

MAY 8 1992

Decision 92-05-011 May 8, 1992

## BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of	)	
Norstan Network Services, Inc., for	)	
a certificate of public convenience	)	Application 92-03-002
and necessity to resell	)	(Filed March 2, 1992)
telecommunications services within	)	
the State of California.	)	

O P I N I O NRequest

Norstan Network Services, Inc. (applicant), a Minnesota 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 provide interLATA and intraLATA services in California<sup>1</sup> to the extent permitted by the Commission.

Applicant served a copy of its application and Exhibit I, an excerpt from applicant's proposed intrastate tariff showing applicant's proposed rates, on the 154 interexchange carriers listed in Exhibit J to its application. A copy of Exhibits A through H were not served on the listed interexchange carriers because of the substantial costs, approximately 10% of its projected operating expense for the first year of operation, that applicant would incur. Accordingly, applicant requested a waiver

<sup>1</sup> California is divided into 10 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.

of Rule 18(b) to the extent that the rule may require applicant to serve a complete copy of all exhibits attached to its application on competitors.

Upon review of their complete copy of the application, competitors had an option to request and receive a copy of the excluded exhibits from applicant or review a conformed copy of applicant's complete filing at the Commission's Central Files Office. We concur with applicant that it has satisfied the intent of Rule 18(b)'s competitor notice requirement and should be granted a waiver of the rule to the extent that it requires applicant to serve a complete copy of its application with exhibits on its competitors.

In further regards to Rule 18(b), applicant did not serve a copy of its application and exhibits on the cities and counties within which it proposes to operate. However, the Commission has granted similarly situated non-dominant carriers an exemption of Rule 18(b) to the extent that it requires applicant to serve a copy of its application on cities or counties within the proposed service area. For example, such an exemption has been granted in Decision (D.) 91-06-035 and D.87-08-022. There is no reason to treat applicant any differently than other non-dominant carriers. Therefore, applicant should also be granted a waiver of Rule 18(b) to the extent that it requires applicant to serve a copy of its application on the cities and counties within which it proposes to operate.

Background

In D.90-08-032, as modified by D.91-10-041 and D.91-12-013, 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 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, and the current

requirement is \$78,750. In addition, an applicant is required to make a reasonable showing of technical expertise in telecommunications or related business.

Protest

On April 3, 1992, Pacific Bell protested the application to the extent that applicant seeks authority to provide intraLATA service. By D.84-06-113, we limited competition for long-distance service to an interLATA basis only. IntraLATA telecommunications service has been restricted for only local exchange companies.

Presently, in the Implementation Rate Design phase of I.87-11-033 we are considering the terms and conditions upon which the intraLATA service ban should be lifted. Until a decision is issued in I.87-11-033, the ban on resellers providing intraLATA telecommunications service remains in effect. Pacific Bell's protest is moot because resellers are already precluded from providing intraLATA telecommunications service.

Financial Resources

Applicant is a newly created corporation, established to provide the requested services. Applicant's initial balance sheet dated December 1991 shows that it has \$1,000 in cash. Norstan, Inc., its parent corporation, unconditionally guaranteed \$80,000 to applicant for the payment of all debts, expenses, and other legal obligations incurred by applicant in the course of applicant's operations as a reseller of interstate and intrastate long-distance services. Norstan, Inc.'s unconditional financial guarantee remains in effect for 12 months after the date upon which applicant is certificated to operate as a reseller in California, which is consistent with the financial requirements of D.91-10-041.

Applicant has satisfied the financial requirement that it must demonstrate that it has a minimum of \$78,750 in uncommitted cash or equivalent financial resources.

Technical Expertise

Norstan, Inc. has been providing telecommunications equipment and services to its business and institutional customers for over 15 years. According to the application, Norstan, Inc. was a pioneer in providing of customer-owned terminal equipment, and has grown to be one of the leading distributors of Private Branch Exchange (PBX) and key systems in the country.

Applicant's employees are drawn from Norstan, Inc.'s personnel. Norstan, Inc. has been the precursor to applicant, and has operated as an agent for US Sprint over the past two years. As an agent, Norstan, Inc. provided the sales force to sell US Sprint's services and assisted US Sprint in the support and servicing of customers. It is through this agency work that Norstan, Inc. developed the expertise and knowledge to take on the added responsibility of providing the full range of customer sales, service, and support as a reseller of US Sprint's services.

Applicant possesses the necessary technical expertise to operate as a non-dominant 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 154 telephone corporations with which it is likely to compete.
2. A notice of the filing of the application appeared in the Daily Calendar of March 9, 1992.
3. Pacific Bell protested applicant's request to provide intraLATA telecommunications service.
4. Pacific Bell's protest is moot.
5. A hearing is not required.
6. 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.

7. 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.

8. 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.

9. There is no basis for treating this application differently than those filed earlier.

10. Applicant has a minimum \$78,750 in uncommitted cash or equivalent financial resources, as required by D.90-08-031, as modified by D.91-10-041 and D.91-12-013.

11. Applicant has made a reasonable showing of technical expertise in telecommunications, 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 provision 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 should be treated no differently than other non-dominant 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 (ULTS);
- 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 Norstan Network Services, Inc. (applicant) to operate as a reseller of interLATA 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 D.91-12-013, 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 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. 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-5268-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.

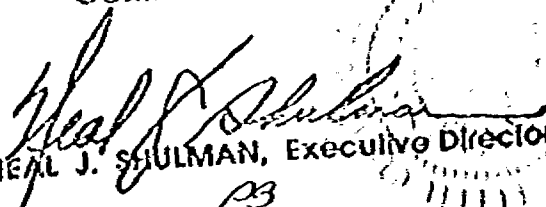
13. Within 60 days of the effective date of this order, applicant shall comply with PU Code § 708, Employee Identification Cards, and notify the Chief of CACD's Telecommunications Branch in writing of its compliance.

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 May 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

  
NEAL J. SHULMAN, Executive Director  
PB

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)