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Decision 90-11-054 November 21, 1990

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
National Brands, Inc., dba Sharenet)
Communications Company, for a)
certificate of public convenience)
& necessity to operate as a reseller)
of interLATA telecommunications)
services within California.)

ORIGINAL
Application 90-06-063
(Filed June 28, 1990)

O P I N I O N

National Brands, Inc., dba Sharenet Communications Company (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 and automated operator assisted 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.

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. CACD should continue its review, since this order provides that we required an applicant's tariff schedules for the provision of AOS operator services be subject to pre-filing review and approval of the Chief of the CACD's Telecommunications Branch. Upon receipt of a letter from the Chief of the Telecommunications Branch indicating CACD's approval of the AOS-related tariff schedules, an applicant is authorized to file with this Commission its tariff schedules for the provision of such services. An applicant may not offer AOS-related service until these tariffs are on file. We shall require that applicant in this proceeding follow this tariff pre-filing review.

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.

This application is granted to authorize interLATA service, including interLATA AOS services, subject to the same terms and conditions as those we have imposed on similar applications. 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 Sharenet Communications 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.

Applicant is placed on notice that this Commission may review issues affecting the Alternate Operator Service 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.

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. 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 "Sharenet Communications 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. Applicant's income statement shows net income after taxes as of December 31, 1989 of \$943,871, returned earnings of \$3 million after dividends, and an unsecured short-term revolving line of credit of \$2 million.

5. 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 1989-90 fiscal year.

Conclusion of Law

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

ORDER

IT IS ORDERED that:

1. A certificate of public convenience and necessity is granted to National Brands, Inc. (applicant) to operate as a reseller of the interLATA telecommunication 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. In connection with its provision of AOS, applicant shall adhere to the following four conditions:

- a. All intraLATA calling shall be directed by applicant 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, applicant 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. 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 "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 applicant, (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 applicant, so long as those who provide operator service on behalf of applicant clearly identify themselves as applicant 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 LEC. In addition, applicant 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, 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.

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

5. 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.

6. Applicant's preliminary statement in its tariff shall include the following:

Sharenet Communications Company has been granted authority by the California Public Utilities Commission to provide interLATA service within the State of California. Sharenet Communications Company does not hold itself out as offering intraLATA service. IntraLATA communications should be placed over the facilities of the local exchange company.

7. 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.

8. 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 4.

9. 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.

10. 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.

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

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

13. 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.

14. 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.

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

16. The corporate identification number assigned to applicant is U-5222-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.

17. 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.

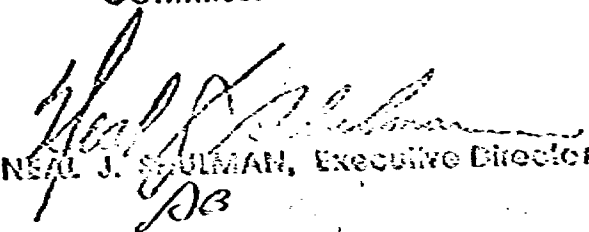
This order is effective today.

Dated November 21, 1990, 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


NEAL J. SPULMAN, 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)