

Decision 90 05 021 MAY 04 1990

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of Chernow Communications, Inc. for a Certificate of Public Convenience and Necessity to Operate as a Reseller of Telecommunication Services within the State of California.

CONFIDENTIAL

Application 89-12-047 (Filed December 28, 1989)

O P I N I O N

Chernow Communications, Inc. (Chernow or applicant) has filed an application requesting that the Commission issue a certificate of public convenience and necessity (CPCN) under Public Utilities (PU) Code § 1001 to operate as an interLATA resale telecommunications carrier within the entire State of California. Chernow would provide direct-dial and operator-assisted interexchange telecommunication services to hotels and motels for use by their patrons. Chernow currently offers interstate long distance services and operator-assisted service to customers of public payphones outside of California. In addition, Chernow offers call-accounting equipment, which is not regulated by this Commission, for use with PBX equipment maintained by hotels and motels to provide more precise tracking of interexchange calls.

The applicant is a wholly owned subsidiary of Metromedia Long Distance, Inc., which is a wholly owned subsidiary of Metromedia Company, a privately-held company with interests in the telecommunications and hospitality industries, among other areas. Its principal place of business is in Boulder, Colorado. It is organized as a Colorado corporation and is qualified to conduct business as a foreign corporation in the State of California.

Chernow would provide its services solely through the resale of interexchange services and facilities provided by other

carriers, as it owns no transmission facilities within this state. It anticipates that its customers will generate some intrastate traffic, although a very high percentage of the traffic will be interstate in nature. Intrastate calls will be transferred either to its sister company, Communications Services, Inc. (formerly, ITT Communications Services, Inc.), or to International Telecharge, Inc., each of which holds a CPCN from this Commission. During the first year, Chernow expects to have 350 customers. By the 5th year, it expects to have about 750 customers.

The applicant's proposed rates appear as Attachment A to this decision. Of particular note are the proposed evening rate discount of 20 percent and night-weekend rate discount of 40 percent. Surcharges of \$1.55 per call billed to a calling card, \$1.55 for operator handled station-to-station calls, and \$3.00 for operator handled person-to-person calls are proposed. Consistent with this Commission's directive, the applicant represents that rates for calls originated from customer-owned coin-operated telephones will not exceed AT&T time of day rates plus \$.10 per call.

Applicant has more than five years' operating experience providing interstate interexchange telecommunication services. Chernow's management is led by a former senior marketing officer of the company's affiliate, Communications Services, Inc., which has provided interexchange services for more than a decade throughout the country. Administrative, legal, and regulatory services are provided by Chernow's parent, Metromedia Long Distance, Inc., on a contractual basis. As a subsidiary of Metromedia company, Chernow has adequate financial resources to provide the proposed services.

Chernow alleges that its service is in the public interest as it provides competitive long distance services to its subscribers (i.e., hotels) which will, in the long run, result in better service and lower rates to its subscribers.

Finally, Chernow requests that it be authorized to deviate on an ongoing basis from the pagination requirements set forth in General Order (GO) 96-A. In particular, the applicant seeks relief from Paragraph II.C.(1)(b) which requires consecutive sheet numbering and prohibits the reuse of sheet numbers, as well as Paragraph II.C.(4) which states that a separate sheet or series of sheets should be used for each rule.

Protest of Pacific Bell

Pacific Bell (Pacific) protested the application because Chernow would not agree to amend its application to expressly adopt the conditions the Commission has imposed on interLATA service providers who propose to provide Alternative Operator Services (AOS) from coin phones and hotels/motels. Pacific also protested on the grounds that Chernow had failed to attach proposed tariffs showing its intended rates for service.

In its "Reply to Protest", Chernow stated that it had attempted to negotiate revised conditions of service. The applicant believes that the conditions now imposed on AOS providers are highly impracticable, such that AOS providers have been agreeing to abide by requirements that were nearly impossible to meet. However, Chernow finally agreed to the imposition of three of the four standard conditions to the Commission's issuance of a CPCN. The fourth condition, which limits the charge for interLATA intrastate calling from nonutility-owned pay phones to the otherwise applicable charge by ATT-C, plus any additional amount permitted by the CPUC, was addressed in Chernow's application.

Upon receipt of Chernow's reply, Pacific wrote to the Administrative Law Judge expressing approval of Chernow's position, but failed to withdraw its protest.

Discussion

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 (Order Instituting Investigation (OII) 83-06-01). Numerous applications to provide competitive service were consolidated with that investigation. 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 OII.

On June 13, 1984 we issued D.84-06-113 in the OII proceeding, which denied the applications to the extent not previously granted and directed 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 (LEC).

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 CPCN and to propose tariffs for their intrastate services within 60 days. This letter could be interpreted, as Pacific has done, to require proposed tariffs to accompany AOS applications for CPCN. However, when the Director of CACD's letter is viewed in the context of events that existed in April, 1988, it becomes clear that it was directed at AOS companies that were operating without CPUC authorization. Because more than 50 unregulated AOS companies were already in existence, immediate provisions of proposed rates in tariff form were needed for CACD to review the terms and conditions of operation of AOS companies.

A standard condition of approval of an application like this one subjects the applicant's tariff schedules for the provision of AOS to prefiling review and approval of the Chief of the CACD's Telecommunications Branch. Since the applicant is not operating without authority, it is not necessary for Chernow to

have filed its proposed tariff with its application for CPCN. It did properly include its proposed rates in its application. Upon receipt of a letter from the Chief of the Telecommunications Branch indicating CACD's approval of the AOS-related tariff schedules, applicant will be authorized to file with this Commission its tariff schedules to reflect the rates contained in its application 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. The applicant may not offer such service until tariffs are on file.

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 Chernow 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 LEC and that charges may vary from those assessed by the dominant carrier/LEC. Significant differences in rates are quite possible when the caller is not using a pay phone, such as when the call is placed from a hotel room, since the Commission has only limited the rates charged for AOS services provided at pay telephones. Operator identification will also facilitate the resolution of customer complaints, if any occur.

Chernow 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, 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 LEC.

3. This applicant should be treated in the same way as others who seek to provide AOS and to originate and terminate interLATA calls within California, except that the applicant shall direct persons who provide operator service on its behalf to identify themselves clearly as a "Chernow Operator" to the caller when first connected to the caller. This requirement should become a part of the standard conditions of approval of applications such as this one.

4. As an AOS provider, applicant will not construct, own, or operate any telecommunications equipment or facilities but will utilize existing facilities of other existing telecommunications companies to complete calls.

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

6. As a telephone corporation operating as a telecommunications service supplier, applicant is subject to: (a) the current 2.5 percent surcharge on gross intrastate interLATA revenues as established by Commission decisions and resolutions pursuant to PU Code § 879; (b) the current 0.3 percent surcharge on gross intrastate interLATA revenues to fund Telecommunications Devices for the Deaf pursuant to Resolution T-13061 and issued pursuant to PU Code § 2881; and (c) the user fee as a percentage of gross intrastate revenue pursuant to PU Code §§ 431-435. The fee is currently 0.1 percent for the 1989-90 fiscal year.

Conclusion of Law

1. There is no substantial evidence that the proposal of Chernow to provide AOS as described in its application for CPCN may have a significant effect on the environment.

2. 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 Chernow Communications, Inc. (Chernow 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 (LEC).

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 Alternative Operator Services (AOS), applicant shall adhere to the following four conditions:

- a. All intraLATA calling shall be directed by Chernow to the LEC for completion by the LEC 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. 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, Chernow shall not, by itself or in conjunction with any other entity or person, 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. Chernow 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 "nonsent paid calls"), whether handled mechanically or manually, include 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 (nonsent paid calls) by the LEC requires that

(1) all such calls as dialed by the end user customer be routed to the LEC and to no other person or entity, including Chernow, (2) routing shall be accomplished in a manner that permits application of the LEC's operator charges, and (3) such nonsent paid calls shall be billed by the LEC to the number or account designated by the calling person and acceptable by the LEC. InterLATA operator-handled calls may be provided by Chernow, so long as those who provide operator service on behalf of Chernow clearly identify themselves as Chernow operators when first connected to the caller.

- c. Chernow shall inform all customers who inquire that intraLATA calls and intraLATA operator-handled calls are to be provided by the LEC. In addition, Chernow shall take all necessary action to ensure that such calls are returned to the LEC's central office serving the calling party for completion and billing by the LEC as an intraLATA call.
- d. For completion of calls from nonutility pay phones, Chernow 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.

4. Applicant shall provide tariff schedules for the provision of interLATA AOS at rates contained in Attachment "A" to 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 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 surcharges in Findings of Fact 6.

7. 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.

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 Chernow is U-5203-C which shall 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.

16. The Protest of Pacific Bell is denied.

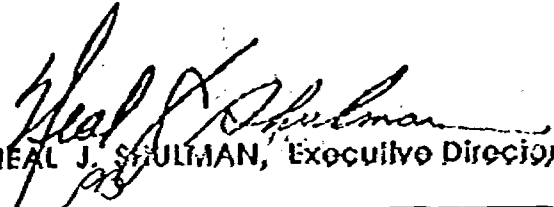
This order is effective today.

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

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NEAL J. SHULMAN, Executive Director

ATTACHMENT A

Statement of Proposed Rates
Chernow Communications, Inc.

Direct Dial ("1+") Calling

Per minute rate \$.20

Operator Services Calling

Per minute rates

<u>Mileage</u> <u>Band</u>	<u>1st</u> <u>Min.</u>	<u>Add'l.</u> <u>Min.</u>
0 - 20	\$0.20	\$0.16
21 - 40	0.27	0.17
41 - 70	0.29	0.13
71 - 100	0.33	0.20
101 - 150	0.35	0.21
151 - 330	0.37	0.24
331 +	0.39	0.24

Evening Rate Discount: 20%
 Night/Weekend Rate Discount: 40%

Per Call Surcharges

Calling Card \$1.55
 Operator-Handled Station 1.55
 Person-to-person 3.00

Rates for calls originated from customer-owned coin operated telephones will not exceed AT&T time of day rates + \$.10 per call.

(END OF ATTACHMENT A)