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Decision 91-05-050 May 22, 1991

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
Phoenix FiberLink Incorporated, a)
Nevada corporation, for a Certificate)
of Public Convenience and Necessity)
to construct facilities and provide)
IntraLATA high speed digital private)
line communications services.)

ORIGINAL

Application 91-02-083
(Filed February 19, 1991)

OPINION

Phoenix FiberLink Incorporated (FiberLink or applicant), a Nevada corporation, seeks a certificate of public convenience and necessity for authority to construct fiber optic cable communications facilities and provide intraLATA high speed digital private line communications services, pursuant to Decision (D.) 88-09-059.

Applicant is a Nevada corporation with its principal place of business in Sacramento. FiberLink is a wholly owned subsidiary of Phoenix American Incorporated, a holding company whose other subsidiaries are engaged in businesses such as organizing and managing limited partnerships investing in high technology equipment leases, providing telecommunications management and network services, and owning and operating cable television systems.

FiberLink seeks authority to construct metropolitan area networks consisting of fiber optic cable communications facilities, and to provide intraLATA high speed (1.544 megabits and above) digital private line communications services pursuant to D.88-09-059 in I.87-11-033, the Commission's investigation of alternative regulatory frameworks (ARF) for local exchange carriers (LECs). D.88-09-059 provided for competitive entry in the provision of intraLATA high speed digital private line services

through its adoption of a modified settlement agreement in Phase I of the ARF proceeding.

All of FiberLink's services will be provided over fiber optic cable facilities which will be dedicated and nonswitched and will comply with all other requirements and conditions for competitive intraLATA high speed digital private line services set forth in D.88-09-059.

Although FiberLink's initial system will be constructed, and will provide service, in the Sacramento metropolitan area, FiberLink seeks statewide authority from the Commission and plans to rapidly expand its facilities and services into other metropolitan areas throughout California as a need for such services arises. In addition to the downtown Sacramento area, applicant will also construct backbone fiber facilities to the Rancho Cordova area, approximately 8 miles to the east of downtown Sacramento.

All funds necessary for construction and operation of FiberLink's initial Sacramento system will be provided by its parent company, Phoenix American Incorporated, which has the financial resources to undertake this project, or through financing from vendors of fiber optic cable or other equipment components (without encumbrance of any of applicant's assets or stock) necessary to construct the system.

A copy of Phoenix American Incorporated's latest annual report for the period ending June 30, 1990 is attached to the application and shows the financial resources available to FiberLink for construction and operation of its initial system.¹ In addition, a letter from the Chief Financial Officer of

¹ As of the date of Phoenix American Incorporated's latest annual report, its stock was publicly traded. As of November 14, 1990, Phoenix American Incorporated became a 100% privately owned company.

applicant's parent company is attached to the application, which applicant asserts satisfies the financial requirements for nondominant carrier certificate applicants adopted by the Commission in D.90-08-032.

Any necessary health and safety permits as required for the construction and operation of FiberLink's initial Sacramento metropolitan area network will be obtained from the appropriate Sacramento city or county offices. The construction in Sacramento proposes placement of fiber optic cables in existing city rights of way or the use of existing conduits or ducts in existing utility rights of way. The use of existing city rights of way or existing utility conduits or ducts shows a reasonable certainty that the proposed construction will have no significant environmental impacts.

By its issuance of D.88-09-059, the Commission has previously determined that the public convenience and necessity require that competition be allowed in the provision of intralATA high speed digital private line services.

The major users of FiberLink's services will be interexchange carriers (IECs) who require cost effective, high quality communications facilities for a variety of point-to-point uses, including connection of their points of presence (POPS) to local exchange carrier central offices, connections between POPS, and connections between POPS and the IECs' major and users. Other major users of FiberLink's services will be large companies or governmental agencies with a need to connect separate buildings or offices within the same metropolitan area.

The public interest will be served by FiberLink's proposed construction and operations by providing users of communications services with innovative, customized services designed to meet their specific needs, by expanding the availability of technologically advanced communications facilities, and by improving the quality and reliability of services offered by

IECs to their customers, and the public at large, through use of FiberLink's customized services over these technologically advanced communications facilities.

FiberLink will initially offer high speed digital services at two speeds: 1.544 Mbps (DS-1 service) and 44.736 Mbps (DS-3 service). The pricing components for both services include non-recurring installation charges and recurring charges for (i) channel terminations (two channels required), and (ii) mileage charges reflecting the length of the individual customer's service based on the distance between the origin and destination points.

Because both services are highly specialized, services will require multiplexing and diagnostic equipment to be customized and installed to meet an individual customer's particular needs. Thus, FiberLink proposes to price its services on an individual case basis (ICB). Upon certification by the Commission, FiberLink will file a tariff for these services which will include the general conditions under which service will be provided, including the respective obligations of the customer and of FiberLink, billing, payment, and credit terms, and all other information required by the rules and regulations of the Commission applicable to nondominant telecommunications carriers. As individual customers are signed up for service, FiberLink will file advice letter updates to its tariff showing the charges for service to each individual customer.

A proposed tariff for its intraLATA high speed digital private line services is attached to the application.

FiberLink estimates that the number of customers being served at the end of its first year of operation is 7, and that its number of customers, including customers in other metropolitan areas of the state, will grow to 30 at the end of its fifth year of operation.

In compliance with Rule 18(i) of the Commission's Rules of Practice and Procedure, FiberLink states that none of its

officers, directors, or stockholders, whether record of beneficial owners of stock, have a material financial interest (as that term is defined in Section 2 of General Order 104-A) in any transaction involving the purchase of materials or equipment, or the contracting, arranging, or paying for construction, maintenance, or service for or on behalf of applicant.

Findings of Fact

1. FiberLink is a nondominant carrier (telephone corporation) qualified to do business in California.
2. FiberLink is requesting authority to provide 1.544 Mbps and 44.736 Mbps HC-DPLS on an intraLATA basis in California.
3. FiberLink will initially offer these services to customers within the metropolitan area of Sacramento and may later extend these services to customers in other areas of California. FiberLink will be required to file an advice letter with appropriate tariff revisions, prior to any expansion from its initial service areas.
4. FiberLink forecasts that it will have 7 and 30 customers at the end of the first and fifth full year of operation, respectively.
5. FiberLink possesses the technical resources and ability to provide this proposed service on a safe, effective, reliable, and continuous basis.
6. FiberLink has sufficient funds to provide the service.
7. Since FiberLink intends to use already existing fiber optic and other cable facilities now under construction in existing ducts, supporting structures, and rights of way to provide the proposed services, it can be seen with reasonable certainty that granting this application will not have a significant adverse impact on the environment.
8. FiberLink has agreed that it will not subdivide or multiplex its intraLATA services below 1.544 Mbps.

9. FiberLink will not switch intraLATA voice or data lease line traffic.

10. Public convenience and necessity require the granting of this application to the extent set forth in the ordering paragraphs which follow.

Conclusions of Law

1. FiberLink's request for authority to provide inter- and intraLATA 1.544 Mbps and 44.736 Mbps should be granted to the extent set forth in the order.

2. FiberLink should be prohibited from holding out the availability of other intraLATA services it is not authorized to provide and should be required to advise its customers that the intraLATA communications it is not authorized to provide must be placed over the facilities of an authorized carrier.

3. The effective date of FiberLink's initial offering of its proposed service should be five days after its filing of tariff schedules.

4. In order to allow FiberLink to make these services available without further delay, this order should be effective today.

Only the amount paid to the State for operative rights may be used in rate fixing. The State may grant any number of rights and may cancel or modify the monopoly feature of these rights at any time.

ORDER

IT IS ORDERED that:

1. A certificate of public convenience and necessity is granted to applicant Phoenix FiberLink Incorporated (FiberLink) to provide intraLATA high speed and high capacity digital private line services (HS-DPLS and HC-DPLS) at 1.544 Mbps and 44.736 Mbps, respectively, within all LATAs in California and with dedicated

nonswitched access to and from interLATA carriers' points of presence subject to the following conditions:

- a. FiberLink may hold out the availability of and provide multiplexing equipment or services, including voice services, as part of such high speed digital services.
- b. Digital private line services at 1.544 Mbps or above are considered to be "high speed digital private line service." "IntraLATA high speed digital private line" service is defined as the dedicated connection of two or more end-user premises within a LATA for the purpose of providing intraLATA high speed digital nonswitched services.
- c. FiberLink may provide multiplexing service for voice and/or data at the end-user's premises such that the transmission speed from or to the end-user's premises is at 1.544 Mbps or above.
- d. This authority does not permit the transport from or to the end-user's premises for intraLATA service of either analog or digital transmissions at speeds less than 1.544 Mbps.
- e. FiberLink shall refrain from holding out to the public the provision of any intraLATA services it is not authorized to provide.

2. FiberLink is authorized to file an advice letter with associated tariff sheets as set forth in Exhibit H to its application for its initial offering of high speed 1.544 Mbps digital private line service.

3. FiberLink is further authorized to file an advice letter together with each individual contract for its customized 44.736 Mbps HC-DPLS.

4. The advice letters and associated tariff sheets described in Ordering Paragraphs 2 and 3 above shall be filed in compliance with the provisions of General Order (GO) 96-A after the effective date of this order. These tariff schedules shall apply only to

service rendered after their effective date which shall be at least 5 days 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 (CACD) Telecommunications Branch.

6. The requirements of GO 96-A relative to the effectiveness of tariffs after filing are waived in order that future tariff revisions for this competitive service may become effective on 5 days' notice after filing.

7. Within 30 days after this order is effective, applicant shall file a written acceptance of the certificate granted in this proceeding; absent such filing, the authority granted by this certificate is revoked.

8. Applicant shall notify the CACD director 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.

11. Applicant shall monitor the implementation of its intraLATA 1.544 Mbps HS-DPLS and shall submit semiannual reports for a 2-year period beginning with the effective date of the rates and charges for this service. These reports shall be filed with the CACD with copies to the DRA-Telecommunications Rate Design

Branch and shall include the following recorded data for applicant's intraLATA 1.544 Mbps HS-DPLS and 44.736 Mbps HC-DPLS:

- a. Monthly in-service volumes.
- b. Monthly inward movement volumes.
- c. Monthly recurring billings by tariff rate item.
- d. Monthly nonrecurring billings by tariff rate item.

The format of these semiannual reports shall be determined in consultation with the CACD staff.

12. The reporting requirement of Ordering Paragraph 11 shall commence within 45 days after December 31, 1991 and shall terminate upon submission of the report for the semiannual period ending December 31, 1993 to be submitted on or before February 14, 1994.

13. Within 60 days after the effective date of this order, FiberLink shall prepare and issue to every employee who, in the course of his or her employment, has occasion to enter the premises of customers or subscribers of the corporation an identification card in a distinctive format having a photograph of the employee. FiberLink shall require every employee to present the card upon requesting entry into any building or structure on the premises of a customer or subscriber, as set forth in Public Utilities Code § 708.

14. The certificate granted and the authority to render service under the rates, charges, and rules authorized herein will expire if not exercised within 12 months after the effective date of this order.

15. HS-DPLS is subject to a monthly surcharge to fund Telecommunications Devices for the Deaf which is currently 0.3% for Fiscal Year 1990-91.

16. The corporate identification number currently assigned to applicant is U-5236-C, which shall be included in the caption of

all original filings with this Commission and in the title of other pleadings filed in existing cases.

17. This proceeding is closed.

This order is effective today.

Dated May 22, 1991, at San Francisco, California.

PATRICIA M. NECKERT
President

G. MITCHELL WILK
DANIEL Wm. FESSLER
NORMAN D. SHUMWAY
Commissioners

Commissioner John B. Ohanian,
being necessarily absent, did
not participate.

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

NEAL J. STULMAN, Executive Director