

SEP 26 1991

Decision 91-09-064 September 25, 1991

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
 The Washington Hogan Company for a)
 Certificate of Public Convenience)
 and Necessity to provide InterLATA)
 Telecommunications Services Within)
 the State of California.)

ORIGINALApplication 91-04-037
(Filed April 26, 1991)OPINION

The Washington Hogan Company (applicant), a Washington corporation¹ authorized to do business in California, 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.² Applicant also seeks exemption from the requirements of PU Code §§ 816-830, dealing with the issuance of stocks and other evidences of ownership and bonds, notes, and other indebtedness.

1. Financial Resources

In Decision (D.) 90-08-032, the Commission established two major criteria for determining whether a CPCN should be granted. The applicant must demonstrate that it has a minimum of

1 The company is incorporated in Washington as The Hogan Company. The application explains that the name was already in use in California, and the name The Washington Hogan Company was substituted in this state.

2 California is divided into 10 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.

\$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. In addition, an applicant is required to make a reasonable showing of technical expertise in telecommunications or related business.

A CPCN may be granted when the \$420,000 uncommitted cash requirement is not met. However, in such a case, an applicant must show that \$420,000 in cash is not needed for the proposed first year of operation even in the absence of revenues for that period. Additionally,

"[a] sufficient showing must be made...that applicant can meet all demands for wages, rents, wholesale IEC and LEC services, equipment and supplies and any applicable taxes and insurance for the first full year of operation with any lesser amount of cash available in lieu of the [\$420,000] minimum standard." D.90-08-032, 37 CPUC2d 130, at 148.

Applicant has conducted a telecommunications business in the State of Washington since 1988, reselling long distance service at a discount to small businesses and others. It has submitted with its application a balance sheet as of December 31, 1990, showing current assets of \$1 million and fixed assets of \$209,000. Its income statement as of December 1990 shows annual revenue of \$4.6 million. In requesting a waiver of the \$420,000 uncommitted cash requirement, applicant states that it does not plan to construct facilities to provide its service in California. It states that it provides a rebill function, passing on quantity discounts to its customers, and it has the personnel and procedures in place to begin offering this service immediately in California.

It is clear that applicant has the financial resources to support its California service even if only minimum revenues are generated during the first year of operations. While we decline to waive the financial requirement of D.90-08-032, we find that

applicant has made a sufficient showing to satisfy the test of having equivalent financial resources.

2. Technical Expertise

Applicant includes in its application the biography of Walter N. Hogan, president and chief executive officer. The biography shows substantial experience in the telecommunications industry and in restaurant and property management businesses. Applicant also appends a complete copy of its proposed tariff. Applicant has contracts with two long-distance service providers to resell long distance service, and applicant has operated a reseller service in the State of Washington since 1988. It is clear that applicant has the technical resources to operate a reseller service in California.

3. Exemption From PU Code §§ 851-856

Applicant requests that, pursuant to PU Code § 853, the Commission grant it an exemption from the provisions of Part I, Article VI of Chapter 4, of the PU code (§§ 851-856) in the same fashion as that provided other non-dominant interexchange carriers (NDIECs) under D.86-08-057. In that decision, we exempted NDIECs from the provisions of § 851 for transfers or encumbrances made for the purpose of securing debt. Later, in D.87-10-035, we granted the same relief to radiotelephone utilities. Accordingly, we will grant applicant the same exemption.

4. Notice Requirement

Rule 18(b) of the Rules of Practice and Procedure requires that a notice of service on potential competitors be contained in the application. It is not altogether clear, however, whether service on competitors (beyond notice in the Commission's Daily Calendar) is required where, as here, applicant intends no

construction as part of its proposed service.³ Applicant did not serve a copy of its application on competitors. Upon inquiry by the assigned administrative law judge, however, applicant stated that it desired to effect such service. Accordingly, copies of the filing were mailed to 58 potential competitors on June 18, 1991. No protest has been received by the Commission.

5. Conclusion

We will authorize the interLATA service that applicant seeks to provide. 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 58 telephone corporations with which it is likely to compete.

2. A notice of the filing of the application appeared in the Daily Calendar.

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 Decision (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 serve a copy of their application on all entities with which they are likely to compete, along with a list of cities or counties within which service will be rendered. The rule contemplates that the application will be served upon these entities.

³ Rule 18(b) requires an applicant to list the names and addresses of all entities "with which the proposed construction is likely to compete," along with a list of cities or counties within which service will be rendered. The rule contemplates that the application will be served upon these entities.

that they not hold themselves out to the public to provide intraLATA service, pending our final decision in OIR-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 a minimum of \$420,000 in uncommitted cash or equivalent financial resources, as required by D.90-08-032 (pp. 34, 52, 56-57) in Order Instituting Rulemaking (R.) 85-08-042.

10. Applicant has made a reasonable showing of technical expertise in telecommunications or related business, as required by D.90-08-032 (pp. 34-35, 52, 57) in R.85-08-042. This showing includes a complete draft of applicant's initial tariff. (Id. at 34.)

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

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 PUC 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 telecommunications 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. Applicant should be exempted from the provisions of PU Code § 851 for transfers or encumbrances made to secure debt.

5. 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 those rights at any time.

ORDER

IT IS ORDERED that:

1. A certificate of public convenience and necessity is granted to The Washington Hogan Company (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 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 include 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 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-5238-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. Applicant is exempted from the provisions of PU Code § 851 for transfer or encumbrances made to secure debt.

17. 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