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Decision 92-03-066 March 31, 1992

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application
of Mark Vincent Enterprises, Inc.,
dba Business Communications Network,
a California Corporation, for a
Certificate of Public Convenience
and Necessity to Provide InterLATA
Telecommunications Services Within
the State of California.

ORIGINAL

Application 91-12-044
(Filed December 27, 1991)

O P I N I O N

Request

Mark Vincent Enterprises, Inc. (applicant), a California corporation doing business as Business Communications Network, 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 California.¹

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

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 substantiated that it possesses a sufficient amount of unencumbered cash or cash equivalent to meet the financial requirement. As shown in Exhibit B to the application, applicant has approximately \$62,000 in cash and a \$75,000 irrevocable guarantee for a period of 12 months following the date that applicant receives a CPCN. The cash guarantee is provided by Mark V. DePhilippis, one of applicant's key employees.

Technical Expertise

Applicant addressed in its application the business biographies of its two key corporate employees, DePhilippis and Michael A. Brown. DePhilippis has 15 years of management, marketing, and sales experience. Among his accomplishments, DePhilippis formed the Innovare National Marketing group in 1988 to market AT&T's new Software Defined Network. In 1989, DePhilippis developed a marketing strategy that built applicant's business and customer base to over \$100,000 in monthly long distance traffic.

Brown has a number of years' experience in telecommunications operations, installation, and repair. He began his telecommunications career with Pacific Telephone. In 1982,

Brown formed and managed Future Tel, Inc., which sold and serviced commercial telephone systems. Subsequently, Brown was employed as an operations and financial manager for two telecommunications companies, one dealing with national sales and service and the other providing long distance service. Applicant possesses the necessary technical expertise to operate as a nondominant telecommunications carrier.

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 61 telephone corporations with which it is likely to compete.
2. A notice of the filing of the application appeared in the Daily Calendar of January 14, 1992.
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 filed earlier.

9. Applicant has a minimum of \$75,000 in uncommitted cash or equivalent financial resources, as required by D.90-08-031, 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. The Commission has routinely 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);

- 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's requested exemption from Rule 18(b)'s requirement of service of the application on cities and counties in the proposed service area should be granted.

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 Mark Vincent Enterprises, Inc. (applicant) to operate as a reseller of inter-Local Access and Transport Area (LATA) telecommunications service offered by communications 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 telecommunications 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 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, 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 those 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 a 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 Federal Communications Commission 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. Applicant shall send a copy of this decision to concerned local permitting agencies not later than 30 days from today.

12. The corporation identification number assigned to applicant is U-5260-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.

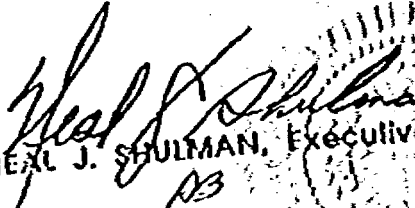
13. Within 60 days of the effective date of this order, applicant shall comply with Public Utilities (PU) Code § 708, Employee Identification Cards, and notify the Chief of CACD's Telecommunications Branch in writing of its compliance.

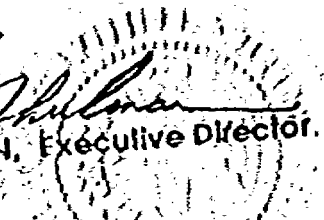
14. Applicant is exempted from the provisions of PU Code §§ 816-830.

15. The application is granted, as set forth above.
This order is effective today.
Dated March 31, 1992, at San Francisco, California.

DANIEL Wm. FESSLER
President
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.
RB



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)