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APR - 8 1992

Decision 92-04-011 April 8, 1992

~~ORIGINAL~~

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
Worldphone Communication, Inc., a)
California Corporation, for a)
Certificate of Public Convenience)
and Necessity to Provide InterLATA)
Telecommunications Services Within)
the State of California.)

Application 91-11-066
(Filed November 20, 1991)

O P I N I O N

The applicant, Worldphone Communication, Inc. (Worldphone), is a California corporation with its principal place of business located in San Diego, California. Pursuant to Public Utilities (PU) Code § 1001, the applicant seeks a Certificate of Public Convenience and Necessity (CPC&N) to provide interLATA long distance telephone services between points within California.¹

Worldphone filed its application on November 20, 1991 requesting ex parte relief. Notice of the filing of the application appeared in the Commission's Daily Calendar on December 16, 1991. No protests were received in connection with Worldphone's application.

¹ California is divided into ten Local Access and Transport Areas (LATAs) of various sizes, each containing numerous local telephone exchanges. "InterLATA" describes services, revenue, and functions that relate to telecommunications originating in one LATA and terminating in another. "IntraLATA" describes services, revenue, and functions that relate to telecommunications originating and terminating within a single LATA.

An application for a CPC&N must comply with the requirements of the PU Code and contain the information described in Rule 18 of the Commission's Rules of Practice and Procedure.

The applicant seeks statewide authority to operate as a non-dominant interexchange carrier (NDIEC) offering 24-hour intrastate² interLATA long distance telephone service between points in California. Applicant plans to offer its interLATA long distance services through a resale arrangement, and will initially provide standard MTS/WATS type services. The applicant plans to provide services initially in the areas of Los Angeles, Sacramento, Stockton, San Jose, and San Diego. Applicant proposes to lease existing facilities, and to use its own switch. It does not plan to construct or extend any existing facilities in California. A map of the proposed service area was attached to the application. The above information fulfills the requirements of Rule 18(a) and (c).

A list of potential competitors was appended to the application, and copies of the application were served on those persons in compliance with Rule 18(b). Copies of the application were not served on the cities and counties within which the applicant proposes to render service. The applicant requests that it be exempted from such a requirement since exemptions of that sort have been routinely granted in the past. (See Decision

² In Paragraph VIII of Worldphone's application, the applicant states that it "will offer interstate interLATA long distance services through a resale arrangement..." and that "Its initial marketing area includes, generally, the Los Angeles, Sacramento, Stockton, San Jose, and San Diego areas." We believe that the reference to "interstate interLATA" is a typographical error, and instead was meant to refer to intrastate interLATA long distance services. Such an interpretation is consistent with the authority requested elsewhere in the application.

(D.) 91-06-035, D.87-08-022.) The applicant did not state any other reasons why it should be exempted from this requirement.

The Commission has granted exemptions in the past from serving cities and counties. The waiver of this requirement usually is based on the large number of cities and counties that would have to be served, the expense of complying with such a requirement, and whether any construction or extension of facilities has been planned. (See D.91-06-035, D.90-03-076, D.90-03-039, D.90-03-010, D.87-08-022.)

Although the applicant will initially serve certain metropolitan areas, Worldphone seeks statewide authority. To comply with the cities and counties service requirement on a statewide basis would require well over 500 mailings. The applicant has already served the application on potential competitors, many of whom are already operating in the markets Worldphone plans to enter. Furthermore, no construction or extension of facilities is contemplated which might trigger a protest by a county or city. In addition, notice of the application was published in the Commission's Daily Calendar. Accordingly, we will waive the requirement in this case of serving the application upon the cities and counties in which service will be rendered.

Applicant does not propose to construct or extend any existing facilities in California. Accordingly, Rule 18(d) does not apply.

In compliance with Rule 18(e), Worldphone asserts that its proposed intrastate services will meet the long distance telephone service needs of its subscribers, and that its subscribers will realize cost savings as a result of using its services. The applicant also contends that its proposed service will use existing communications facilities more efficiently, and at the same time provide its subscribers with cost advantages. Furthermore, Worldphone contends that its proposed services will

promote competition in the intrastate communications market and benefit California telephone users for the reasons stated above. Other benefits include better quality service, innovative telecommunications services, increased diversification and reliability in the supply of communications services, development and expansion of the telecommunications industry, and the creation of employment opportunities.

Rule 18(g) requires that statements or exhibits showing the financial ability of the applicant to render the proposed service must be included as part of the application. In D.90-08-032, 37 CPUC2d 130, the Commission clarified the showing required of prospective NDIECs. The Commission adopted the requirement that any such applicant must have 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. Any applicant who can demonstrate that \$420,000 of cash is not needed for its first year of operation, in absence of revenues during that period, may be granted a CPC&N with a lesser amount, based on the sufficiency requirements set forth in Ordering Paragraph 1.a of D.91-10-041.

Exhibit B of the application contains an irrevocable guarantee by Bernard Simkin, a director and president of Worldphone, which guarantees the applicant access to \$274,150 for a twelve-month period of time following the date the applicant receives its CPC&N. Simkin also submitted information showing that he has ready access to assets in excess of the amount needed to satisfy his guarantee. In addition, Simkin agrees to supply additional financial information as may be required anytime during the twelve months following Worldphone's certification in accordance with Ordering Paragraph 5.1 of D.90-08-032, as modified by D.91-10-041. Exhibit B also lists the balance sheet of the applicant which shows cash in the bank of \$145,850.11 as of October 31, 1991. These two amounts total to \$420,000.11.

Information regarding the manner in which the applicant proposes to finance the cost of the new construction or extension, as required by Rule 18(g), is not necessary since no new construction or extension is contemplated.

Rule 18(h) requires a statement of the proposed rates. Applicant has attached Exhibit E to the application which shows the proposed rates for its intrastate services. Upon the issuance of a CPC&N by the Commission, the applicant intends to file a formal tariff.

In compliance with Rule 18(i), the applicant states in Exhibit F of its application that "No such matters are known to have so occurred or are then known to be proposed and not applicable."

In accordance with Rule 18(j), applicant has listed in Exhibit C to its application the estimated number of customers in the first year (2,500 customers), and in the fifth year (5,000 customers). Although the applicant did not specifically identify its customer requirements for the first and fifth years, the application states in several places that the applicant will use its own switch and existing communications facilities, and that its services will provide its customers with cost savings.

D.90-08-032 also requires that each new applicant make a reasonable showing of technical expertise in telecommunications or related businesses. In its application, the applicant describes the telecommunications and general business experience of its director and president, Bernard Sinkin, and the telecommunications experience of Israel Zamd, who will provide consulting services to Worldphone.

Applicant has also requested authority to deviate from two of the provisions in General Order 96-A. The two provisions are Paragraph II.C(1)(b), which requires consecutive sheet numbering and prohibits the reuse of sheet numbers, and Paragraph II.C(4), which requires that a separate sheet or series of sheets should be used for each rule. In D.90-08-032, we approved deviations from those two provisions in General Order 96-A for NDIECs. In Ordering Paragraph 6 of that decision, we ordered that

those two changes be included in the next revision and printing of General Order 96-A.

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. The applicant filed its application on November 20, 1991 requesting ex parte relief.

2. The applicant requests statewide authority to operate as a non-dominant interexchange carrier (NDIEC) offering 24-hour intrastate interLATA long distance telephone service between points in California.

3. The applicant does not propose to construct or extend any existing facilities.

4. The applicant served a copy of the application upon 63 potential competitors.

5. The applicant requests an exemption from the requirement in Rule 18(b) that it serve a copy of its application on the cities and counties in which it proposes to render services.

6. A notice of the filing of the application appeared in the Commission's Daily Calendar on December 16, 1991.

7. No protests have been filed.

8. A hearing is not required.

9. 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.

10. 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.

11. There is no basis for treating this applicant differently than those that filed earlier.

12. Applicant currently has access to \$420,000 in uncommitted cash or equivalent financial resources, as required by D.90-08-032, as modified by D.91-10-041.

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

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

15. Applicant has requested authority to deviate from Paragraphs II.C(1)(b) and II.C(4) of General Order (GO) 96-A.

16. 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.

Conclusions of Law

1. An application for a CPC&N must comply with the requirements of the PU Code and contain the information described in Rule 18.

2. Service of the application on cities and counties, as provided for in Rule 18(b), is waived in this case.

3. In D.90-08-032, we approved revisions to GO 96-A, which would permit NDIECs to deviate from Paragraphs II.C(1)(b) and II.C(4) of that GO.

4. Applicant has included in its application the information required by Rule 18.

5. Applicant is a telephone corporation operating as a telecommunication service supplier. As such, applicant is subject to: (a) the current 3.0% surcharge on gross intrastate interLATA revenues to fund Universal Lifeline Telephone Service (PU Code § 879); (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 the user fee provided for in PU Code §§ 431-435, which is 0.1% of gross intrastate revenue for the 1991-92 fiscal year (Resolution M-4757).

6. The application should be granted to the extent set forth below.

7. Because of the public interest in competitive interLATA service, the following order should be effective immediately.

8. 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 Worldphone Communication, 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. 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 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 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 5.

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

12. The corporate identification number assigned to applicant is U-5257-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 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 April 8, 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

A.91-11-066 ALJ/JSW/tcg

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
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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:

ATTACHMENT A
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- a. Regulated public utility.
 - b. Public 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)