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Decision 92-03-079 March 31, 1992

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application  
of U.S. Osiris Corporation for a  
certificate of convenience and  
necessity to operate as a reseller  
of interLATA telecommunications  
services within California.

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**ORIGINAL**

Application 91-01-033  
(Filed January 29, 1991)

O P I N I O N

U.S. Osiris Corporation (applicant), a privately held corporation under the laws of the State of Texas but qualified to do business in the State of California, seeks a certificate of public convenience and necessity (CPCN) under Public Utilities (PU) Code § 1001 to permit it to resell interLATA telephone services and to provide operator services in California.<sup>1</sup>

Applicant intends to provide resold intrastate interLATA operator assisted telecommunications service between points within California. Service will be provided 24 hours per day, 7 days per week. Interstate operator assisted telecommunications services (provided pursuant to current Federal regulations) will be offered in conjunction with intrastate service. Applicant proposes to provide originating service to prospective customers throughout the state, as depicted in a service area map attached to the application. Service will be offered to hotels, hospitals, educational institutions, pay telephones, and similar entities.

<sup>1</sup> 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.

Applicant proposes to provide operator services to hotels, motels, universities, and similar businesses which provide phone services to the transient public. These services will be provided through the transmission and switching facilities of applicant's underlying interexchange carriers (IECs). Applicant does maintain its own operator center as the primary answering position, and it contracts with other operator service companies for additional operator services.

The end user is billed by the local exchange company (LEC) or the commercial credit card issuing bank for the call charges. This billing service is accomplished by a billing "clearinghouse" company that maintains billing and collection agreements with LECs. The billing company (through LEC bills and bank card bills) charges the end user for each call placed through applicant. Calls are billed under applicant's name and rates. Collected revenues are then forwarded to applicant (less billing charges and uncollectables). The property owner is then paid a portion of these revenues in the form of a commission.

Applicant operates without a switch and the high cost associated therewith. In addition, by relying on the services of established underlying carriers, such as AT&T, applicant does not need to purchase access services from LECs in order to provide its service. With the exception of overhead (payroll, operator cost, rent, taxes, insurance, and office supplies) applicant's expenses are deducted from revenues before those revenues are received.

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 \$400,000 in uncommitted cash or equivalent financial resources. This minimum requirement increases 5% per year starting in 1991. Thus, the minimum requirement for applications filed in 1991 is \$420,000. Only under rare circumstances will a CPCN be granted when this requirement is not met. (See D.90-08-032, p. 34.) In

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

In D.91-10-041 the Commission recognized the new classification of "switchless reseller"<sup>2</sup>; and it reduced the financial criterion set in D.90-08-032 to \$75,000 for such entities. This minimum requirement increases 5% per year starting in 1992.

By letter of November 25, 1991, applicant submitted additional financial information to the ALJ. In addition, applicant asserts that it is "...a profitable going concern that is operating profitably in numerous other states." Accordingly, applicant argues that it is "...a switchless reseller of operator services."

The Finance Branch of the Commission Advisory and Compliance Division (CACD) examined applicant's most recent financial statements and concluded that "...it does meet the financial viability requirements of D.91-10-041 in that it maintained a balance of at least \$75,000 in cash or cash equivalents unencumbered by any other expenses as of [November 30, 1991]...." In addition, the Telecommunications Branch of CACD has reviewed the file regarding applicant's status as "switchless reseller" and has given its assurance that applicant meets that criterion.

Applicant's financial resources are sufficient to support the proposed operations. Applicant has also made an adequate showing that its managers and operating personnel have the

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<sup>2</sup> A "switchless reseller" has no investment in switching equipment or leased physical telephone plant. It does not construct, operate, or lease utility property and accordingly it does not switch telephone lines. In addition, it does not subscribe to telephone service under the Local Exchange Carrier's access tariffs. (D.91-10-041, p. 13.)

technical expertise to manage and operate a public utility telephone corporation.

We will authorize the interLATA service that applicant seeks to provide, subject to the same conditions that we have imposed on other such applicants; 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 16 telephone corporations with which it is likely to compete. In Decision 92-03-008 the Executive Director, pursuant to Resolution ALJ-162, exempted applicant from the requirement in Rule 18(b) that copies of the application be served on "the cities and counties within which service will be rendered in the exercise of the requested certificate.

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 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 as a "switchless reseller."

9. Applicant is a "switchless reseller," as defined by D.91-10-041 in R.85-08-042.

10. Applicant has sufficient financial resources to sustain its operations.

11. 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.

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

13. 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.

14. 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.)

15. 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 intraLATA 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 1990-91 fiscal year (Resolution M-4754).

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 U.S. Osiris Corporation (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. 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 CACD's Telecommunications Branch. Tariff filings shall reflect all fees and surcharges to which applicant is subject, as reflected in Conclusion of Law 2.

6. In connection with the provision of alternate operator services, applicant shall adhere to the following four conditions:

- a. All intraLATA calling shall be directed by applicant to the LEC for completion by the LEC as intraLATA calling. As used herein "intraLATA calling" shall mean all calls that originate and terminate within the same LATA. The routing of intraLATA calls to the LEC requires that (1) all such calls, as dialed by the end user customer, be routed as dialed to the LEC and may not be routed to any person or entity for call processing, billing, transmission, or completion, and (2) all such routing be accomplished in a manner that permits



application of the LEC's for intraLATA calling by the LEC from the central office where the call originates to the central office or wire center serving the device where the call terminates. In addition, the routing of intraLATA calls to the LEC shall be done in a manner which permits the performance by the LEC of functions for which a LEC charge applies (including, without limitation, all intraLATA operator and operator surcharge functions). By way of example, and without limitation, applicant shall not, by itself or in conjunction with any other entity or person, permit, allow, or hold out the availability of any routing arrangement that directs intraLATA calls as dialed by an end user customer to any person or entity other than the LEC.

- b. Applicant shall not offer, hold out, provide, or otherwise make available intraLATA operator-handled calls. As used herein intraLATA operator-handled calls (also referred to as "non-sent paid calls"), whether handled mechanically or manually, includes all intraLATA credit card, bill third number, collect, Station to Station, Person to Person, conference calls, or any combination thereof. The routing of intraLATA operator-handled calls (non-sent paid calls) by the LEC requires that (1) all such calls as dialed by the end user customer be routed to the LEC and to no other person or entity, including applicant, (2) routing shall be accomplished in a manner that permits application of the LEC's operator charges, and (3) such non-sent paid calls shall be billed by the LEC to the number or account designated by the calling person and acceptable by the LEC. InterLATA operator-handled calls may be provided by applicant.
- c. Applicant shall inform all customers who inquire that intraLATA calls and intraLATA operator-handled calls are to be provided by the LEC. In addition, applicant shall take all necessary action to ensure that such calls are returned to the LEC central

office serving the calling party for completion and billing by the LEC as an intraLATA call.

- d. For completion of calls from non-utility pay phones, applicant will charge customers no more for interLATA intrastate calling than the tariffed rates of AT&T-Communications, Inc., plus any additional amounts permitted by the Commission.

7. Applicant shall provide tariff schedules for the provision of interLATA alternate operator services to the CACD for its review. Upon review of these tariff schedules and the written approval of them by the Chief of CACD's Telecommunications Branch, applicant is authorized to file with this Commission tariff schedules for the provision of interLATA alternate operator services. Applicant may not offer such services until these tariffs are on file.

8. 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.

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

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

11. 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.

12. 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.

13. Applicant shall send a copy of this decision to concerned local permitting agencies not later than 30 days from today.

14. The corporate identification number assigned to applicant is U-5237-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.

15. 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.

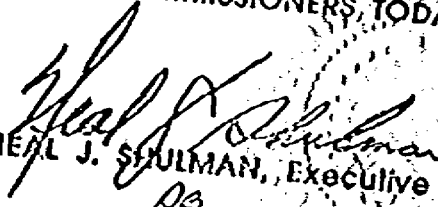
16. Applicant is exempted from the provisions of PU Code §§ 816-830.

17. 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  
ps

A.91-01-033 ALJ/RTB/jac

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 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)