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Decision 92-03-034 March 11, 1992

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
Mid-Com Communications, Inc. for a
Certificate of Public Convenience
and Necessity to operate as a
reseller of telecommunications
services within California.

ORIGINAL
Application 91-09-046
(Filed September 18, 1991)

O P I N I O N

Mid-Com Communications, Inc. (MCCI or applicant), a company incorporated in the State of Washington with a certificate of qualification 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.¹ Applicant requests authority to operate as a nonfacilities based (switchless) reseller of the interexchange services of American Telephone and Telegraph Company (AT&T). Applicant will utilize AT&T network facilities and will not construct any new facilities.

Applicant requests that the Commission waive or modify the application of Commission rules, general orders, procedures and notice requirements to relieve the economic burden this regulation places on MCCI. If the Commission does not grant this broad waiver, applicant seeks exemption from the requirements of PU Code

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.

§§ 816-830 and 851-855, dealing with the issuance of stocks and other evidences of ownership and bonds, notes, and other evidences of indebtedness.

Applicant amended its application on November 6, 1991 to eliminate the request for a broad waiver of Commission rules, general orders and procedures. Further, by its amendment, applicant performed service of the application (without exhibits) on all parties identified by Commission Rule 18(b), consistent with an Administrative Law Judge (ALJ) ruling granting applicant's request for this modified service requirement.

In Decision (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. This minimum requirement increases 5% per year starting in 1992.² In addition, an applicant is required to make a reasonable showing of technical expertise in telecommunications or a related business.

Financial Resources

Applicant meets the financial resources requirement by submitting a letter from U.S. Bank of Washington dated January 30, 1992. The letter confirms that the bank extends credit to MCCI (at the California address of 6033 West Century Boulevard, Suite 1070, Los Angeles, California) in the amount of \$78,750 for a term of 12 months following MCCI's receipt of authority to operate as an interexchange carrier in California. Further, the letter makes clear that the funds are to be employed solely to meet expenses incurred by MCCI during its first year of operations in California

² The 1991 requirement of \$75,000 applies for applicant since the application was filed in 1991.

(e.g., wages, rents, supplies, taxes, insurance), with the claims to be made on or before January 30, 1993. By telephone call from the ALJ, the bank confirms the validity of the letter, the amount of credit, and the willingness to extend the credit as necessary for the 12-month period after Commission certification, as required by D.91-10-042. In the application, applicant avers that its customers' deposits will be held in an escrow account, thereby eliminating both any claim on the bank's extension of credit for customer deposits and any customer risk of failure to receive their deposits should MCCI fail.

Technical Expertise

Applicant also meets the technical expertise requirement. Exhibit F to the application reveals the president and chief executive officer, Ashok Rao, has many years of technical and management experience in telecommunications or related businesses. Applicant's vice president of sales, Michael E. Rogala, has many years experience with MCI Telecommunications Corporation. Finally, applicant's vice president of marketing has over 26 years of line and management experience in the radio broadcasting industry, and was president and general manager of Pinnacle Communications Corporation. Moreover, applicant demonstrates its technical expertise by attaching a complete draft of its initial tariff schedule.

We have directed our ALJs to consider allegations or evidence of a previous failure of service to the public very carefully in reviewing new applications. (D.90-08-032, mimeo., p. 37.) At the ALJ's request in this proceeding, MCCI declares that no principal of MCCI has ever been a principal of any failed telecommunications carrier.

Exemption From PU Code §§ 816-830 and 851-855

Applicant requests exemption from the requirements of PU Code §§ 816-830 and 851-855, but offers no explanation or support. We routinely grant resellers exemption from §§ 816-830 when

requested, and will do so here. Similarly, we have granted exemption from § 851 with respect to transfers or encumbrances made for the purpose of securing debt. We allow the Executive Director to grant noncontroversial applications by nondominant telecommunications carriers for authority to transfer assets or control under §§ 851-855. We have not granted blank exemptions from all of §§ 851-855. (See 25 CPUC 2d 459; D.91-05-046.) We will grant here the same exemptions that we have previously allowed similar utilities.

Tariff Provisions

Two provisions of applicant's proposed tariff need to be addressed.

Notice of Rate Changes

Applicant proposes that:

"In the event of the adoption by the Company of new or optional schedules of rates, the Company will advise its Customers who may be affected that such new or optional rates are effective." (Exhibit E, Sheet No. 34-T.)

We have recently adopted specific rules on how and when rates may be changed, and specific requirements for notice. (See D.91-12-013.) Applicant's tariff, and its administration, must comply with D.91-12-013.

Promotional Service Offerings

Applicant proposes that:

"The Company may from time to time engage in special promotional service offerings designed to attract new customers or to increase existing customer awareness of a particular tariff offering. These offerings may be limited to certain dates, time[s] and/or locations." (Exhibit E, Sheet No. 38-T.)

All public utility rates must be just and reasonable. (PU Code § 451.) Reseller promotional rates are just and reasonable only to the extent they are not discriminatory. For example, an offering designed to attract new customers in a

particular location must be offered to all new customers in that location. While we would not normally allow rate discrimination on the basis of location unless it was cost-justified, it is allowed here because we do not regulate nondominant interexchange carriers on the basis of cost. (See, e.g., D.91-08-032, finding of fact 8, mimeo., p. 50.) But such offering cannot discriminate between customers in that location on other bases (e.g., race, creed, sex, national origin, marital status, age, physical handicaps). Applicant's tariff should make this nondiscriminatory provision clear, and applicant must apply its tariff in a nondiscriminatory manner.

Further, our rules on how and when rates may be changed, and notice provided, apply to promotions. A promotional rate is a rate reduction, and becomes effective on five days' notice. The termination of a promotional offering is a rate increase. Rate increases, except for minor increases, for existing services shall become effective on thirty (30) days' notice, with notice provided by bill inserts, a message on the bill itself, or first class mail notice to customers of the pending increase in rates. (See D.91-12-013.)

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 142 interexchange telephone corporations with which it is likely to compete, 453 cities and 54 counties.
2. A notice of the filing of the application appeared in the Daily Calendar on September 30, 1991; a notice of filing the amendment appeared in the Daily Calendar on December 6, 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 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 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 (or in a 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., p. 34.)

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

12. Since no facilities are to be constructed, it can be said 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.) Exemption from the provisions of PU Code § 851 with respect to transfers or encumbrances made for the purpose of securing debt has been granted other resellers, along with allowing the Executive Director to grant noncontroversial applications by nondominant telecommunications carriers for authority to transfer assets or control under PU Code §§ 851-855. (See, e.g., D.87-10-035 and D.91-05-046.)

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 intrastate toll and intrastate interLATA toll to fund the Universal Lifeline Telephone Service (ULTS) (PU Code § 879; Resolution T-14400);
 - 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.

The State may grant any number of operative rights and may cancel or modify the monopoly feature of those rights at any time.

O R D E R

IT IS ORDERED that:

1. A certificate of public convenience and necessity is granted to Mid-Com Communications, Inc. (MCCI) 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. 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 modified by D.91-12-013:

"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, 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 (40) days' notice.

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

7. Applicant shall notify this Commission in writing of the date service is first rendered to the public within 5 days after service begins.

8. Applicant shall keep its books and records in accordance with the Uniform System of Accounts specified in Part 32 of the FCC rules.

9. 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.

10. 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.

11. The corporate identification number assigned to applicant is U-5261 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.

12. 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.

13. Applicant is exempted from the provisions of PU Code §§ 816-830.

14. Applicant is exempt from the provisions of PU Code § 851 for transfer or encumbrances made to secure debt.

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

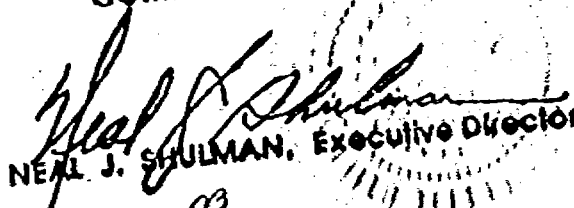
16. This proceeding is closed.

This order is effective today.

Dated March 11, 1992, at San Francisco, California.

DANIEL Wm. FESSLER
Président
JOHN B. OHANIAN
PATRICIA M. ECKERT
NORMAN D. SHUMWAY
Commissioners

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 questions 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 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)