

Decision 88 09 049 SEP 28 1988

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
Communique Telecommunications Inc. of)
Ontario for a Certificate of Public)
Convenience and Necessity to Operate)
as a Reseller of Telecommunications)
services within California.)

Application 88-06-013
(Filed July 1, 1988)

Mailed

SEP 28 1988

OPINION

Communique Telecommunications Inc. of Ontario (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. Applicant also requests an exemption from PU Code §§ 851 to 855.

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).

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.

There is no basis for treating this applicant any differently than those which filed earlier. Therefore, this application will be granted to authorize interLATA service.

GTE California Incorporated (GTE) filed a timely protest. Since applicant has not requested interLATA authority, GTE did not protest to limit the scope of authority. It argued, however, that the decision should spell out applicant's obligation to provide billing information to other telephone companies, for example, minutes of use. It also protests the request for exemption claiming that such exemption is not in the public's interest.

Request for Exemption

Applicant also requests that the Commission grant it an exemption from the provisions of Article VI of Chapter 4 of the Public Utilities (PU) Code pursuant to PU Code § 853. Article VI, encompassing Sections 851 to 855, deals principally with the transfer or encumbrance of utility properties. GTE's protest alleges only that the: (1) applicant "should not be exempted from the sale or transfer of assets or stock without having first secured from the Commission an order authorizing it to do so"; and (2) "request for exemption is not in the public's interest, because such transfer of assets or stock may adversely affect the financial stability and continuity of Communique."

We are not impressed with either the application or the protest as they pertain to the request for exemption. The application contains a bare request for exemption without supporting allegations, while the protest is not persuasive. Neither applicant nor GTE has cited the line of decisions in A.84-03-92 in which the Commission exempted nondominant telecommunications carriers:

1. from Sections 816 to 830, regarding stocks and security transactions (D.85-01-008); and,
2. from the requirement in Section 851 of obtaining authority to transfer legal title to, or otherwise encumber, property to which Section 851 applies, when such transfer or encumbrance serves to secure debt. (D.85-07-081; D.85-11-044.)

The Commission also authorized the Executive Director to grant noncontroversial applications by nondominant telecommunications carriers seeking authority to transfer assets or control under Sections 851 through 855. (D.86-08-057.) Finally, in D.87-10-035 the Commission extended the same exemptions and expedited procedures to radiotelephone utilities.

As a nondominant telecommunications carrier, applicant will be entitled, upon certification, to the above-described exemptions and expedited procedures. Since applicant has alleged no facts supporting its request that it be further exempted from the provisions of Sections 851 to 855, its request will be denied.

GTE's Request for Conditions

GTE's protest states that:

"...any decision giving Applicant authority to provide intrastate service should specify Applicant's duty to provide local telephone utilities such as GTEC all information necessary to compute the appropriate access charge billings and should state that such information must be provided in a prompt and timely manner. The granting of Applicant's request for authority should also be conditioned on the timely provision of such information and the timely payment of access charge billings. In particular, any grant of intrastate authority should order applicant to immediately begin tracking its intrastate minutes of use. Problems have been developing in this area with other carriers and resellers, and the negative effect on GTEC and its ratepayers is potentially enormous. It should

be made clear from the outset that local telephone companies and customers will not underwrite carriers such as Applicant by bearing the costs of late or non-existent access charges." (Protest, p. 2.)

On August 3, 1988, Applicant filed comments in response to GTE's protest. Regarding GTE's proposed conditions, applicant asserts:

"GTEC's Protest is not based on any record evidence that the conditions it seeks to have imposed are needed. Communique is a new company, not yet having begun intrastate operations. In its interstate operations, Communique has cooperated fully with the local exchange and other carriers upon which its operations depend, and there is no reason for it to do otherwise with respect to its intrastate operations. GTEC's protest is therefore based solely upon speculative fears as to Communique's further operations. Such speculation in no way demonstrates that Communique's certificate need be conditioned in any manner.

"To the extent GTEC's concerns arise from its experience with other of its resale customers, such experience cannot fairly be relied on to judge and thereby burden Communique's operations. Moreover, GTEC's proposed conditions are based on the groundless assumption that Communique is unaware of or will ignore CPUC regulations governing the handling of intrastate traffic. Communique is aware of CPUC requirements and policies in this area, and GTEC cannot [show] and has not shown any reason to believe that Communique will in any way fail to abide by CPUC requirements." (Comments to Protest, pp. 1-2.)

Although GTE raises an interesting concern that may prove to be a problem, it has alleged no facts to support the imposition of the conditions it proposes. By GTE's own allegation the negative effect of this "developing" problem is merely "potentially" enormous. We appreciate the warning; and we ask GTE

to keep our staff fully informed as statistics are accumulated about the magnitude of the problem. If failure to provide billing information or nonpayment or late payment of access charge billings becomes a serious problem, then GTE should communicate with the staff or the Commission with its recommendations for addressing the problem. GTE may also decide to deal with the problem through tariff changes by advice letter. In any event, a routine application for reseller authority is not an appropriate procedural vehicle for addressing a matter, allegedly, of statewide concern.

Finally, GTE does not ask that a public hearing be convened to address its concerns nor does its protest contain the allegations required by our rules. (Rules 8.1 and 8.4.) Accordingly, no public hearing is necessary. We conclude that the conditions proposed by GTE should 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.

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

5. As a telephone corporation operating as a telecommunications service supplier, applicant should be subject to the 4% surcharge on gross intrastate interLATA revenues as established by Commission decisions and resolutions pursuant to PU Code § 879.

6. As a telephone corporation operating as a telecommunications service supplier, applicant should also be subject to the one-half percent (1/2%) surcharge on gross intrastate interLATA revenues to fund Telecommunications Devices for the Deaf. This surcharge becomes effective on October 1, 1988 as set forth in Resolution T-13005 dated July 22, 1988 and issued pursuant to PU Code § 2881.

7. 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 1988-89 fiscal year.

Conclusions of Law

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

2. The request to condition applicant's certificate on providing billing information to GTE should be denied without prejudice.

3. The request for exemption from regulation under Article VI should be denied without prejudice.

ORDER

IT IS ORDERED that:

1. The application of Communique Telecommunications Inc. of Ontario 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. Applicant is authorized to file with this Commission, 5 days after the effective date of this order, tariff schedules for the provision of interLATA service. Applicant may not offer service until tariffs are on file. If applicant has an effective 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.

4. Applicant is authorized to deviate on an ongoing basis from the requirements of GO 96-A in the following manner: (a) to deviate from 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 Commission Advisory and Compliance Division's Telecommunications Branch. Tariff filings shall reflect the 4% interim surcharge noted in Ordering Paragraph 7.

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

6. 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.

7. Applicant is subject to the 4% surcharge applicable to the gross revenues of intrastate interLATA services as established by Commission decisions and resolutions pursuant to PU Code § 879.

8. Effective on and after October 1, 1988, applicant is subject to a one-half percent (1/2%) monthly surcharge to fund Telecommunications Devices for the Deaf as outlined in Resolution T-13005 dated July 22, 1988 pursuant to PU Code § 2881.

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

10. The corporate identification number assigned to Communique Telecommunications Inc. of Ontario is U-5165-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.

11. Applicant's request for exemption from regulation under PU Code §§ 851-855 is denied without prejudice.

12. GTE's request that the certificate be conditioned 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 SEP 28 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 Weisser

Victor Weisser, Executive Director