

Decision 89 05 068 MAY 26 1989**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application)
of Northwestern Payphone Systems)
for a Certificate of Public)
Convenience and Necessity to)
Operate as a Reseller of)
Telecommunications Services)
Within California.)

Application 89-01-002
(Filed January 1, 1989)

OPINION

Northwestern Payphone Systems (Northwestern or applicant) seeks a certificate of public convenience and necessity under Public Utilities (PU) Code § 1001 to permit it to operate as a reseller of telephone service offered by communication common carriers providing telecommunication service in California.

On June 29, 1983, the Commission issued Order Instituting Investigation (OII) 83-06-01 to determine whether competition should be allowed in the provision of telecommunication transmission service within the state. Many applications to provide competitive service were consolidated with OII 83-06-01. By interim Decision (D-) 84-01-037 and later decisions we granted those applications, limiting the authority conferred to interLATA service and subjecting the applicants to the condition that they not hold themselves out to the public to provide intraLATA service, pending our decision in OII 83-06-01.

On June 13, 1984 we issued D.84-06-113 in OII 83-06-01, denying the applications to the extent not previously granted. We also directed persons not authorized to provide intraLATA telecommunication service to refrain from holding out the availability of such service; we required them to advise their subscribers that intraLATA calls 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, penal institutions, and hotels/motels.

The Division of Ratepayer Advocates (DRA) filed comments on February 6, 1989. DRA does not oppose the granting of applicant's certificate of public convenience and necessity because other AOS providers have received authority. DRA submitted its comments to alert the Commission to the need for safeguards in the captive O-Plus, OO-Plus, and OO-Minus¹ interLATA operator services markets and to reassert its request that the Commission open an investigation into local exchange carrier (LEC) billing practices.

Since the filing of DRA's comments, the Commission has announced its intention to open a proceeding to "address the broad range of policy issues bearing on the use of the LEC billing services and related network functions." (D.88-02-066, mimeo. p. 72). Therefore, it is not necessary to address DRA's comments further in this application.

Pacific Bell (Pacific) filed a protest on February 7, 1989, requesting that the applicant be subject to the same conditions imposed on other AOS providers in recent Commission decisions.²

GTE California Incorporated (GTE) filed a Motion to File a Late-Filed Protest on February 23, 1989. That request was later

1 O-Plus and OO-Plus calls are operator-assisted calls made by dialing zero or zero-zero plus the desired telephone number. OO-Minus calls are operator-assisted calls where the caller dials zero-zero and relies entirely on a live operator to complete the call.

2 See, e.g., U.S. Operators, Inc., Application (A.) 88-10-026, D.89-04-031; Payline Systems, Inc., A.88-10-044, D.89-02-021.

withdrawn on May 15, 1989 by letter to the assigned Administrative Law Judge.

On March 8, 1989, Northwestern amended its application to incorporate the same conditions imposed on other AOS operators by the Commission in prior decisions cited above. Northwestern's amended application resolves the issues raised in Pacific's protest and was the reason for GTE's withdrawal of its protest.

Nine 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 Northwestern'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 tariffs 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 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. As a telephone corporation operating as a telecommunication service supplier, applicant is subject to: (a) the current 4% surcharge on gross intrastate interLATA revenues, (PU Code § 879), (b) the current one-half percent (0.5%) surcharge on gross intrastate interLATA revenues to fund Telecommunications Devices for the Deaf, (PU Code § 2881; Resolution T-13005), and (c) the user fee provided in PU Code §§ 431-435. For the 1988-89 fiscal year the user fee is 0.1% of gross intrastate revenue.

Conclusion of Law

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

ORDER

IT IS ORDERED that:

1. The application of Northwestern Payphone Systems (Northwestern 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 Northwestern 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 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, Northwestern, 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. Northwestern 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 Northwestern, (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 Northwestern.
- c. Northwestern 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, Northwestern 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, Northwestern 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 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.

6. Applicant may deviate from the following provisions of GO 96-A: (a) paragraph II.C(1)(b), which requires consecutive sheet numbering and prohibits the reuse of sheet numbers, and (b) paragraph II.C(4), which requires 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% surcharge pursuant to § 879.

7. The requirements of GO 96-A relative to the effectiveness of tariffs after filing are waived to the extent that changes in Federal Communications Commission (FCC) tariffs may become effective on the same date for California interLATA service for those companies that adopt the FCC tariffs.

8. Applicant shall file as part of its individual tariff, after the effective date of this order and consistent with Ordering Paragraph 4, a service area map.

9. Applicant shall notify this Commission in writing of the date service is first rendered to the public within 5 days after service begins.

10. Applicant shall keep its books and records in accordance with the Uniform System of Accounts specified in Part 32 of the FCC rules.

11. Applicant shall file an annual report, in compliance with GO 104-A, on a calendar year basis using the information request form developed by the CACD Auditing and Compliance Branch and contained in Attachment A.

12. The certificate granted and the authority to render service under the rates, charges, and rules authorized will expire if not exercised within 12 months after the effective date of this order.

13. Within 30 days after this order is effective, applicant shall file a written acceptance of the certificate granted in this proceeding.

14. The corporate identification number assigned to Northwestern Payphone Systems is U-5178-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.

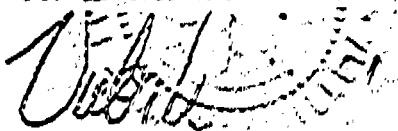
15. Within 60 days of the effective date of this order, applicant shall comply with PU Code § 708, Employee Identification Cards, and notify the Chief of CACD's Telecommunications Branch in writing of its compliance.

This order is effective today.

Dated MAY 26 1989, at San Francisco, California.

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

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


Victor Weisner, Executive Director

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TO: ALL INTEREXCHANGE TELEPHONE UTILITIES

Article 5 of the Public Utilities Code grants authority to the California Public Utilities Commission to require all public utilities doing business in California to file reports as specified by the Commission on the utilities' California operations.

A specific annual report form has not yet been prescribed for the California interexchange telephone utilities. However, you are hereby directed to submit an original and two copies of the information requested in Attachment A no later than March 31st of the year following the calendar year for which the annual report is submitted.

Address your report to:

California Public Utilities Commission
Auditing and Compliance Branch, Room 2151
505 Van Ness Avenue
San Francisco, CA 94102-3298

Failure to file this information on time may result in a penalty as provided for in §§ 2107 and 2108 of the Public Utilities Code.

If you have any question concerning this matter, please call (415) 557-2484.

Very truly yours,

/s/ KENNETH K. LOUIE
Kenneth K. Louie
Auditing and Compliance Branch

ATTACHMENT A

Information Requested of California Interexchange Telephone Utilities.

To be filed with the California Public Utilities Commission, 505 Van Ness Avenue, Room 3251, San Francisco, CA 94102-3298, no later than March 31st of the year following the calendar year for which the annual report is submitted.

1. Exact legal name and U # of reporting utility.
2. Address.
3. Name, title, address, and telephone number of the person to be contacted concerning the reported information.
4. Name and title of the officer having custody of the general books of account and the address of the office where such books are kept.
5. Type of organization (e.g., corporation, partnership, sole proprietorship, etc.)
If incorporated, specify:
 - a. Date of filing articles of incorporation with the Secretary of State.
 - b. State in which incorporated.
6. Commission decision number granting operating authority and the date of that decision.
7. Date operations were begun.
8. Description of other business activities in which the utility is engaged.
9. A list of all affiliated companies and their relationship to the utility. State if affiliate is:
 - a. Regulated public utility.
 - b. Publicly held corporation.
10. Balance sheet as of December 31st of the year for which information is submitted.
11. Income statement for California operations for the calendar year for which information is submitted.