

Decision 91-11-063 November 20, 1991

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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
of American Communications Network,)
Inc., a California corporation, for)
a certificate of public convenience)
and necessity to provide InterLATA)
Telecommunications Services within)
the State of California.)

Application 91-05-062
(Filed May 31, 1991)

ORIGINAL

O P I N I O N

American Communications Network, Inc. (applicant), a California corporation, seeks a certificate of public convenience and necessity (CPC&N) under Public Utilities (PU) Code § 1001 to permit it to resell interLATA telephone services in California.¹ Applicant proposes to operate as a nondominant interexchange carrier (NDIEC) offering 24-hour direct distance dialing, calling card, and 800 service. Applicant seeks authority to provide long distance services by feature group D trunking arrangements with the local exchange carriers. Within non-equal access areas, applicant seeks authority to provide service by feature group B trunking arrangements with local exchange carriers. Applicant does not request to provide intrastate intraLATA service. Applicant proposes to automatically block all 900 and 976 calls at no additional charge to its customers. Applicant also seeks exemption from the requirements of PU Code §§ 816-830, dealing with the

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.

issuance of stocks and other evidences of ownership and bonds, notes, and other evidences of indebtedness.

In Decision (D.) 90-08-032, we established financial criteria for determining whether a CPC&N should be granted. In D.91-10-041 we modified this standard: We created two definitions of non-dominant interexchange service providers; facilities based telephone corporations; and "switchless resellers" who repackage and resell telephone services without owning facilities (See D.91-10-041, pp. 6-8 and pp. 13-14 for a detailed description of a switchless reseller). We required a lower level of financial assets from switchless resellers to qualify for a CPC&N. This type of company requires less capital investment to maintain its quality of service. D.91-10-041's ordering paragraph 1b modified D.90-08-032 to read:

"Two new paragraphs should be inserted on p. 148, between the fourth and fifth full paragraphs as follows:

"Any applicant who does not own, control, operate, or manage telephone lines (Switchless Reseller) may be granted a CPC&N based on a financial showing of \$75,000 of cash available or the equivalent thereof. Any certificated switchless reseller who desires to own, control, operate, or manage telephone lines, and to offer the expanded services of a facilities based reseller, shall file an advice letter demonstrating that it meets the standard financial requirement (\$420,000 in 1991). The advice letter will require Commission approval.

"The \$75,000 standard for the 'Switchless Reseller' is a base figure for 1991 to be escalated 5% each year thereafter."

Applicant is a wholly-owned subsidiary of StarTel Communications, Inc., a Texas corporation. Startel is a retail carrier that purchases wholesale minutes of use from interexchange carriers. StarTel provides 24-hour direct distance dialing, calling card and 800 service from Texas to all points in the United

States. StarTel also provides intrastate interLATA and intrastate intraLATA service in the state of Texas. As of April, 1991 StarTel had 636 customers generating 256,000 minutes of use per month in Texas. StarTel's income statement indicates an actual net income for four months in 1990 of \$24,315, and a projected first year net income in 1991 of \$131,106. Five stockholders have provided \$178,490 worth of capital to Applicant. Applicant's projected expenses (including leases, insurance, salaries) for 12 months total \$140,855, approximately \$12,000 per month. If the company earns no income for the first 12 months, the start-up capital investment will cover projected expenses. Applicant both passes the test for D.91-10-041's financial criteria and holds enough uncommitted cash to remain in operation one year, even without any projected income.

Applicant intends to operate under access contracts secured by its parent, StarTel. These contracts provide for transport of messages, terminating access, and billing and collection of calls at costs much lower than applicant could secure on its own. In addition, applicant will use its parents' billing and collection system. Thus, applicant estimates its first year operating expenses in the range of \$140,855 - \$174,724 based upon "expected" and "worst" case scenarios of monthly income, expenses and cash flow. Applicant provides written confirmation that each of its stockholders, James P. Bowman, Scott D. Garrison and Larry E. Adkins, have the ability to contribute a portion of the required start-up cash. Applicant provides a letter of commitment from each stockholder to contribute a specific portion of this total requirement. Based upon this financial information, applicant qualifies as a switchless reseller for a CPC&N according to the modified standards issued in D.91-10-041.

Applicant's operating managers have, collectively, 44 years of experience in the telecommunications industry. This

showing satisfies our requirement of adequate technical expertise, first stated in D.90-08-032 and reinforced in D.91-10-041.

Findings of Fact

1. Applicant served a copy of the application upon telephone corporations with which it is likely to compete.

2. A notice of the filing of the application appeared in the Daily Calendar on June 5, 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 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 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. Applicant qualifies for an CPC&N as applicant is a switchless reseller with more than \$75,000 of uncommitted financial resources, as required by D.91-10-041.

9. Applicant has made a reasonable showing of technical expertise in telecommunications, 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., p. 34.)

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

11. 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.

12. 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.)

13. With respect to exemptions from PU Code §§ 816-830, there is no basis for treating this applicant differently than those that filed earlier.

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 "switchless reseller" telecommunication service supplier.

2. Applicant is subject to:

- a. The current 3.4% 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 because applicant qualifies for a CPC&N according to the standards promulgated in D.91-10-041.

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 those rights at any time.

ORDER

IT IS ORDERED that:

1. A certificate of public convenience and necessity is granted to American Communications Network, 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. 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 nondominant 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 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-2528-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 Public Utilities Code §§ 816-830.

16. The application is granted, as set forth above.
This order is effective today.

Dated November 20, 1991, at San Francisco, California.

PATRICIA M. ECKERT
President
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. SHULMAN, 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) 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:
 - 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)