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Decision 90-11-004 November 9, 1990

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application)
of Phoenix Network, Inc. for a)
certificate of public convenience)
and necessity to operate as a)
reseller of InterLATA Tele-)
communications services within)
California.)

ORIGINAL

Application 90-09-035
(Filed September 17, 1990)

O P I N I O N

Phoenix Network, Inc. (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.

There is no basis for treating this applicant differently than those that filed earlier. Therefore, we will authorize interLATA service; but to the extent that the application seeks authority to provide intraLATA service, we will deny it.

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 telecommunication service and required persons not authorized to provide intraLATA telecommunication service to refrain from holding out the availability of such service and to advise their subscribers that intraLATA calls should be placed over the facilities of the local exchange company.

3. Exemption from the provisions of Public Utilities Code § 816-830 has been granted to other resellers (e.g. Decision 86-10-007 and Decision 88-12-076).

4. There is no basis for treating this applicant differently than those that filed earlier.

5. Applicant will provide telecommunications service using the leased facilities of other interexchange carriers. It has no plans to construct telecommunications routes of its own.

6. It can be seen with certainty that there is no possibility that granting this application may have a significant effect on the environment.

7. As a telephone corporation operating as a telecommunication service supplier, applicant is subject to: (a) the current 3.4% surcharge applicable to service rates of intraLATA toll and intrastate interLATA toll (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 1990-91 fiscal year.

8. Applicant has total assets of \$2,223,766 as of April 30, 1989.

Conclusion of Law

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

O R D E R

IT IS ORDERED that:

1. A certificate of public convenience and necessity is granted to Phoenix Network Inc. (applicant) to operate as a reseller of the interLATA telecommunications service offered by communication common carriers in California, subject to the following conditions:
 - a. Applicant shall offer and provide its services only on an interLATA basis;
 - b. Applicant shall not provide intraLATA services;
 - c. Applicant shall not hold out to the public that it has authority to provide, or that it does provide, intraLATA services; and
 - d. Applicant shall advise its subscribers that they should place their intraLATA calls over the facilities of the local exchange company.
2. To the extent that applicant requests authority to provide intraLATA telecommunication service, it is denied.
3. Within 30 days after this order is effective, applicant shall file a written acceptance of the certificate granted in this proceeding.
4. 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.

5. 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 Commission Advisory and Compliance Division's (CACD) Telecommunications Branch. Tariff filings shall reflect all surcharges to which applicant is subject, as reflected in Finding of Fact 7.

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. 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.

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

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

10. 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.

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. Applicant 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 applicant is U-5223-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.

14. 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.

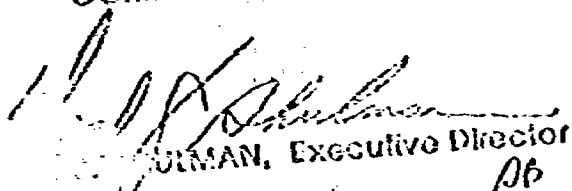
15. Applicant is exempted from the provisions of § 816-830. This order is effective today.

Dated November 9, 1990, at San Francisco, California.

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

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

Commissioner Stanley W. Hulett,
being necessarily absent, did
not participate.


HULETT, 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. 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.

(END OF ATTACHMENT A)