

JUN 17 1992

Decision 92-06-048 June 17, 1992

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
Convergent Communications, Inc.)
for a Certificate of Public)
Convenience and Necessity to)
Operate as a Reseller of InterLATA)
Telecommunications Services Within)
California.)

ORIGINAL

) Application 91-03-007
) (Filed March 4, 1991;
) amended March 13, 1992)

O P I N I O N

Convergent Communications, Inc. (applicant), an Oklahoma corporation qualified to do business in California, 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

In Decision (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. This minimum requirement increases 5% per year starting in 1992. Thus, for the year 1992, the minimum requirement is \$78,750. In addition, an applicant is required to make a reasonable showing of technical expertise in telecommunications or a related business.

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

Protest and Request for Hearing

On April 4, 1991, Division of Ratepayer Advocates (DRA) filed its Protest and Request for Hearing, stating that: (1) applicant does not have "uncommitted cash" of \$400,000 required by D.90-08-032; and (2) applicant's financial statements raise a substantial doubt about applicant's ability to continue as a going concern, citing Note 2 of the auditor's report.

On February 6, 1992, the Administrative Law Judge (ALJ) asked DRA to reconsider its protest in light of D.91-10-041.

On March 13, 1992, applicant filed an amendment to the application, invoking D.91-10-041 and its new, \$75,000 requirement for "switchless resellers." Applicant alleges that it is a "switchless reseller," and that it meets the new, \$75,000 (\$78,750 for 1992) financial requirement for "switchless resellers." In support of these allegations applicant attaches to its verified amendment a Guaranty Agreement of George L. Bragg, a director and shareholder of applicant, guaranteeing collection of all applicant's obligations up to \$78,750. (Exhibit A.) Applicant also attaches Bragg's February 8, 1992, personal financial statement, showing a net worth of \$3,633,902.21. (Exhibit B.)

After considering both the ALJ's request and applicant's amendment, DRA responded by letter dated April 7, 1992. DRA does not dispute applicant's claim that it is a "switchless reseller." Indeed, the facts alleged in the application support its claim. DRA, however, states: "Other than Mr. Bragg's pledge to act as guarantor on behalf of Convergent, we have no verification of his financial ability to fulfill that obligation."

DRA does not allude to the financial statement of Bragg (Exhibit B to the amendment). That document supports the finding that Bragg has the financial ability to fulfill the obligation explicitly undertaken in the Guaranty Agreement. (Exhibit A.) Moreover, that financial statement is attached to the verified

amendment, thus providing the "verification" that DRA asserts is absent.

DRA continues to be concerned about a statement in Arthur Andersen & Co.'s audit report, dated February 5, 1991. While making clear that Convergent Communications, Inc., is a development-stage enterprise, the report concludes:

"The accompanying financial statements have been prepared assuming that the Company will continue as a going concern. As shown in the accompanying financial statements, the Company is a development-stage enterprise with no significant operating results to date. The factors discussed in Note 2 to the financial statements raise a substantial doubt about the ability of the Company to continue as a going concern. Management's plans in regards to those matters are also described in Note 2. The financial statements do not include any adjustments that might result from the outcome of this uncertainty." (Application, Exhibit E.)

Note 2 is in an appendix to the audit report, entitled Notes to Financial Statements. Note 2 states:

"The Company is a development-stage enterprise with no significant operating results to date. Development activity to date includes the development of the Company's custom billing system (see Note 6), acquisition of fixed assets, development of a customer base through agreements with some affinity groups and subsequent telemarketing to obtain and customers, and the establishment of a working capital structure. The Company has incurred significant losses since its inception and management forecasts that such losses will continue through June 1991. As of December 31, 1990, the Company had working capital and stockholder deficits of \$339,049 and \$617,014, respectively. Management has forecasted that approximately \$1,000,000 in financing will be required from external sources in 1991. This has not yet been totally arranged.

"Future operations will be affected by the Company's ability to expand its revenue base

which will be influenced by competition within the industry and customer acceptance of the Company's service. The pricing of services may be significantly affected by government regulation of the major long-distance carriers which could reduce the Company's ability to remain competitive in the industry.

"Even though the Company is experiencing operating losses, management believes profitable operations and economies of operating scale will be achieved through customer retention, attraction of additional market share and cost efficiencies to be realized through the utilization of its custom billing system.

"The financial statements do not include any adjustments that might result from the outcome of this uncertainty."

Most of the resellers to whom we have issued certificates of public convenience and necessity to operate as telephone corporations have been development-stage enterprises. We recognized that status by providing in D.90-08-032 for a \$400,000 financial threshold for such companies; and we further refined that requirement for "switchless resellers" in D.91-10-041 by requiring a \$75,000 threshold.

In this case we are satisfied that applicant does meet the \$75,000 (\$78,750 in 1992) requirement for "switchless resellers." Accordingly, we will deny the protest of DRA. While doing so we also note DRA's statement that it "does not have the resources as this time to participate in a hearing." (April 7, 1992, letter to the ALJ) This indicates to us that DRA's protest might also have been dismissed for lack of prosecution.

Technical Qualifications

The application details the experience of applicant's managing personnel. Several have extensive experience in the telecommunications industry; and two have held senior management

positions with Fortune 500 companies. Applicant meets the Commission's technical qualifications standards.

Service on Cities and Counties

By letter dated May 1, 1992, applicant sought exemption from Rule 18(b), requiring service of a copy of the application upon cities and counties within which service would be rendered in the exercise of the requested certificate. By D.92-05-039, the Executive Director granted the exemption, pursuant to Resolution ALJ-162.

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 89 telephone corporations with which it is likely to compete. On May 14, 1992, the Executive Director issued D.92-05-039, exempting applicant from the requirement in Rule 18(b) that applicant serve copies of the application on all cities and counties in the state.

2. A notice of the filing of the application appeared in the Daily Calendar on March 12, 1991.

3. DRA filed a timely protest.

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.

9. Applicant is a "switchless reseller," as defined in D.91-10-041.

10. Applicant has a minimum of \$78,750 in uncommitted cash or equivalent financial resources, as required by D.90-08-032, as modified by D.91-10-041.

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

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 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. Since applicant meets the minimum financial requirements set by the Commission in D.91-10-041, DRA's protest should be denied.

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 Convergent Communications, 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. 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 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 corporate identification number assigned to applicant is U-5276 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 protest of the Division of Ratepayer Advocates is denied.

16. The application is granted, as set forth above.
This order is effective today.

Dated June 17, 1992, at San Francisco, California.

DANIEL Wm. FESSLER
President

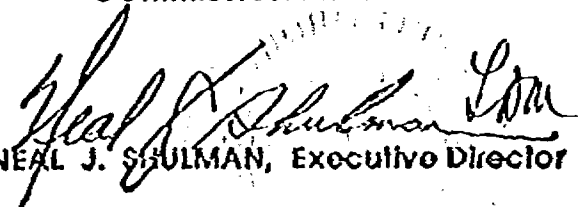
JOHN B. OHANIAN

PATRICIA M. ECKERT

NORMAN D. SHUMWAY

Commissioners

I CERTIFY THAT THIS DECISION
WAS APPROVED BY THE ABOVE
COMMISSIONERS TODAY


NEAL J. SHULMAN, Executive Director

A.91-03-007 ALJ/RTB/E.s

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)