

DEC 6 1990

Decision 90-12-011 December 6, 1990

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application )  
of Spectrum II, Inc. for a )  
Certificate of Public Convenience )  
and Necessity to Operate as a )  
Reseller of Telecommunications )  
Services Within California. )

ORIGINAL

Application 90-08-022  
(Filed August 9, 1990)

O P I N I O N

Spectrum II, Inc. (applicant), seeks a certificate of public convenience and necessity (CPC&N) 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.

We also issued D.90-08-032 in Order Instituting Rulemaking 85-08-042, which imposed new requirements of

non-dominant interexchange (NDIEC) telecommunications utilities. Among these new requirements is the requirement that new NDIEC applicants demonstrate that they possess a minimum of \$400,000 of unencumbered cash to carry out their first full year of operations. An exemption to this financial requirement is available if the new carrier can demonstrate that it does not need \$400,000 of cash for its first year of operation.

Applicant has only \$85,841 of cash and retained assets as of June 1990, as shown in Exhibit III to the application. However, by a September 11, 1990 letter, applicant requests a waiver of the financial requirement for the following reasons:

- a. Applicant entered into a contract with Execuline of Sacramento (Execuline), a current NDIEC, to supply service to applicant's customers.
- b. Execuline will do the billing, collections, and collect and report the required federal and state taxes and fees to government agencies.
- c. Should applicant go bankrupt, all of its customers will be transferred to Execuline without any disruption of service to the customers.
- d. All equipment used to provide customer service belongs to Execuline.

The rulemaking decision which implemented the minimum \$400,000 in uncommitted cash or equivalent financial resource requirement for new applicants seeking CPC&Ns to become NDIECs was signed by the Commission on August 8, 1990, but was not published or available to the public until August 13, 1990. The application for an NDIEC before us now was filed with the Docket Office on August 9, 1990, one day after the financial requirement became technically effective and four days prior to the published date of the financial requirement.

Applicant did not mention the financial requirement in its application because applicant had no knowledge, and no means to obtain knowledge of the new requirement. Upon learning of the new financial requirement applicant, responsive to providing good telecommunications service, supplemented its application with a request for waiver of the financial requirement on the basis that its proposed operation will not adversely affect customers or subject customers to service disruption, even in extreme circumstances such as bankruptcy.

Applicant has been caught in the transition period of the new financial requirement. Since applicant filed its application four days prior to the date that the financial requirement was known to the public, filed a timely request for a waiver, and designed its proposed operation so that customers will not be adversely affected, applicant should be grandfathered from meeting the financial requirement. However, the financial waiver should be conditioned upon applicant implementing each of the four criteria listed and discussed in this decision. Applicant's interexchange operations shall conform to all other D.90-08-032 requirements.

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 PU Code §§ 816-830 has been granted to other resellers (e.g., D.86-10-007 and D.88-12-076).

4. By D.90-08-032 NDIECs are required to demonstrate that they possess a minimum of \$400,000 of unencumbered cash to carry out their first full year of operation.

5. D.90-08-032 allows for a waiver of the financial requirement upon reasonable cause.

6. Applicant requested a waiver of the financial requirement.

7. D.90-08-032 was not published or available to the public until August 13, 1990.

8. This application was filed on August 9, 1990.

9. Applicant's proposed operations will not adversely affect its customers.

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

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

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

13. 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.

Conclusions of Law

1. Applicant should be granted a waiver of D.90-08-032's requirement that new NDIECs must have a minimum of \$400,000 of unencumbered cash to carry out their first year of operation.
2. 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 Spectrum II, 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. Applicant is granted a waiver of the minimum \$400,000 financial requirement imposed by D.90-08-032 conditioned upon applicant executing and implementing the four criteria identified in its September 11, 1990 letter requesting a waiver of the financial requirement and listed in this decision. Applicant's interexchange operations shall conform to all other D.90-08-032 requirements.

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 the Chief of the Commission Advisory and Compliance Division (CACD) Telecommunications Branch tariff schedules for the provision of interLATA service. Applicant may not offer service until the tariffs are on file and until applicant has received written approval from the Chief of the CACD Telecommunications Branch. 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 Chief of the CACD Telecommunications Branch. Tariff filings shall reflect all surcharges to which applicant is subject, as reflected in Finding of Fact 13.

7. 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.

8. Applicant shall file as part of its individual tariff, after the effective date of this order and consistent with Ordering Paragraph 5, 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. Applicant shall send a copy of this decision to concerned local permitting agencies not later than 30 days from today.

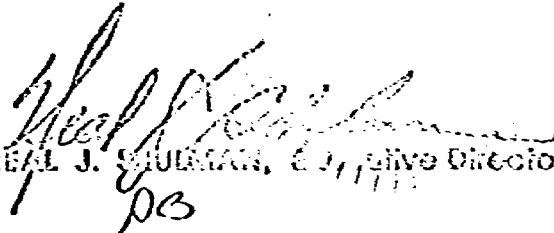
14. The corporate identification number assigned to applicant is U-5224-C which shall be included in the caption of all original filings with this Commission, and in the titles of other pleadings filed in existing cases.

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. Applicant is exempt from the provisions of §§ 816-830.  
This order is effective today.  
Dated December 6, 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. STURMAN, Executive Director  
NS



A.90-08-022 ALJ/MFG/jt

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 at
  - 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)