

Decision 90 05 063 MAY 22 1990

**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of )  
Century Network, Inc. for Authority )  
to Operate as a Reseller of )  
Interexchange Telecommunications )  
Services within the State of )  
California. )

Application 89-10-058  
(Filed October 31, 1989)

O P I N I O N

On October 31, 1989, Century Network, Inc. (CNI or applicant) filed an application requesting that the Commission issue a certificate of public convenience and necessity (CPCN) under Public Utilities (PU) Code § 1001 to permit applicant to resell interLATA interexchange telecommunications service to operators of pay phones and transient facilities in California. CNI proposes to provide operator services to callers for whom it provides interLATA services. CNI was incorporated in Florida and was qualified to transact business in California by the Secretary of State.

On April 11, 1990, CNI filed its "Amendment to Application and Request for Authority" to advise the Commission that its name has been changed to ASCOM TeleNetwork, Inc. Applicant has appended the certificate of the Florida Secretary of State as well as the Certificate of Qualification issued by the California Secretary of State to show that it is now lawfully authorized to do business as ASCOM TeleNetwork, Inc. The applicant wishes the authority to be issued to ASCOM at its new corporate address and otherwise incorporates all other terms of its application. No protests to the amendment have been received. The applicant will be referred to as ASCOM hereafter.

ASCOM will not provide or employ live operators but will contract with third parties or the underlying facilities-based

carrier for that service. ASCOM intends to contract with AT&T, TeleAmerica, and US Sprint to provide operator assistance. AT&T, MCI, and US Sprint will be used for call distribution and completion. ASCOM's networking systems employ a switch in Ft. Lauderdale, Florida, to provide access to the various credit card validation services used by its clients. During the first year, ASCOM estimates it will have five customers. By the fifth year, it expects to have about 200 customers. Service will be provided initially in the San Francisco/East Bay area and in the Los Angeles basin. Expansion of service will also occur in these metropolitan areas, although the applicant seeks authority to originate and terminate interLATA calls throughout California. The management profiles reveal that ASCOM's directors have strong financial investment and managerial skills. Only one of the profiled individuals possesses technical skills relating to telecommunications systems.

Pacific Bell (Pacific) protested the application because ASCOM would not agree during the course of negotiations 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 ASCOM had failed to attach proposed tariffs showing its intended rates for service.

ASCOM responded that it is willing and able to comply with Commission orders including the decisions containing the four conditions set forth in Pacific's protest. As to the tariff sheets, ASCOM pointed out that the Commission's Rules of Practice and Procedure do not require the filing of a proposed tariff simultaneously with an application for CPCN. ASCOM had listed its proposed rates in the body of its application and had simultaneously asserted that "Upon receiving authority from the Commission to operate, applicant will file a formal tariff,

pursuant to General Order (GO) 96-A, providing additional detail of the services it will provide and the rates it will charge."

The Administrative Law Judge then inquired whether Pacific's concerns had been satisfied. Pacific withdrew its protest to the application by letter dated January 12, 1990.

On March 5, 1990, ASCOM filed an "Amendment to Application and Request for Authority." ASCOM clarified that its proposed rates for message toll service shall apply to pay telephones only. Those rates have been reproduced in Attachment A of this decision. As ordered by the Commission, these rates do not exceed the otherwise applicable AT&T rate by more than \$.10. Besides interLATA calling within the state of California, ASCOM proposes to provide operator services to callers for whom it provides interLATA services. The applicant proposes to provide 0 + automated credit card calling at \$.53 per call, station-to-station operator assistance for a charge of \$1.05, and person-to-person operator assistance for a charge of \$3.15. These charges reflect AT&T's current rates.

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 pre-filing 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 ASCOM to have filed its proposed tariff with its application for CPCN. It did properly include its proposed rates for message toll service within California, credit card and operator service in its application, as amended.

Applicant has stated that upon receipt of authority from the Commission, it will file a tariff pursuant to GO 96-A providing additional detail of the services it will provide and the rates it will charge. 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, as amended, 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 an ASCOM 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. Operator identification will also facilitate the resolution of customer complaints, if any occur.

ASCOM 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. On October 31, 1981, Century Network, Inc. (CNI) filed an application for a CPCN to resell interLATA interexchange telecommunications service and to provide operator services to callers for whom it provides interLATA services. On April 11, 1990, CNI filed its "Amendment to Application and Request for Authority" to advise the Commission that it had changed its name to ASCOM TeleNetwork, Inc. and to request issuance of the CPCN in the name of ASCOM TeleNetwork, Inc.

2. By D.84-01-037 the Commission authorized interLATA entry generally.

3. 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.

4. 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 "ASCOM 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.

5. 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.

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

7. As a telephone corporation operating as a telecommunications service supplier, applicant is subject to: (a) the current 2.5% surcharge on gross intrastate interLATA revenues as established by Commission decisions and resolutions pursuant to PU Code § 879; (b) the current 0.3% 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% for the 1989-90 fiscal year.

Conclusions of Law

1. There is no substantial evidence that the proposal of ASCOM to provide alternate operator services 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.

ORDER

IT IS ORDERED that:

1. The application of ASCOM TeleNetwork, Inc. (ASCOM 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 ASCOM 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, ASCOM 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. ASCOM 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, 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 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 ASCOM, (2) routing shall be accomplished in a manner that permits application of the LEC's operator charges, and (3) such non-sent 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 ASCOM, so long as those who provide operator service on behalf of ASCOM clearly identify themselves as ASCOM operators when first connected to the caller.

- c. ASCOM shall inform all customers who inquire that intraLATA calls and intraLATA operator-handled calls are to be provided by the LEC. In addition, ASCOM 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, ASCOM 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 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 surcharges in Finding of Fact 7.

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.

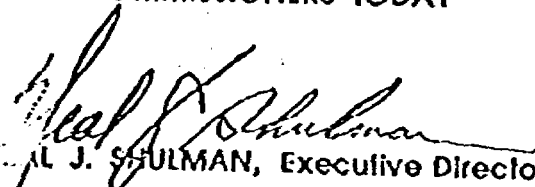
14. The corporate identification number assigned to ASCOM is U-5204-C which shall be included in the caption of all original filings with this Commission, and in the titles of other pleadings filed in existing cases.

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.

This order is effective today.

Dated MAY 22 1990, at San Francisco, California.

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

  
NEAL J. SHULMAN, Executive Director

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

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

ATTACHMENT A

Proposed Message Toll Service Rates for California

Intrastate/InterLATA

Monday - Friday 8:00 AM to 6:00 PM

<u>Mileage</u>	<u>First Minute</u>	<u>Additional Minute</u>
0-10	.21	.12
11-22	.26	.17
23-55	.28	.19
56-124	.29	.21
125-292	.29	.24
293-430	.30	.25

Monday - Friday 6:00 PM to 8:00 AM

<u>Mileage</u>	<u>First Minute</u>	<u>Additional Minute</u>
0-10	.17	.12
11-22	.21	.14
23-55	.23	.16
56-124	.24	.17
125-292	.24	.20
293-430	.24	.20

A \$.55 surcharge is added to the first minute rate for each of these mileage ranges and for day and evening rates.

(END OF ATTACHMENT A)