

Decision 90 05 016 MAY 04 1990

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
CellToll Corporation)
for a certificate of public)
convenience and necessity to operate)
as a reseller of telecommunications)
services within the state of)
California.)

ORIGINAL

Application 90-01-058
(Filed January 30, 1990)

O P I N I O N

CellToll Corporation (CellToll 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 operator assisted interLATA long distance telephone service within the state of California.

Pacific Bell (Pacific) filed a protest on March 6, 1990, alleging that applicant had not attached proposed tariffs for its intrastate services leaving Pacific's ratepayers unaware of what they will be charged for Applicant's services. Pacific also protested that four conditions setting out an applicant's obligations regarding provision of interLATA alternative operator service (AOS) which have been imposed on other applicants by the Commission are missing from this application. In order to be consistent, and to protect the interests of the Commission and Pacific's customers, Pacific urges that these four conditions be applied to the grant of authority in this case.

On March 16, 1990, applicant sent a letter to the Chief Administrative Law Judge, with a copy to Pacific stating that it would abide by all requirements imposed by the Commission, including those indicated in Pacific's protest. Applicant also agrees to submit draft tariff pages governing the AOS service to CACD for prior review. This agreement, together with the further opportunity we will provide Pacific to examine the AOS tariffs and file a protest prior to their approval in CACD, effectively resolves Pacific's protest.

The four conditions on service previously applied to approvals of CPCN for AOS and interLATA reseller services appear in Ordering Paragraph 3. A minor amendment has been made to subparagraph b, however. As in prior Commission decisions, (D. 88-12-043, Intellicall, et al.), the applicant may provide interLATA operator handled calls. This decision requires the persons who provide operator service on behalf of the applicant to clearly identify themselves as a CellToll operator to the caller. This

notice to the end user is a reasonable way of alerting the consumer to the fact that operator services are not being provided by the dominant carrier or the local exchange carrier (LEC) and that charges may vary from those assessed by the dominant carrier/LEC. Operator identification will also facilitate the resolution of customer complaints, if any occur.

On April 13, 1988, the Director of the Commission Advisory and Compliance Division (CACD) sent a letter 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. Such tariffs were not attached to this application. This order will provide 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 filing the tariffs with CACD, applicant shall serve a copy on Pacific which will have 15 days to file a protest with CACD. 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, including the direction to persons who provide operator service on applicant's behalf to identify themselves clearly as a "CellToll Operator" to the caller when first connected to the caller. This requirement should become a part of the standard conditions of approval of AOS applications such as this one.

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 2.5% 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 three-tenths of one percent (0.3%) surcharge on

gross intrastate interLATA revenues to fund Telecommunications Devices for the Deaf. This surcharge became effective on July 1, 1989 as set forth in Resolution T-13061 dated April 26, 1989 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 1989-90 fiscal year.

8. Applicant will not be engaged in the construction or extension of facilities and thus it can be seen with certainty that there is no possibility that this authority, if granted, will adversely affect the environment.

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 CellToll Corporation (CellToll 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 four conditions:

- a. 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.

- b. 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 CellToll, (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 so long as those who provide operator service on behalf of applicant clearly identify

themselves as CellToll operators when first connected to the caller.

- c. 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.
- d. 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.

4. Applicant shall provide tariff schedules for the provision of interLATA AOS, to CACD for its review and shall at the same time serve a copy on Pacific. Pacific shall have 15 days to file any protest with CACD. 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 the Commission Advisory and Compliance Division's Telecommunications Branch. Tariff filings shall reflect the surcharge noted in Ordering Paragraphs 10, 11 and 12.

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 exempted from PU Code §§ 816-830 pursuant to Decision 85-01-008.

10. Applicant is subject to the 2.5% surcharge applicable to the gross revenues of intrastate interLATA services as established by Commission decisions and resolutions pursuant to PU Code § 879.

11. Effective on the effective date of this decision, applicant is subject to a three-tenths of one percent (0.3%) monthly surcharge to fund Telecommunications Devices for the Deaf as outlined in Resolution T-13061 dated April 26, 1989 pursuant to PU Code § 2881.

12. Applicant is subject to the current 0.1% user fee as a percentage of gross intrastate revenue pursuant to PU Code §§ 431-435.

13. The corporate identification number assigned to applicant is U-5202-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.

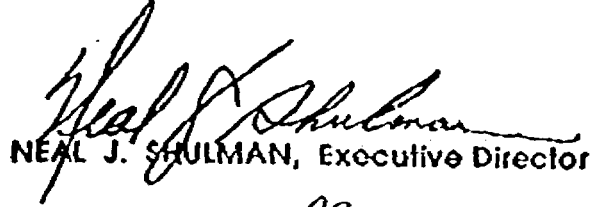
13. The application is granted in part and denied in part as set forth above.

This order is effective today.

Dated MAY 04 1990, 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


NEAL J. SHULMAN, Executive Director