

Decision 89 09 096 SEP 27 1989**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
 Communitel, Inc., for a Certificate)
 of Public Convenience and Necessity)
 to Operate as a Reseller of)
 Telecommunications Services Within)
 the State of California.)

Application 89-03-034
 (Filed March 20, 1989)

OPINION

This is an application in which Communitel, Inc. (Communitel) seeks a certificate of public convenience and necessity to operate as a reseller of interLATA telecommunications services in California.

Notice of the filing of the application appeared in the Commission's Daily Calendar. Pacific Bell filed a timely protest and the matter was set for hearing on August 21, 1989. On August 7, 1989, the parties entered into a stipulation about the matters at issue and Pacific Bell withdrew its protest.

The Commission makes the following findings and conclusion.

Findings of Fact

1. The stipulation between Communitel and Pacific Bell, the only parties of record, conforms to Rule 51.1. It is reasonable in light of the whole record, consistent with law, and in the public interest and should be approved by the Commission.

2. A public hearing is not necessary in this matter.

3. Communitel is a newly formed California corporation. Its president is Michael Lozano. Communitel's initial capitalization is as follows:

<u>Type of Security</u>	<u>Price</u>	<u>Aggregate Securities Sold</u>	<u>Aggregate Contributions</u>
Shares	\$214.29 per share	700	\$150,000.00
Notes	\$15,000.00 per note	10	<u>\$150,000.00</u>
Total Capitalization			\$300,000.00

4. Communitel proposes to operate an interLATA long-distance telephone service among points in California. It also proposes to provide service between origination points in California and points in the United States and various foreign countries.

5. Communitel intends to provide service to hotels, motels, private and semi-private pay phones, hospitals, and similar establishments. It will use access facilities from local exchange telephone companies. Communitel will lease WATS-like facilities from other telephone companies to provide for the termination of the interLATA traffic. Its traffic service position station will be a standard telecommunication industry product which Communitel intends to obtain from a manufacturer of national reputation.

6. Communitel has provided a pro forma income statement which projects net losses for the first three months of operation and continually increasing net income thereafter.

7. Communitel has the ability, including financial ability, to conduct the proposed operations.

8. It can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.

9. Granting the application will increase competition in the California interLATA communications market and provide for the more efficient use of existing communications facilities.

10. Public convenience and necessity require that the application be granted.

11. A statement of proposed rates is included in the application, but proposed tariff pages, which are not mandatory, were not provided. It is reasonable to require that the initial tariffs filed by applicant be filed on not less than 15 days' notice before they become effective to allow time for appropriate review by the Commission Advisory and Compliance Division and other interested parties.

12. As a telephone corporation operating as a telecommunication service supplier, Communitel is subject to: (a) the current 2.5% surcharge on gross intrastate interLATA revenues (Public Utilities (PU) Code § 879), (b) the current 0.3% surcharge on gross intrastate interLATA revenues to fund Telecommunications Devices for the Deaf (PU Code § 2881; Resolution T-13061), and (c) the user fee provided in PU Code §§ 431-435, which is 0.1% of gross intrastate revenue for the 1989-90 fiscal year.

13. It is reasonable to include in the ensuing order the following conditions which were stipulated to by Communitel and Pacific Bell:

- "1. All intraLATA calling shall be directed by Applicant 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 be routed either directly or indirectly as dialed by the end user customer 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. Applicant shall not permit, allow, or hold out the availability over its network 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.

- "2. Applicant 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, include all intraLATA credit card, bill third number, 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 Applicant, (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 Applicant.
- "3. Applicant 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, Applicant 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.
- "4. Applicant will charge end users no more for interLATA intrastate calling than the tariffed rates of AT&T Communications, Inc., plus any additional amounts permitted by the Commission for completion of calls from non-utility payphones, unless otherwise approved by the Commission."

14. Because of the public interest in effective competition, this order should be effective on the date of issuance.

Conclusion of Law

The application should be granted.

Only the amount paid to the State for operative rights may be used in rate fixing. The State may grant any number of rights and may cancel or modify the monopoly feature of these rights at any time.

ORDER

IT IS ORDERED that:

1. A certificate of public convenience and necessity to operate as a telephone corporation as defined in PU Code § 234 for the purpose of operating as a reseller of interLATA long-distance telephone service is granted to Communitel, Inc. (Communitel) in accordance with the terms of the application.

2. The authority granted in Ordering Paragraph 1 is subject to the following conditions:

- a. All intraLATA calling shall be directed by Communitel 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 be routed either directly or indirectly as dialed by the end user customer 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. Communitel shall not permit, allow, or hold out the availability over it's network 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. Communitel 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, include all intraLATA credit card, bill third number, 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 Communitel, (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 Communitel.
- c. Communitel 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, Communitel 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. Communitel will charge end users no more for interLATA intrastate calling than the tariffed rates of AT&T Communications, Inc., plus any additional amounts permitted by the Commission for completion of calls

from non-utility payphones, unless otherwise approved by the Commission."

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

4. Communitel is authorized to file with this Commission after the effective date of this order, on not less than 15 days' notice to the public and Commission, tariff schedules for the provision of interLATA service. Communitel may not offer service until tariffs are in effect. If Communitel 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 Communitel 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 III.G.5, IV, V, and VI, and shall be effective not less than 15 days after filing. After the filing of initial tariffs, Communitel's subsequent tariff filings shall be subject to the same minimum notice period that applies to the subsequent tariff filings of other non-dominant interLATA telephone corporations.

5. After the filing of initial tariffs, Communitel 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 Commission Advisory and Compliance Division's (CACD) Telecommunications Branch. Tariff

filings shall reflect all surcharges to which Communitel is subject, as reflected in Finding of Fact 12.

6. The requirements of GO 96-A relative to the effectiveness of tariffs after filing are waived to the extent 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. Communitel 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.

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

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

10. Communitel 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.

11. 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.

12. Communitel shall send a copy of this decision to concerned local permitting agencies not later than 30 days from today.

13. The corporate identification number assigned to Communitel is U-5190-C which shall be included in the caption of all original filings with this Commission, and in the titles or other pleadings filed in existing cases.

14. Within 60 days of the effective date of this order, Communitel 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 SEP 27 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.

Wesley Franklin

WESLEY FRANKLIN, Acting Executive Director

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 3251
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.

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:
 - 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.