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Decision 88-08-019 August 10, 1988

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
Elcotel LD*OS, Inc. for a certifi-)
cate of public convenience and)
necessity to operate as a reseller)
of interexchange telecommunication)
service and as a provider of)
operator services.)

ORIGINAL
Application 88-04-051
(Filed April 18, 1988)

OPINION

Elcotel LD*OS, Inc. (Elcotel 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 hotels/motels and privately owned pay phones.

On May 16, 1988, Pacific Bell (PacBell) sent a letter to counsel for Elcotel seeking to resolve PacBell's concerns regarding the application informally, in lieu of filing a protest. PacBell specified conditions designed to clarify that applicant would engage in no intraLATA bypass or overcharging in its Alternate Operator Service (AOS) operations.

In a separate letter also dated May 16, 1988, PacBell confirmed a conversation with counsel for Elcotel and Administrative Law Judge (ALJ) Kiernan-Harrington where it was agreed that Elcotel would consent to a one-week extension of time until May 31, 1988, for PacBell to file its protest if the parties' attempt to settle their differences did not succeed. A similar letter, dated May 31, 1988, memorialized a further extension of time for PacBell to file its protest to June 13, 1988.¹

Meanwhile, on May 23, 1988, the Division of Ratepayer Advocates (DRA) filed a Protest and Motion to Consolidate Applications. DRA asserted that the application failed to comply with Commission decisions² dealing with customer-owned pay telephones (COPT) by charging prohibited rates for operator services provided over COPTs and by offering "O minus" operator assistance over COPTs. "O minus" operator assistance applies to

1 PacBell would have still been required to file a Motion to File A Late Protest in order for its filing to be accepted by the Commission's Docket Office. Obviously, by giving its consent Elcotel would have been unable to oppose such a motion.

2 D.85-11-057, D.86-01-059, D.87-05-061, D.87-08-052, and D.87-08-063 were cited by DRA.

calls where the end user dials "0" only, without dialing subsequent digits. Additionally, DRA moves to consolidate all AOS applications into one proceeding.

On June 17, 1988, applicant advised the assigned ALJ by letter that agreement had been reached with PacBell and DRA as to certain changes in the tariff language proposed by Elcotel and conditions to be included in the decision granting a certificate. Elcotel also submitted a new tariff page which sets forth rates for service from COPT instruments which comply with PacBell's COPT tariff. DRA specifically withdrew its protest based on the agreement reached. Thus, the issues raised by PacBell's letter and DRA's protest 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, PacBell's letter and DRA's protest. Since its protest was withdrawn as to Elcotel, DRA's motion to consolidate is denied, without prejudice to raising it in another AOS application.

Shortly before the filing of applicant's 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 Elcotel's tariffs submitted with its 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 affect 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.

O R D E R

IT IS ORDERED that:

1. The application of Elcotel LD*OS, Inc. (Elcotel 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. Elcotel 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, Elcotel 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. Elcotel 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 Elcotel, (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 Elcotel.

- c. Elcotel 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, Elcotel 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, Elcotel 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 Elcotel LD*OS, Inc. is U-5159-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. DRA's motion to consolidate AOS applications is denied without prejudice.

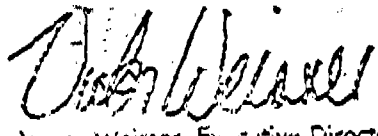
13. The application is granted in part and denied in part as set forth above.

This order is effective today.

Dated AUG 10 1988, at San Francisco, California.

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

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



Victor Weiss, Executive Director

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