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FEB 20 1992

Decision 92-02-069 February 20, 1992

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Western Union ATS, Inc. for a Certificate of Public Convenience and Necessity to Provide Intrastate Telecommunications Services in the State of California.

ORIGINAL
Application 91-10-001
(Filed October 1, 1991)

O P I N I O N

Request

Western Union ATS, Inc. (applicant), a Delaware corporation qualified to do business in California, requests a certificate of public convenience and necessity (CPCN) under Public Utilities (PU) Code § 1001 to permit it to resell inter-Local Access and Transport Area (LATA) telephone services in California¹ and to provide intrastate, intraLATA high-speed digital private line service at speeds of 1.544 megabits per second or higher within each California LATA.

Applicant also seeks an exemption from Rule 18(b) of the Rules of Practice and Procedure to the extent that the rule requires applicant to serve a copy of its application on cities in the proposed service area. We have granted such exemption to other similarly situated nondominant interLATA carriers, such as in Decision (D.) 91-06-035 and D.87-08-022.

¹ California is divided into ten 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.

Background

In D.90-08-032, as modified by D.91-10-041, the Commission established two major criteria for determining whether a CPCN should be granted. An applicant who does not own, control, operate, or manage telephone lines (switchless reseller) must demonstrate that it has a minimum of \$75,000 in uncommitted cash or equivalent financial resources. For applications filed after 1991, this minimum requirement increases 5% per year. In addition, an applicant is required to make a reasonable showing of technical expertise in telecommunications or related business.

Financial Resources

With respect to the requirement that applicant demonstrate that it has a minimum of \$75,000 in uncommitted cash or equivalent financial resources, applicant provided as part of its December 20, 1991 clarification letter a copy of its November 30, 1991 financial statements. Further, Exhibit 6 to the application shows that applicant's parent corporation, MCI Communications Corporation, has \$183 million of uncommitted cash and cash equivalents. Applicant has substantiated that it possesses a sufficient amount of unencumbered cash and that it has access to additional unencumbered cash and cash equivalents from its parent company to offer its proposed public utility service.

Technical Expertise

Applicant is currently an interstate common carrier; a portion of its interstate operations originate and terminate interstate traffic in California. As part of furnishing its interstate services, applicant has found it convenient to share capacity of its facilities with others on a private carriage basis. The occasional availability of this limited amount of intrastate capacity has not been held out as available to the public.

Applicant is a wholly owned subsidiary of MCI Telecommunications Corporation (MCIT), a certificated nondominant interexchange carrier (NDIEC). MCIT, in turn, is a wholly owned

subsidiary of MCI Communications Corporation. In addition, applicant included as Exhibit 6 to its application, a copy of MCI Communications Corporation's 1990 stockholders report which elaborates on applicant's and its parent company's technical expertise in the telecommunications field.

We will authorize the interLATA service and intraLATA high-speed digital private line service that applicant seeks to provide.

Findings of Fact

1. Applicant served a copy of the application upon 16 telephone corporations with which it is likely to compete and on 58 counties in California.

2. A notice of the filing of the application appeared in the Daily Calendar of October 10, 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 application differently than those that filed earlier.

9. Applicant has a minimum of \$75,000 in uncommitted cash or equivalent financial resources, as required by D.90-08-032, as modified by D.91-10-041.

10. Applicant has made a reasonable showing of technical expertise in telecommunications, as required by D.90-08-032, pages 34-35, 52, and 57, in Rulemaking 85-08-042.

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

14. When requested to do so, and for good cause shown the Commission has granted nondominant interLATA carriers such as applicant an exemption from Rule 18(b) to the extent that the rule requires applicant to serve a copy of its application on cities and counties in the proposed service area.

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

Conclusions of Law

1. Applicant should be treated no differently than other nondominant interLATA carriers which have requested and received a CPCN to provide interLATA telecommunications service in California.

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-14400); to fund the Universal Lifeline Telephone Service;

- 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 1991-92 fiscal year (Resolution M-4757).

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.

5. Applicant should be exempted from Rule 18(b) to the extent that the rule requires applicant to serve a copy of its application on cities within the proposed service area.

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 Western Union ATS, Inc. (applicant) to operate as a reseller of the inter Local Access and Transport Area (LATA) telecommunications service offered by communication common carriers in California and to provide intraLATA high-speed digital private line service at speeds of 1.544 megabits per second (mbps) or higher within each California LATA.

Applicant's authority to operate as a reseller of interLATA telecommunications service is 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.

Applicant's authority to provide intraLATA high-speed digital private line service within each California LATA is subject to the following conditions and to the reporting requirement identified in Ordering Paragraph 2:

- a. Applicant 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" services. "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. Applicant 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 premise for intraLATA service of either analog or digital transmissions at speeds less than 1.544 mbps;
- e. Applicant shall refrain from holding out to the public the provision of any intraLATA services it is not authorized to provide; and

- f. Applicant shall advise its subscribers that intraLATA communications which applicant is not authorized to provide should be placed over the facilities of an authorized carrier.

2. Applicant shall monitor its intraLATA 1.544 mbps high-speed digital private line service and shall submit semiannual reports for a two-year period beginning with the effective date of the rates and charges for this service. These reports shall be filed with the Commission's Advisory and Compliance Division (CACD) Director with copies to the Division of Ratepayer Advocates - Telecommunications Rate Design Branch and shall include the following recorded data for applicant's intraLATA 1.544 mbps high-speed digital service:

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

The reporting requirement of this Ordering Paragraph shall commence within 45 days after June 30, 1992 and shall terminate upon submission of applicant's semiannual report ending December 31, 1993, to be submitted on or before February 14, 1994.

3. To the extent that applicant requests authority to provide intraLATA telecommunication service other than high-speed digital private line services at 1.544 mbps or higher, it is denied.

4. Within 30 days after this order is effective, applicant shall file a written acceptance of the certificate granted in this proceeding.

5.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 and intraLATA high-speed digital private line services at speeds of 1.544 mbps or higher. Applicant may not offer service until tariffs are on file. 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 Decision (D.) 90-08-032 as modified by D.91-12-013, 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 for interstate services in California public utilities 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, except for minor rate increases, for existing services shall become effective on thirty (30) days' notice, and shall require bill inserts, or a message on the bill itself, or first class mail notice to customers of the pending increased rates;
- *d. Uniform minor rate increases, as defined in D.90-11-029 for existing services shall become effective on not less than 5 working days' notice, and shall require bill inserts or a notice on the bill itself to inform customers of the increased rates;
- *e. Advice letter filings for new services and for all other types of tariff revisions, except changes in text not

affecting rates or relocations of text in the tariff schedules, shall become effective on forty days' notice; and

- "f. Advice letter filings merely revising the text or location of text material which does not cause an increase in any rate or charge shall become effective on not less than five (5) days' notice."

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 those deviations shall be subject to the approval of the CACD's Telecommunications Branch. Tariff filings shall reflect all fees and surcharges to which applicant is subject, as reflected in Conclusion of Law 2.

7. 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.

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 corporation identification number assigned to applicant is U-5253-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 Public Utilities (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 February 20, 1992, at San Francisco, California.

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

Commissioner Patricia M. Eckert,
being necessarily absent, did
not participate.

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


NEAL J. SHULMAN, Executive Director

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)