

JUN 3 1992

Decision 92-06-017 June 3, 1992

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application)
of TFN Marketing Company, Inc.)
for a Certificate of Public)
Convenience and Necessity)
Authorizing the Provisions of)
Long-Distance Telephone Services)
within California.)

ORIGINAL
Application 92-01-029
(Filed January 8, 1992)

O P I N I O N

TFN Marketing Company, Inc. (applicant), a California corporation, 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 intends to provide 24-hour interstate long distance telephone service between origination and termination points in and outside of California. Applicant will operate from any or all points in California and seeks authority to provide intraLATA service between all points in California in accordance with a future decision in Investigation (I.) 87-11-033, the Implementation Rate Design Phase of the Regulatory Flexibility Investigation.² Applicant also seeks exemption from the requirements of PU Code §§ 816-830, dealing with the issuance of stocks and other

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.

2 "IntraLATA" describes services, revenues, and functions that relate to telecommunications originating and terminating within a single LATA.

evidences of ownership and bonds, notes, and other evidences of indebtedness.

Applicant proposes to employ a rate structure based upon a set of rate mileage bands. One rate schedule applies to calls between two on-network stations which use local exchange service access lines or between an on-network station and an off-network station. A second rate schedule applies to calls between an originating on-network station which uses a special access line and either an on-network station that uses a local exchange service access line or an off-network station. A third schedule applies to calls between two on-network stations which use special access lines. Applicant's proposed rates are similar to those of its competitors.

Applicant proposes that day, evening, and night rate periods will also apply to service usage. The day rate period is 8:00 a.m. to, but not including, 5:00 p.m., Monday through Friday. The evening rate period is 5:00 p.m. to, but not including, 11:00 p.m., Monday through Friday, and 8:00 a.m. to, but not including, 11:00 p.m., Saturday and Sunday. The night rate period is 11:00 p.m. to, but not including, 8:00 a.m., all days. Holidays will be treated in accordance with the appropriate day, evening, and night rate periods. Calls that overlap rate periods will be billed at the rates applicable for each portion of each call in each rate period.

Applicant proposes to bill its customers monthly. The customer's billing period will begin with the calendar day on which applicant first provides the customer service.

After protest by Pacific Bell (Pacific) of its request for intraLATA authority, applicant amended its application to remove this request. After applicant amended its application, Pacific withdrew its protest.

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, for the year 1992, the minimum requirement is \$441,000. Any applicant who can demonstrate that this amount of cash is not needed for its first year of operation, in absence of revenues during that period, may be granted a CPCN with a lesser amount, based on the sufficiency requirements set forth in Ordering Paragraph 1.a of D.91-10-041. In addition, an applicant is required to make a reasonable showing of technical expertise in telecommunications or a related business.

TFN Group Communications, Inc. (TFN Group), applicant's parent corporation, was incorporated on July 21, 1988 and subsequently acquired all of the outstanding capital stock of Tele-FiberNet Corporation through an exchange of stock in a transaction accounted for as a pooling of interests. TFN Group formed two other entities: Telamarketing Communications of Greater New York, Inc., a wholly owned subsidiary, and TFN Marketing Company, Inc., a 93.74% owned subsidiary. TFN Group and its subsidiaries provide telecommunication services and information processing services. The directors and principal officers of applicant are under the direct supervision of its parent corporation. In addition, applicant's directors and principal officers have extensive telecommunications experience. Therefore, applicant has sufficient technical experience to manage the business described in its application.

An audited balance sheet of applicant and its parent attached to the application shows unencumbered cash for the year ended December 31, 1990 of \$458,312. Applicant's parent corporation pledges in writing to provide \$441,000 to meet applicant's expenses during the first year of operations. This pledge is irrevocable for a period of 12 months after authority is

granted. Therefore, applicant meets the financial standard established by the Commission in D.90-08-032.

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 telephone corporations with which it is likely to compete; applicant did not serve a copy of its application on the cities or counties within which it proposes to render service.

2. A notice of the filing of the application appeared in the Daily Calendar on January 24, 1992.

3. On March 10, 1992, Pacific protested applicant's request for intraLATA authority should the Commission allow such service in the future. Since the protest was untimely, Pacific also filed a Motion for Leave to File a Protest Late. Pacific requests a Commission ruling that the granting of authority for intraLATA service is premature and any such requests will be rejected as improper. Pacific indicates that its protest will be withdrawn should applicant withdraw its request for intraLATA service.

4. On March 20, 1992, applicant tendered an amendment to its application to remove the request for intraLATA authority. Applicant perfected this filing on April 23, 1992. Thereafter, Pacific withdrew its Motion for Leave to File a Protest Late and its Protest. Therefore, Pacific'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. A review of this policy is presently pending in I.87-11-033, the Implementation Rate Design Phase of the Regulatory Flexibility Investigation.

9. In past decisions, for good cause shown, this Commission has authorized waiver from the provisions of Rule 18(b) which require service of the application on cities and counties.

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

11. Applicant has a minimum of \$441,000 in uncommitted cash or equivalent financial resources, as required by D.90-08-032, as modified by D.91-10-041.

12. 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. This showing includes a complete draft of applicant's initial tariff. (Id., p. 34.)

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

14. 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.

15. 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.)

16. 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 Universal Lifeline Telephone Service (PU Code § 879; Resolution T-14081);
- b. The current 0.3% surcharge on gross intrastate interLATA revenues to fund Telecommunications Devices for the Deaf (PU Code § 2881; Resolution T-14400); 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-4754).

3. Pacific's Motion to File a Protest Late and its Protest are moot because Pacific withdrew these pleadings.

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

5. 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 TFN Marketing Company, 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 its services only on an interLATA basis;
- b. Applicant shall not offer 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. Pacific Bell's Motion to File a Protest Late and its Protest are moot.

3. To the extent that applicant requests authority to provide intraLATA telecommunication service, it has withdrawn that request.

4. Within 30 days after this order is effective, applicant shall file a written acceptance of the certificate granted in this proceeding.

5. 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."

6. 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.

7. Applicant shall file as part of its individual tariff, after the effective date of this order and consistent with Ordering Paragraph 5, a service area map.

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

9. 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.

10. 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.

11. 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.

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

13. The corporate identification number assigned to applicant is U-5274-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.

14. 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.

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

16. Applicant is exempted from the provisions of Rule 18(b) of the Commission's Rules of Practice and Procedure, which require service of the applicant on the cities and counties within which applicant proposes to render service.

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

This order is effective today.

Dated June 3, 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
NEAL J. SHULMAN, Executive Director

A.92-01-029 ALJ/PAB/jft

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:
 - 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)