

SEP 27 1991

Decision 91-09-055 September 25, 1991

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application)
of L.D. Network, a California)
Corporation, for a Certificate of)
Public Convenience and Necessity)
to Provide InterLATA Telecommuni-)
cations Services Within the State)
of California.)

ORIGINAL

Application 91-05-001
(Filed May 3, 1991)

OPINION

L.D. Network (applicant), a California corporation, seeks a certificate of public convenience and necessity (CPCN) under Public Utilities (PU) Code § 1001 to permit it to resell interLATA telephone services in California.¹ Applicant also seeks exemption from the requirements of PU Code §§ 816-830.

In Decision (D.) 90-08-032, 37 CPUC 2d 130, the Commission established two major criteria for determining whether a CPCN should be granted. First, the applicant must demonstrate that it has a minimum of \$400,000 in uncommitted cash or equivalent financial resources. This minimum requirement increases 5% per year starting in 1991. Thus, the current minimum requirement is \$420,000. Only under rare circumstances can a CPCN be granted when this requirement is not met (see 37 CPUC 2d at 148). In addition, an applicant is required to make a reasonable showing of technical expertise in telecommunications or related business.

¹ California is divided into ten Local Access and Transport Areas (LATAs) of various sizes, each containing numerous local telephone exchanges. "InterLATA" describes services, revenues, and functions that relate to telecommunications originating in one LATA and terminating in another. "IntraLATA" describes services, revenues, and functions that relate to telecommunications originating and terminating within a single LATA.

Applicant submitted Exhibit B, which included a projected cash flow analysis covering its first year of operation. It proffered this analysis to support the argument that the rare circumstance exists and that applicant can successfully operate for the proposed first year without \$420,000 in "uncommitted cash or equivalent financial resources." The projection estimates that until February 1992, when its resources will begin to exceed its expenses, applicant will incur approximately \$60,000 in accumulated losses.

Exhibit B also presents a memorandum from applicant which states that its principal owners, David and Luana Yost, have elected to be the sole financial support. The Yosts, who also serve as chief financial officer and president, respectively, have access to \$200,000 cash to cover initial negative cash flow. Supporting the memorandum are (1) the April bank statement of the Yosts revealing a balance of approximately \$82,000 and (2) a copy of Yost's certificate of participation in his employer's profit sharing plan in which he is 100% vested and has unrestricted access to approximately \$106,000. The memorandum also recites that applicant has acquired a portfolio of qualified investors assuring an additional \$200,000, if issuance of corporate stock becomes necessary at investment rates. This total amount appears sufficient to meet all demands for wages, rents, wholesale interexchange carrier and local exchange company services, equipment, supplies and the applicable taxes and insurance for the first full year.

On May 31, the assigned administrative law judge issued a ruling requesting additional information on applicant's technical expertise in telecommunications or a related business. In response, applicant submitted a letter on June 4, detailing the technical expertise of its president and secretary, who jointly hold primary responsibility for the technical aspects of the business. Together the two officers have more than ten years'

experience in the telecommunications business covering a range of responsibilities including sales, phone bill analysis, network design, account maintenance and management. Accordingly, it appears that the requisite expertise exists.

We will authorize the interLATA service that applicant seeks to provide; but to the extent that the application seeks authority to provide intraLATA service, we will deny it.

Findings of Fact

1. Applicant served a copy of the application upon 59 telephone corporations with which it is likely to compete.
2. A notice of the filing of the application appeared in the Daily Calendar on May 7, 1991.
3. No protests have been filed.
4. A hearing is not required.
5. 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.
6. By interim D.84-01-037, and later decisions, we granted those applications, authorizing interLATA entry generally. However, we limited the authority conferred to interLATA service; and we subjected the applicants to the condition that they not hold themselves out to the public to provide intraLATA service, pending our final decision in OII 83-06-01.
7. By D.84-06-113 we denied the applications to the extent that they sought authority to provide competitive intraLATA telecommunications service. We also directed those persons or corporations not authorized to provide intraLATA telecommunication service to refrain from holding out the availability of such service; and we required them to advise their subscribers that intraLATA calls should be placed over the facilities of the local exchange company.

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

9. Applicant has made a firm showing that \$420,000 in uncommitted cash or equivalent financial resources is not needed for its proposed first year of operation, as required by D.90-08-032, 37 CPUC 2d at 148, 156, 157-158, in Rulemaking (R.) 85-08-042.

10. Applicant has made a reasonable showing of technical expertise in telecommunications (or in a related business), as required by D.90-08-032, 37 CPUC 2d at 148, 156, 158, and R.85-08-042. This showing includes a complete draft of applicant's initial tariff. (Id., p. 148.)

11. Applicant is technically and financially able to provide the proposed services.

12. Since no facilities are to be constructed, it can be seen with certainty that the proposed operation will not have a significant effect upon the environment.

13. Exemption from the provisions of PU Code §§ 816-830 has been granted to other resellers. (See, e.g., D.86-10-007 and D.88-12-076.)

14. Public convenience and necessity require the service to be offered by applicant.

Conclusions of Law

1. Applicant is a telephone corporation operating as a telecommunication service supplier.

- 2. Applicant is subject to:
 - a. The current 3.0% surcharge applicable to service rates of intraLATA toll and intrastate interLATA toll (PU Code § 879; Resolution T-14081);
 - 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 (Resolution M-4754).

3. The application should be granted to the extent set forth below.

4. Because of the public interest in competitive interLATA service, the following order should be effective immediately.

The State may grant any number of operative 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 L.D. Network (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. Within 30 days after this order is effective, applicant shall file a written acceptance of the certificate granted in this proceeding.

4. a. 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 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. Applicant's initial 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.

b. Applicant is a non-dominant interexchange carrier (NDIEC). The effectiveness of its future tariffs is subject to the schedules set forth in Ordering Paragraph 5 of D.90-08-032, as follows:

"5. All NDIECs are hereby placed on notice that their California tariff filings will be processed in accordance with the following effectiveness schedule:

- "a. Inclusion of FCC-approved rates in California Public Utilities [Commission] tariff schedules shall become effective on one (1) day's notice,
- "b. Uniform rate reductions for existing services shall become effective on five (5) days' notice,
- "c. Uniform rate increases for existing services shall become effective on thirty (30) days' notice, and shall require bill inserts or first class mail notice to customers of the pending increased rates, and

"d. Advice-letter filings for new services and for all other types of tariff revisions shall become effective on forty (40) days' notice."

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 fees and surcharges to which applicant is subject, as reflected in Conclusion of Law 2.

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

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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-5241-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 PU Code §§ 816-830.

16. The application is granted, as set forth above.

This order is effective today.

Dated September 25, 1991, at San Francisco, California.

PATRICIA M. ECKERT
President

JOHN B. OHANIAN
DANIEL Wm. FESSLER
NORMAN D. SHUMWAY
Commissioners

I abstain.

/s/ G. Mitchell Wilk
Commissioner

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


NEAL J. SHULMAN, Executive Director

A. WORK DATES

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) 703-1961.

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)