority solely for the purpose of subjecting themselves to the requirement for filing tariffs." (D.96-12-033, p. 2.)

On March 3, 1997, Jessie J. Knight, Jr. issued his Assigned Commissioner's Ruling which asked the parties to address three questions: (a) what specific rules should the Commission adopt to comply with PU Code § 495.7(c)? (b) what additional consumer protection rules should the Commission adopt for nondominant interexchange carriers that are exempt from filing tariffs? and (c) does PU Code § 495.7(h) affect the Commission's authority to extend liability protections to NDIECs that have been exempted from the requirement to file tariffs?

On April 25, 1997, the assigned Commissioner held oral argument. The nine parties that filed draft rules, comments and/or reply comments participated in oral argument: Consumer Services Division (CSD), Office of Ratepayer Advocates (ORA), the Utility Reform Network (TURN), Telecommunications Resellers Association (TRA), California Association of Competitive Telecommunications Companies (CALTEL), AT&T, ICG Telecom Group, Inc. (ICG), Sprint, MCI, ATCALL, Inc. (ATCALL), and Working Assets Funding Service, Inc. (Working Assets).

On May 23, 1997, assigned Commissioner Knight issued his Proposed Decision. The active parties filed comments and reply comments on the Proposed Decision. On June 20, 1997, a quorum of the Commission held oral argument. As a result of discussions at the oral argument, the assigned Commissioner determined that the issue of detariffing required further review. To provide for such consideration, the assigned Commissioner decided to remove the issue of detariffing from the Proposed Decision, then scheduled for Commission consideration on June 25, 1997, but to allow the portions of the Proposed Decision which addressed registration and service requirement exemptions to go forward for Commission consideration on June 25, 1997.

Resolution of Issues

PU Code § 1013(a) requires that the Commission determine that the telephone corporations do not have monopoly power or market power in the relevant market.

The Commission has previously found that the nondominant interexchange carriers are competitive carriers. RE California Association of Long Distance Telephone Companies, 54 CPUC 2d 520, 522 (1994)(D.94-05-051). The marketplace offers consumers many alternative providers. Our current consumer protection rules are reflected in our Decisions, General Orders and other rules, as well as in the utilities' tariffs. Together with our enforcement mechanisms, i.e., the informal and formal complaint processes and the Commission investigation process and available sanctions, these rules minimize the risk of unfair competition and anticompetitive behavior. Accordingly, the Commission finds that the nondominant providers of interexchange services meet the requirements of § 1013(a) and are eligible for the registration process.

Registration Form

As a general matter, the parties did not dispute the overall form and content of the registration form. Some parties, however, sought to include additional information, while other parties advocated deleting certain information requests.

In evaluating the comments, the Commission's objective was to include information that would materially benefit consumers consistent with the Commission's goal of open competition in this market.

Question 1

This question requires the applicant's full name, including any fictitious names the applicant will be using.

No party objected to this question. Consumer Services Division (CSD) suggested repeating the instruction regarding fictitious business names. There is no need for repetition, so this request will be denied. The same party also suggested that the applicant include the Carrier Identification Code (CIC) and Access Customer Name Abbreviation (ACNA) that the applicant will be using. This information would allow the Commission to accurately track unauthorized customer transfer disputes through records kept by the local exchange companies, if each applicant had a unique CIC and ACNA. Unfortunately, this is not the case. Thus, including the nonunique CIC and ACNA will not enhance CSD's information gathering efforts. As CSD correctly observes, the actual solution to this problem would appear to be requiring each applicant to have a unique CIC and ACNA. The record, however, is insufficient in this proceeding to institute such a requirement.

In conclusion, we will adopt the question as stated in the August 29, 1996, assigned ALJ's ruling.

Questions 2 through 6

Question 2 requires the applicant to identify the structure of the applicant, its registered agent for service of process, all officers, directors, and others authorized to do business at a similar level, and affiliated entities. Question 3 seeks the legal domicile of the applicant.

Question 4 requires the applicant to indicate whether it will operate as a switchless reseller or facilities-based carrier. The instructions have been modified to clarify that facilities-based carriers which require CEQA review for the facilities may not use this process.

Question 5 asks for the applicant's service territory.

Question 6 requests the type of services applicant will provide. This question and instruction has been restructured to clarify that only applicants which will provide ordinary voice and data communications may use the registration process.

No party commented on these questions. We will adopt the questions and the instructions as modified.

Question 7

This question elicited the greatest volume of comment from the parties. The question is stated:

"No affiliate, officer, director, or other person associated with proposed registrant has any prior association with an IEC that filed for bankruptcy or went out of business, and has not in the last five years, been convicted in a criminal proceeding (excluding traffic violations or similar misdemeanors)."

The question requires that the applicant respond either "true" or "not true."

For ease of resolving the issues, we will address each component in the order it appears. The first controversial phrase is "person associated with proposed registrant." The instructions do little to guide the applicant as the meaning of "associated with" as the instructions direct the applicant to answer the question with respect to each person "associated with" the applicant. Using the term to define the term does not enhance clarity.

CALTEL and TRA suggest that this phrase is vague, particularly given the important questions to which it applies. CSD proposes to add the phrase "owner of 5 percent or more of proposed registrant" but retain the "associated with" phrase. TRA suggests 10 percent or more.

With CSD's suggested modification, the question would cover affiliates, officers, directors, and significant shareholders. With the addition of "partners," this list would appear to include all those persons that might exercise significant control over an applicant regardless of its legal structure. As modified, the "associated with" phrase renders the question redundant such that the phrase can be deleted.

It would seem unlikely that an owner of only 5 percent of a business would be able to exercise significant control of a business. For this reason, we will adopt TRA's recommended threshold of 10 percent.

The next controversial phrase is "prior association with an IEC." The parties filed similar comments to this phrase as they did with regard to the previous phrase. To address its vagueness, it will be replaced with "has held one of these positions with an IEC" such that only officers, directors, partners, and 10 percent or greater owners will be included.

The third controversial component of this question is "filed for bankruptcy." CALTEL suggests that the Commission review whether this requirement provides any meaningful protection for consumers.

While this question is not required by statute, the Commission has not been favorably impressed with the business practices of IECs that seek bankruptcy protection. In Sonic Communications dba SCI Communications, Investigation 95-02-004 (filed February 8, 1995), the Commission initiated an investigation of a company that was allegedly transferring large groups of customers without their authorization and charging these customers exorbitant rates. Although diligently pursuing the company, the Commission was unable to secure reparations for California customers. The public interest would not be furthered by allowing those responsible for Sonic's wrongful activities to obtain a Certificate of Public Convenience and Necessity (CPCN) via an expedited process. Accordingly, we will retain this question.

The next phrase to garner attention is "went out of business." CALTEL and TRA object to this question because it could include voluntary as well as involuntary departures from the market. Voluntary departures, i.e., sales of assets or the whole company, do not harm the customers and, in fact, require Commission authorization. Involuntary departure from the market apparently would only occur through bankruptcy or CPCN revocation. Both of these instances are included in other aspects of this question, as modified, such that this is redundant. Therefore, "or went out of business" shall be deleted from the question proposed in the assigned ALJ's ruling.

The next area of disagreement is compliance with PU Code § 1013(d)(2) which requires that, prior to registering an applicant, the Commission determine that those managing the applicant "have no prior history of committing fraud on the public." The proposed rule does this by inquiring about previous criminal convictions. The parties allege that this is both overbroad, as not all criminal convictions involve a fraud on the public, and overly narrow as not all fraud on the public results in a criminal conviction.

Modifying the question to include civil liability and to exclude crimes which do not involve a fraud on the public would address these comments. The Commission will replace "has not, during the last five years, been convicted in a criminal proceeding (excluding traffic violations or similar misdemeanors.)" with "has not been found criminally or civilly liable for a violation of §§ 17000 et. seq. of the California Business and Professions or for any actions which involved misrepresentations to consumers." The time limit is also removed, consistent with the statute.

Revised consistent with the discussion above, question 7 will read:

7. No affiliate, officer, director, partner, or person owning more than 10% of applicant, or anyone acting in such capacity whether or not formally appointed, held one of these positions with an IEC that filed for bankruptcy, and has not been found either criminally or civilly liable by a court of competent jurisdiction for a violation of §§ 17000 et. seq. of the California Business and Professions Code or for any actions which involved misrepresentations to consumers, and to the best of applicant's knowledge, is not currently under investigation for similar violations.

Question 8

This question regarding past or pending regulatory investigations also drew many comments. Many of the comments also applied to question 7 regarding the language the questions have in common. The changes made to question 7 will also apply to this question. Thus, "other person associated with applicant" will be replaced with "partner or owner of more than 10% of applicant."

CALTEL would greatly simplify this question, even after adopting the revisions discussed. CSD suggests expanding the question to include informal investigations but

would narrow its applicability to only unlawful business practices. Question 7 has been modified to address investigations of unlawful business practices. Question 7 does not, however, include an applicant's compliance with regulatory authorities.

While PU Code § 1013 does not require that the Commission inquire into this matter, the Commission finds that the applicant's regulatory compliance history is relevant and highly probative of the applicant's prospective compliance with California authorities. For this reason, question 8 will be retained but reworded:

8. To the best of applicant's knowledge, neither applicant, any affiliate, officer, director, partner, nor owner of more than 10% of applicant, or any person acting in such capacity whether or not formally appointed, has been sanctioned by the Federal Communications Commission or any state regulatory agency for failure to comply with any regulatory statute, rule or order.

Question 9

This question requests that the applicant demonstrate that it has the required amount of funds for operation either as a switchless reseller or facilities-based carrier. As no party raised any issues with this question as currently worded, it will be retained in the form proposed.

Question 10

This question seeks the applicant's statement that the applicant possesses the "required technical expertise to operate as an interexchange carrier" and requires that documentation be attached. The comments on this question have not been directed at the wording of the question but rather at the lack of specificity as to what might constitute sufficient documentation and, more importantly to CALTEL and TRA, who will evaluate the information and when.

Demonstrating technical competence has been a part of the Commission's application requirements for IECs for some time. Nevertheless, the Commission has never rejected an application for want of technical expertise. Applicants, it would appear, are aware of the technical requirements to operate as an interexchange carrier and secure such expertise. Question 10 highlights this requirement and thus serves as a reminder that technical proficiency is required and the lack thereof will not be

acceptable for compliance with Commission directives. Moreover, it is not entirely clear what "technical," as in engineering, expertise is required to act as a reseller. For this reason, we will delete this term.

Accordingly, question 10 will remain as proposed, less the term "technical." The requirement to attach documentation will, however, be deleted.

The Registration Process

The parties submitted extensive comment on the process by which the Commission would evaluate any registration applications. Some comments suggested a process which was too inclusive; it accommodated too many anomalies.

Our objective is to allow applicants which have no history of questionable behavior and which present noncontroversial applications (the majority of applicants meet these two standards) to rely on an expedited and inexpensive means of securing operating authority. Applicants which do not meet these standards, but which nevertheless may be suitable for being granted operating authority, will not be excluded from applying but will have to use the more extensive application process.

1. Applicant submits completed form to the Commission docket office. [Original and seven copies and fee.]
2. Within 10 days, the Docket office evaluates the form for acceptable answers, i.e., "true," and completeness.
3. If the answers are acceptable and the application is complete, (1) the applicant's tariffs, if any, are forwarded to the Telecommunications Division for review, (2) the application is noticed in the Commission's Daily Calendar, and (3) the applicant is sent a copy of the standard obligations of interexchange carriers which contain the information reporting requirements and applicable fees currently imposed by a CPCN decision.
4. If unacceptable or incomplete, the registration form will be returned to the applicant for further actions consistent with Commission rules and regulation.
5. If no protests are filed, 30 days after the application appears in the Daily Calendar, the application is effective and the applicant

may begin providing service subject to the standard obligations, including notice to the Commission.

6. If a protest is filed, the application is automatically removed from the expedited process and is assigned to an ALJ for further review, including possible hearings.

Performance Bond

Section 1013(e) requires that the Commission adopt a performance bond as a precondition of registration to cover taxes or fees collected from customers and held for remittance. The Commission currently has in place rules which require all carriers to collect certain fees and remit them to the Commission. Nonpayment of these fees is cause for CPCN revocation. This enforcement mechanism is sufficient to ensure that payment of these fees is forthcoming. No evidence was presented that these fees are not being remitted in a timely fashion. Thus, no performance bond is necessary to ensure payment of these fees or to protect consumers.

The Commission does not collect or impose "taxes," other state or municipal authorities create these obligations. To the extent such obligations involve utilities, the evidence in this proceeding showed that the obligation is either imposed only on the utility or, the customer's duty to pay it is discharged upon payment to the utility. No evidence was presented that utility taxes are not being remitted in a timely fashion. For this reason, no performance bond is necessary to ensure payment of taxes or to protect consumers.

The evidence in this proceeding showed that most NDIECs do not accept advances or deposits. PU Code § 1013(e) gives the Commission the discretion to choose between requiring a performance bond to cover these amounts or ordering that the amounts be held in escrow or trust. We will order that any advances or deposits collected from customers be held in escrow or trust for those customers.

Detariffing

As a result of discussions during oral argument, the Assigned Commissioner determined that whether and how the Commission should exempt certain

telecommunications services from the tariffing requirements of PU Code §§ 454, 489, 491, and 495 requires further proceedings. Thus, the Commissioner decided to hold the portion of the Commissioner's May 23, 1997, Proposed Decision which addressed this issue, but to allow the portions of the Proposed Decision which addressed registration and service exemptions to be considered by the Commission.

In D.96-12-033, the Commission delayed exempting NDIECs that are not affiliates of local exchange companies (LECs) or competitive local carriers (CLCs) from the tariffing requirements until July 1, 1997. To allow the Commission sufficient time to fully consider this issue, the Commission will extend this delay until November 5, 1997. In the interim, NDIECs that wish to detariff may apply for such an exemption as part of their application or registration but will be required to comply with the Consumer Protection Rules adopted in D.96-09-098.

The assigned Commissioner will direct, by further ruling, the procedural schedule for the remainder of this proceeding.

Request for Exemption From Tariff Service Requirements

TRA requests that the Commission exempt all NDIECs from the requirement to serve tariffs upon competing and adjacent utilities found in General Order 96A (G)(1) and (2). TRA asserts that lifting this requirement for all NDIECs will go very far toward achieving the goal of § 495.7 even if the actual exemptions are never used at all. ICG also noted that a recent filing of four advice letters required them to mail approximately 15,000 pages of paper to "competing" and "adjacent" utilities.

In addition, Commission Rule of Practice and Procedure 18(b) requires service of all applications for construction of facilities on all utilities with which the applicant is likely to compete. An exemption for NDIECs from this rule would similarly simplify regulation.

ICG also recommends that the exemptions include competitive local carriers, many of which are also NDIECs.

These service requirements accomplish no consumer protection goal and appear to unnecessarily burden the industry. We will therefore exempt all interexchange

telecommunications carriers and competitive local carriers from the service requirements of General Order 96A(G)(1) and (2) and Rule 18(b). We note that these carriers remain subject to General Order 96A(G)(3) and (4) which require service on other parties that request it. We also want to make crystal clear that we are not now addressing all changes to GO 96A which may be applicable to interexchange carriers. The Commission is currently contemplating an overall review of this general order which may include imposing internet availability of tariffs on utilities. Any such new duty or indeed all duties created by GO 96A except those specifically stated above, shall be fully applicable to all interexchange carriers.

Findings of Fact

1. In evaluating the comments on the registration form, the Commission's objective was to include information that would materially benefit consumers consistent with the Commission's goal of open competition in this market.

2. Including a nonunique CIC and ACNA will not enhance CSD's information gathering efforts.

3. No party commented on Registration Form questions 2, 3, 4, 5, 6, and 9.

4. As used in questions 7 and 8 of the registration form, affiliates, officers, directors, partners, owners of 10% of applicant and those acting in such capacity whether formally appointed or not, includes all those persons that might exercise significant control over an applicant regardless of its legal structure.

5. The Commission has not been favorably impressed with the business practices of IEC's that seek bankruptcy protection.

6. An applicant's regulatory compliance history is relevant and highly probative of the applicant's prospective compliance with California authorities.

7. Expertise is required to operate as an NDIEC and the lack thereof will not be acceptable for compliance with Commission directives.

8. Our objective with the registration process is to allow applicants which have no history of questionable behavior and which present noncontroversial applications (the majority of applicants meet these two standards) to rely on a expedited and inexpensive

means of securing operating authority. Applicants which do not meet these standards, but which nevertheless may be suitable for being granted operating authority, will not be excluded from applying but will have to use the more extensive application process.

9. No performance bond is necessary to ensure payment of fees or taxes or to protect consumers.

10. The Commission should subject the issue of detariffing to additional consideration.

11. The assigned Commissioner should direct the process that will apply to the remainder of this proceeding.

Conclusions of Law

1. PU Code § 1013(a) allows the Commission to establish a registration process for telecommunication service corporations, where the Commission has determined that the corporations do not have monopoly power or market power in a relevant market.

2. The Commission finds that nondominant interexchange carriers meet the requirements of PU Code § 1013(a) and are eligible to register for a certificate of public convenience and necessity.

3. Any deposits or advances collected from customers should be held in trust or escrow for those customers.

4. The service requirements of General Order 96A(G)(1) and (2) and Commission Rule 18(b) accomplish no consumer protection goal for NDIECs and CLCs.

O R D E R

IT IS ORDERED that:

1. The registration form set out as Attachment A to this decision is hereby adopted as the form that qualified applicants may use to obtain a Certificate of Public Convenience and Necessity (CPCN) to provide interLATA and intraLATA telecommunications service.

2. Pursuant to Decision (D.) 96-12-033 and D.96-09-098, nondominant interexchange carriers (NDIEC) may request as part of their application for a CPCN that

they be exempt from the requirement to file tariffs found in Public Utilities (PU) Code §§ 454, 469, 491, and 495 including the obligation to file a draft tariff.

3. Any deposits or advances collected by an NDIEC from customers shall be held in trust for those customers.

4. The assigned Commissioner shall direct the further proceedings in this docket to address the issue of detariffing pursuant to PU Code § 495.7.

5. NDIECs not affiliates of local exchange companies or competitive local carriers (CLCs) shall be exempted from the tariffing requirements effective November 5, 1997.

6. All interexchange carriers and CLCs are no longer required to comply with General Order 96A, subsections (G)(1) and (2) and Commission Rule of Practice and Procedure 18(b).

This order is effective today.

Dated June 25, 1997, at San Francisco, California.

P. GREGORY CONLON
President
JESSIE J. KNIGHT, JR.
HENRY M. DUQUE
JOSIAH L. NEEPER
RICHARD A. BILAS
Commissioners

**Attachment A
Form of Application for Registration**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

1 In the Matter of the Application of the Applicant
Named Below for Registration as an Interexchange
Carrier Telephone Corporation Pursuant to the
Provisions of Public Utilities Code Section 1013
and D.96-

A.

| |
|--|
| |
| |
| |
| (Insert the full legal name of applicant; see instruction 1; attach fictitious names, if any) |
| Street address: |
| |
| |
| Telephone: () - |

| | | |
|---|--|--------------------------|
| 2 Applicant is: (Check only one; see instruction 2.) | A corporation (attach good standing certificate) | <input type="checkbox"/> |
| | A limited partnership (attach good standing certificate) | <input type="checkbox"/> |
| | A limited partnership (attach good standing certificate) | <input type="checkbox"/> |
| | A limited liability company (attach good standing certificate) | <input type="checkbox"/> |
| | A general partnership | <input type="checkbox"/> |
| | A sole proprietor | <input type="checkbox"/> |
| | A trust | <input type="checkbox"/> |
| Other (describe) | <input type="checkbox"/> | |
| <i>Attach name, street address, and telephone number of applicant's registered agent for service of process</i> | | |
| <i>Attach list of the names, titles, and street addresses of all officers and directors, general partners, trustees, members, or other persons authorized to conduct the business of applicant at a similar level</i> | | |
| <i>Attach list of all affiliated entities (see instruction 2)</i> | | |

| | | |
|---|-------------------|--------------------------|
| 3 Legal domicile of applicant is: (Check only one; see instruction 3.) | California | <input type="checkbox"/> |
| | Other (identify): | <input type="checkbox"/> |

| | | |
|--|--------------------------|--------------------------|
| 4 Applicant will operate as: (Check only one; see instruction 4.) | Switchless reseller | <input type="checkbox"/> |
| | Facilities-based carrier | <input type="checkbox"/> |

| | | |
|---|--|--------------------------|
| 5 Applicant will provide service: (Check only one; see instruction 5.) | Statewide | <input type="checkbox"/> |
| | In specific portions only (attach description and map) | <input type="checkbox"/> |

| | | |
|--|----------|--------------------------|
| 6 Applicant will provide voice and data telecommunications only (Check only one; see instruction 6.) | True | <input type="checkbox"/> |
| | Not true | <input type="checkbox"/> |

| | | |
|--|----------|--------------------------|
| 7 No affiliate, officer, director, general partner, or person owning more than 10% of applicant, or anyone acting in such a capacity whether or not formally appointed, held one of these positions with an IEC that filed for bankruptcy or has been found either criminally or civilly 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, and to the best of applicant's knowledge, is not currently under investigation for similar violations. (Check only one; see instruction 2.) | True | <input type="checkbox"/> |
| | Not true | <input type="checkbox"/> |

| | | |
|--|----------|--------------------------|
| 8 To the best of applicant's knowledge, neither applicant, any affiliate, officer, director, partner, nor owner of more than 10% of applicant, or any person acting in such capacity whether or not formally appointed, has been sanctioned by the Federal Communications Commission or any state regulatory agency for failure to comply with any regulatory statute, rule or order. | True | <input type="checkbox"/> |
| | Not true | <input type="checkbox"/> |

| | | |
|---|-----------------------------|--------------------------|
| 9 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. (Check only one; see instruction 7.) | True (attach documentation) | <input type="checkbox"/> |
| | Not true | <input type="checkbox"/> |

| | | |
|---|----------|--------------------------|
| 10 Applicant has the required expertise to operate as an interexchange carrier of the type indicated in the application. | True | <input type="checkbox"/> |
| | Not true | <input type="checkbox"/> |

| | | |
|--|----------|--------------------------|
| 11 Applicant is eligible for an exemption from tariffing requirements as set out in Commission Decision 96-12-033 and seeks such an exemption. (Check only one; see instruction 8.) | True | <input type="checkbox"/> |
| | Not true | <input type="checkbox"/> |

I hereby declare under penalty of perjury under the laws of the State of California that the foregoing information, and all attachments, are true, correct, and complete to the best of my knowledge and belief after due inquiry, and that I am authorized to make this application on behalf of the applicant named above.

Signed:

Name _____
Title _____
Dated _____

Street
Address _____

Telephone
Fax _____

Instructions:

1. Enter the legal name of applicant exactly as it appears on its articles or certificate of corporation or similar charter document.
2. Good standing certificates are available from the office of the Secretary of State of the State of California and should be dated of a date not more than 60 days prior to the date of filing the application. An original certificate must be attached to the manually signed copy of the application. An affiliated entity is any entity under common control with applicant. Common control exists if the same individuals or entities have the direct or indirect power to determine the action of applicant and such entity through the right to vote shares, by contract or agreement, or otherwise. Note whether any such entity is a reporting company for purposes of the Securities Exchange Act of 1934, as amended.
3. For individuals, domicile is the place of legal residence; for entities, it is the state of incorporation or organization.
4. A switchless reseller only uses the switch of another carrier; a facilities based carrier uses its own switch as well as the facilities of another carrier. Only facilities which meet the requirements for exemption from the California Environmental Quality Act (CEQA) pursuant to Commission Rule of Practice and Procedure 17.1(h)(1)(A)(1.) may be included in a CPCN registration. All other facilities will require a formal application.
5. If service is to be provided to less than the entire State of California, specify the exact area for which authority is requested.
6. Applicants which will provide services other than ordinary voice and data communications may not use the registration system.
7. Attach 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.
8. All NDIECs exempt from tariffing requirement must comply with the Consumer Protection Rules adopted in Decision 96-09-098.

(END OF ATTACHMENT A)