

Decision 88 06 025

JUN 8 1988

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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
 National Telephone Services, Inc., a)
 Georgia corporation, for a certifi-)
 cate of public convenience and)
 necessity to provide intrastate)
 operator assisted resold telecom-)
 munication services.)

Application 87-12-043
 (Filed December 23, 1987)

OPINION

National Telephone Services, Inc. (NTS or applicant) has filed an application requesting that the Commission issue a certificate of public convenience and necessity under Public Utilities (PU) Code § 1001 to permit applicant to operate as a reseller of telephone services offered by communications common carriers providing telecommunications services in California.

By order dated June 29, 1983, the Commission instituted an investigation to determine whether competition should be allowed in the provision of telecommunications transmission services within the state (OII 83-06-01). Numerous applications to provide competitive service were consolidated with that investigation and by Interim Decision (D.) 84-01-037 dated January 5, 1984 and subsequent decisions, these applications were granted, limited to the provision of interLATA service and subject to the condition that applicants not hold out to the public the provision of intraLATA service pending our decision in the Order Instituting Investigation (OII or I.).

On June 13, 1984 we issued D.84-06-113 in OII 83-06-01 denying the applications to the extent not previously granted and directing persons not authorized to provide intraLATA telecommunications services to refrain from holding out the availability of such services and to advise their subscribers that

intraLATA communications services should be placed over the facilities of the local exchange company.

The application seeks authority to originate and terminate interLATA calls throughout the State of California, primarily serving "institutional" customers (i.e., hotels, hospitals, and other large institutions, and privately owned pay phones).

Pacific Bell (PacBell) filed a protest to the original application on January 27, 1988, raising concerns that NTS' application did not clearly prohibit intraLATA services and requesting that the Commission condition the granting of the application upon applicant's agreement to cease holding out intraLATA services in California, including intraLATA operator services, and to revise its proposed tariff to conform to the Commission's decisions.

Applicant responded to PacBell's protest on April 22, 1988, stating its intention to conform fully to the Commission's rules and regulations, including the requirement contained in D.84-06-113 that it not "hold out" to its customers the provision of intraLATA service. Applicant requested that PacBell's protest be disregarded.

On April 25, 1988, NTS filed a First Amended Application to reflect corporate reorganization with a substantial change in beneficial ownership and to correct some errors in its proposed tariff language. On May 11, 1988, PacBell sent a letter to counsel for NTS seeking to resolve PacBell's concerns regarding the Amended Application informally, in lieu of filing another protest. PacBell specified conditions designed to clarify that applicant would engage in no intraLATA bypass or overcharging in its Alternate Operator Service (AOS) operations.

On May 26, 1988, applicant advised the assigned administrative law judge by letter that agreement had been reached with PacBell as to certain changes in the tariff language proposed

by NTS and conditions to be included in the decision granting a certificate. NTS also agreed to submit a new tariff page which sets forth rates for service from COPT instruments which comply with PacBell's COPT tariff. Thus, the issues raised by the PacBell's protest and subsequent letter have been resolved satisfactorily, and the conditions are contained in the ordering paragraphs which follow. These conditions are adopted to resolve the limited factual issues raised by this application and PacBell's protest.

Prior to the filing of applicant's amended application, the Director of the Commission Advisory and Compliance Division (CACD) sent a letter on April 13, 1988 directing all AOS companies which provide intrastate services in California to file applications for certificates of public convenience and necessity and proposed tariffs for their intrastate services within 60 days. CACD has been reviewing NTS' tariffs submitted with its amended application. CACD should continue its review, since this order provides that applicant's tariff schedules for the provision of AOS operator services are subject to pre-filing review and approval of the Chief of the CACD's Telecommunications Branch. Upon receipt of a letter from the Chief of the Telecommunications Branch indicating CACD's approval of the AOS-related tariff schedules, applicant is authorized to file with this Commission its tariff schedules for the provision of such services. Applicant may not offer AOS-related service until these tariffs are on file.

On the other hand, applicant is authorized to file with this Commission, five days after the effective date of this order, tariff schedules for the provision of other interLATA service, unconnected with its proposed AOS-related service. However, applicant may not offer such service until tariffs are on file.

Applicant is placed on notice that this Commission may review issues affecting the AOS industry in more general terms in I.88-04-029 or another appropriate proceeding. Nothing in today's

decision should be construed as a prejudgment on our part of issues already identified in I.88-04-029 or other generic issues, as such issues may ultimately impact applicant.

This application is granted to authorize interLATA service, including interLATA AOS operator services, under the conditions specified, and to the extent the application may be construed as a request for authorization to provide intraLATA service, it will be denied.

Findings of Fact

1. By D.84-01-037 the Commission authorized interLATA entry generally.

2. By D.84-06-113 the Commission denied applications to provide competitive intraLATA telecommunications service and required persons not authorized to provide intraLATA telecommunications service to refrain from holding out the availability of such services and to advise their subscribers that intraLATA communications should be placed over the facilities of the local exchange company.

3. There is no basis for treating this applicant differently than those which filed earlier except to the extent addressed in the AOS-related conditions specified in this order.

4. Because of the public interest in effective competition interLATA this order should be effective today.

5. Applicant is subject to the 4% surcharge applicable to the gross revenues of intrastate interLATA services outlined in D.87-07-090, in OII 83-11-05 dated July 29, 1987, and D.87-10-088 dated October 28, 1987.

6. Applicant should be subject to the user fee as a percentage of gross intrastate revenue pursuant to PU Code §§ 431-435. The fee is currently .1% for the 1987-88 fiscal year.

Conclusion of Law

This application should be granted in part to the extent set forth below.

ORDER

IT IS ORDERED that:

1. The application of National Telephone Services, Inc. (NTS or applicant) is granted to the limited extent of providing the requested service on an interLATA basis, subject to the condition that applicant refrain from holding out to the public the provision of intraLATA service and subject to the requirement that it advise its subscribers that intraLATA communications should be placed over the facilities of the local exchange company.

2. To the extent that the application requested authorization to provide intraLATA telecommunications services, the application is denied.

3. In connection with its provision of AOS services, applicant shall adhere to the following three conditions:

- a. NTS shall require that the COPT vendors with whom it does business direct all intraLATA calling to the local exchange company for completion by the local exchange company as intraLATA calling. As used herein "intraLATA calling" shall mean all calls that originate and terminate within the same LATA. The routing of intraLATA calls to the local exchange carrier requires that (1) all such calls, as dialed by the end user customer, be routed as dialed to the local exchange carrier and may not be routed to any other person or entity for call processing, billing, transmission, or completion, and (2) all such routing be accomplished in a manner that permits application of the local exchange carrier's charges for intraLATA calling by the local exchange carrier from the central office where the call originates to the central office or wire center serving the device where the call terminates. In addition, the routing of intraLATA calls to the local exchange carrier shall be done in a manner which permits the performance by the local exchange carrier of functions for which a

local exchange carrier charge applies (including, without limitation, all intraLATA operator and operator surcharge functions). By way of example, and without limitation, NTS shall not, by itself or in conjunction with any other entity or person, permit, allow, or hold out the availability of any routing arrangement that directs intraLATA calls as dialed by an end user customer to any person or entity other than the local exchange carrier.

- b. NTS shall not offer, hold out, provide or otherwise make available intraLATA operator-handled calls. As used herein intraLATA operator-handled calls (also referred to as "non-sent paid calls"), whether handled mechanically or manually, includes all intraLATA credit card, bill third number, collect, station to station, person to person, conference calls, or any combination thereof. The routing of intraLATA operator-handled calls (non-sent paid calls) by the local exchange company requires that (1) all such calls as dialed by the end user customer be routed to the local exchange company and to no other person or entity, including NTS, (2) routing shall be accomplished in a manner that permits application of the local exchange company's operator charges, and (3) such non-sent paid calls shall be billed by the local exchange company to the number or account designated by the calling person and acceptable by the local exchange company. InterLATA operator-handled calls may be provided by NTS.
- c. NTS shall inform all customers who inquire that intraLATA calls and intraLATA operator-handled calls are to be provided by the local exchange company. In addition, NTS shall take all necessary action to ensure that such calls are returned to the local exchange company central office serving the calling party for completion and billing by the local exchange company as an intraLATA call. Specifically, NTS shall inform callers

attempting to complete intraLATA calls that such calls may be completed by dialing "0", or by contacting the operator of the local exchange company.

4. Applicant shall provide tariff schedules for the provision of interLATA AOS, to CACD for its review. Upon review of these tariff schedules and the written approval of them by the Chief of CACD's Telecommunications Branch, applicant is authorized to file with this Commission tariff schedules for the provision of interLATA AOS. Applicant may not offer such services until these tariffs are on file.

5. In connection with non-AOS related interLATA telecommunication services, applicant is authorized to file its tariff schedules with this Commission 5 days after the effective date of this order. Applicant may not offer service until tariffs are on file. If applicant has an effective Federal Communications Commission- (FCC) approved tariff, it may file a notice adopting such FCC tariff with a copy of the FCC tariff included in the filing. Such adoption notice shall specifically exclude the provision of intraLATA service. If applicant has no effective FCC tariffs, or wishes to file tariffs applicable only to California intrastate interLATA service, it is authorized to do so, including rates, rules, regulations, and other provisions necessary to offer service to the public. Such filing shall be made in accordance with General Order (GO) 96-A, excluding Sections IV, V, and VI, and shall be effective not less than 1 day after filing.

6. Applicant is authorized to deviate on an ongoing basis from the requirements of GO 96-A in the following manner: (a) to deviate from the pagination requirements set forth in paragraph II.C.(1)(b) which requires consecutive sheet numbering and prohibits the reuse of sheet numbers, and (b) to deviate from the requirements set forth in paragraph II.C.(4) 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 CACD's Telecommunications Branch. Tariff filings shall reflect the 4% interim surcharge noted in Ordering Paragraph 9.

7. If applicant fails to file tariffs within 30 days of the effective date of this order, applicant's certificate may be suspended or revoked.

8. The requirements of GO 96-A relative to the effectiveness of tariffs after filing are waived in order that changes in FCC tariffs may become effective on the same date for California interLATA service for those companies that adopt the FCC tariffs.

9. Applicant is subject to the 4% interim surcharge applicable to the gross revenues of intrastate interLATA services outlined in D.87-07-090 in OII 83-11-05 dated July 29, 1987, and D.87-10-088 dated October 28, 1987.

10. Applicant is subject to the user fee as a percentage of gross intrastate revenue pursuant to PU Code §§ 431-435.

11. The corporate identification number assigned to National Telephone Services, Inc. is U-5156-C which should be included in the caption of all original filings with this Commission, and in the titles of other pleadings filed in existing cases.

12. The protest of Pacific Bell is granted to the extent consistent with the conditions imposed in this order.

13. The application is granted in part and denied in part as set forth above.

This order is effective today.

Dated June 8, 1988, at Carson, California. ✓

STANLEY W. HULETT
President
DONALD VIAL
FREDERICK R. DUDA
G. MITCHELL WILK
JOHN B. OCHANIAN
Commissioners

I CERTIFY THAT THIS DECISION
WAS APPROVED BY THE ABOVE
COMMISSIONERS TODAY.

Victor Wenger
Victor Wenger, Executive Director

by NTS and conditions to be included in the decision granting a certificate. NTS also agreed to submit a new tariff page which sets forth rates for service from COPT instruments which comply with PacBell's COPT tariff. Thus, the issues raised by the PacBell's protest and subsequent letter have been resolved satisfactorily, and the conditions are contained in the ordering paragraphs which follow. These conditions are adopted to resolve the limited factual issues raised by this application and PacBell's protest.

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Dated JUN 8 1988, at San Francisco, California.

STANLEY W. HULETT
President

DONALD VIAL
FREDERICK R. DUDA
G. MITCHELL WILK
JOHN B. OHANIAN
Commissioners