

Decision 89 04 031 APR 12 1989**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
 U.S. Operators, Inc. for a)
 Certificate of Public Convenience)
 and Necessity to Operate as a)
 Provider of Telecommunications)
 Services Within California.)

Application 88-10-026
 (Filed October 13, 1988)
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APR 15 1989

OPINION

U.S. Operators, Inc. (U.S.O.I. 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).

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, providing Alternate Operator Service (AOS) to private pay phones, campus facilities, and hotels/motels.

No protests to this application have been filed. In regard to its AOS operations, U.S.O.I. agrees to adhere to conditions similar to those imposed on other AOS operators by the Commission in prior decisions.¹ In order to treat all AOS operators similarly, these conditions and an additional one not mentioned in U.S.O.I.'s application are contained in the ordering paragraphs which follow. The additional condition (Ordering Paragraph 3.d below) requires U.S.O.I. to charge no more for interLATA-intrastate calling made from non-utility pay phones than the tarified rates of AT&T-Communications, Inc. plus any additional amounts permitted by the Commission. This condition makes explicit the requirement that U.S.O.I. comply with applicable tariffs regarding permitted pay phone rates.

Six months 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 U.S.O.I.'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

¹ See e.g. Payline Systems, Inc., A.88-10-044, D.89-02-021; AOS Continental of California, Inc., A.88-03-034, D.88-05-062.

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 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 became 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.

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 U.S. Operators, Inc. (U.S.O.I. 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 the provision of AOS services, applicant shall adhere to the following four conditions:

- a. All intraLATA calling shall be directed by U.S.O.I. 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, U.S.O.I. 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. U.S.O.I. 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 U.S.O.I., (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 U.S.O.I.
- c. U.S.O.I. 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, U.S.O.I. 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.
- d. For completion of calls from non-utility pay phones, U.S.O.I. will charge customers no more for interLATA - intrastate calling than the tariffed rates of AT&T-Communications, Inc., plus any additional amounts permitted by the Commission.

4. Applicant shall provide tariff schedules for the provision of interLATA AOS to the Commission Advisory and Compliance Division (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 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 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% surcharge applicable to the gross revenues of intrastate interLATA services as established by Commission decisions and resolutions pursuant to PU Code § 879.

10. 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.

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

12. The corporate identification number assigned to U.S. Operators, Inc. is U-5174-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.

13. Within 60 days of the effective date of this order, applicant shall comply with PU Code § 708, Employee Identification Cards, and notify, in writing, the Chief of the Telecommunications Branch of the Commission Advisory and Compliance Division of compliance.

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

This order is effective today.

Dated APR 12 1989, at San Francisco, California.

G. MITCHELL WILK
President
STANLEY W. HULETT
JOHN B. OHANIAN
PATRICIA M. ECKERT
Commissioners

Commissioner Frederick R. Duda
being necessarily absent, did
not participate.

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

Victor Weisur

Victor Weisur, Executive Director