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Decision 92-07-005 July 1, 1992

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of Hospitality Communications Corp. for a Certificate of Convenience and Necessity to Operate as a Reseller of InterLATA Telecommunications Services Within California.	Application 90-12-068 (Filed December 20, 1990)

OPINION

Hospitality Communications Corporation (HCC or 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] HCC also seeks authority to provide alternative operator service (AOS). Applicant intends to provide resold intrastate interLATA operator-assisted telecommunications services between points within California. Service will be provided 24 hours per day, 7 days per week. Interstate telecommunications services are offered in conjunction with intrastate service. The proposed originating service area is the entire state of California, although initial marketing efforts will focus on metropolitan areas.

Service will be offered only to hotels, hospitals, educational institutions, and correctional facilities. By use of

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.

specialized equipment provided by HCC, automated calling card, commercial credit card, and collect calls are validated and connected to HCC's designated underlying carrier (i.e. NTS/Telesphere, MCI, AT&T, etc.). Calls are switched, routed, and terminated over the resold facilities of the underlying carrier. Billing of calls is performed by local exchange carriers (LECs) through billing and collection contracts maintained by HCC's underlying carrier(s). All automated collect, calling card, and commercial credit card calls are branded with HCC's name and billed at HCC's rates as specified in the application. All calls requiring a live operator are transferred to either AT&T or Telesphere--and are billed at that carrier's rate as filed with this Commission. Tent cards are provided by HCC for placement by each telephone, which cards identify the above operator service information and provide contact names and numbers for rate information. HCC will provide resold automated operator services using facilities of other interexchange carriers (IECs). It does not have any plans to construct telecommunications routes.

Minimum Standards for Resellers

In Decision (D.) 90-08-032, as modified in 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.[2] In addition, an applicant is required to make a reasonable showing of technical expertise in telecommunications or a related business.

2 Since the application was filed in 1990, the lower figure, $75,000 applies to HCC.

Minimum Financial Requirement

HCC alleges that its financial resources are adequate to support successful operations. As an automated operator service provider, HCC's cost of operations and overhead is low. The facilities required for transmission of the automated operator assisted calls handled by HCC are provided by its underlying carriers. This arrangement eliminates the potentially burdensome investment required to construct or lease a network and/or switching facilities. HCC further alleges that its overhead is limited to a small, skilled group of managers, the lease of automated operator service equipment, lease of office space, cost of sales personnel, insurance, and office supplies that account for a small percentage of costs.

By design, HCC limits the cash investment required to provide the services offered to the public. This strategy minimizes the risk of failure, minimizes the risk to other carriers whose services HCC uses, and negates any potential risk to individual consumers. The low capital requirements and the guaranteed low bad debt ratio associated with billing and collections handled through HCC's underlying carriers (billed by local exchange carriers) assure the company of sufficient cash flow to meet its financial requirements and continue long-term operations. This ability to pay its ongoing underlying carrier cost will insure that LECs are not adversely affected in any way. HCC does not lease circuits directly from Pacific Bell or other local exchange carriers, but uses resold circuits of its underlying IECs. In addition to providing an efficient, cost-effective network, this arrangement eliminates possible costly up-front LEC installation charges for new circuits.

HCC's financial statements attached to the application and supplementary financial information submitted by HCC were analyzed by the Finance Branch of CACD. It concludes that: 1) HCC meets the "switchless reseller" standard relation to financial viability requirements, as defined by D.91-10-041 and 2) HCC does meet the financial viability requirement 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 February 29, 1992, the date of its most recent financial statements.

In light of the small scale of its operations, we believe that HCC has financial resources in amounts sufficient to support its operations.

Technical Experience and Ability

Applicant relies upon its underlying carriers for the operation and ongoing maintenance of switching and network transmission facilities. Applicant's underlying carriers provide all aspects of call completion, including switching, routing, and termination of calls. Applicant chooses its underlying carriers carefully and bases its decision to use a carrier on its quality of service, customer responsiveness, and price.

Although the applicant relies upon the technical expertise of its underlying carriers, its own resources include several qualified and technically experienced people with backgrounds in telecommunications, data processing, and the provision of operator services. Applicant represents it is managed by a talented pool of individuals with considerable business and managerial experience. The application contains short business biographies of three principal officers of the applicant, which show that they have many years of experience in the telecommunications industry or related businesses.

In addition to its management team, HCC employs several different subcontractors in California to install and service the equipment that provides the automated calling features. All companies that HCC subcontracts with must be licensed and certified in their specialty and are experienced telecommunications professionals.

In addition, HCC appended to its application its proposed tariff, consisting of the entire tariff schedule applicable to resale common carrier service of HCC. Various schedules of the tariff set forth the rates, charges, and rules applicable to AOS.

Standard Conditions Applicable to AOS

In other proceedings in which the applicants have sought authority to provide AOS, the Commission has imposed four standard conditions. We will do so in this instance. They are set forth in the following order.

In addition, we have required applicants for authority to provide AOS to submit tariff schedules for the provision of interLATA AOS to the Commission Advisory and Compliance Division (CACD) for its review. After review of these proposed tariff schedules and the written approval of them by the Chief of CACD's Telecommunications Branch, we have authorized applicants to file with this Commission tariff schedules for the provision of interLATA AOS.

In this instance, applicant has attached its entire tariff, including schedules applicable to AOS, to its application. Accordingly, we will direct CACD to promptly review the tariff schedules submitted with the application and to issue its written approval, if appropriate, as soon as possible. Until applicant receives the letter from the Chief of CACD's Telecommunications Branch, and until it formally files these tariffs with CACD after such approval, applicant should not offer AOS to the public.

Findings of Fact

1. Applicant served a copy of the application upon 17 telephone corporations with which it is likely to compete.

2. A notice of the filing of the application appeared in the Daily Calendar on January 4, 1991.

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 Decision (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 has a minimum of $75,000 in uncommitted cash or equivalent financial resources, as required by D.90-08-032, as amended by D.91-10-041.

10. 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.)

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

12. 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.

13. 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.)

14. 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 3.4% surcharge applicable to service rates of intraLATA toll and intrastate interLATA toll (PU Code § 879; Resolution T-14400);[3]

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.

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3 This surcharge will be 4.0% on July 1, 1992 (Resolution T-14960).

<u>O R D E R</u>

IT IS ORDERED that:

1. A certificate of public convenience and necessity is granted to Hospitality Communications Corporation (HCC or 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 (LEC).

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. If applicant has an effective FCC-approved tariff, it may file a notice adopting such FCC tariff with a copy of the FCC tariff included in the filing. Such adoption notice shall specifically exclude the provision of intraLATA service. If applicant has no effective FCC tariffs, or wishes to file tariffs applicable only to California intrastate

interLATA service, it is authorized to do so, including rates, rules, regulations, and other provisions necessary to offer service to the public. 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 follows:

> "5. All NDIECs are hereby placed on notice that their California tariff filings will be processed in accordance with the following effectiveness schedule:
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> "a. Inclusion of FCC-approved rates in California Public Utilities [Commission] 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 or first class mail notice to customers of the pending increased rates, and
>
> "d. Advice letter filings for new services and for all other types of tariff revisions shall become effective on forty (40) 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. The requirements of GO 96-A relative to the effectiveness of tariffs after filing are waived to the extent that changes in FCC tariffs may become effective on the same date for California interLATA service for those companies that adopt the FCC tariffs.

7. 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.

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 FCC 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-5235-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. In connection with the provision of AOS, applicant shall adhere to the following four conditions:

a. All intraLATA calling shall be directed by HCC 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 charges 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 the LEC charge applies (including, without limitation, all intraLATA operator and operator surcharge functions). By way of example, and without limitation, HCC shall not, by itself or in conjunction with any other entity or person, permit, allow, or holdout 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. HCC shall not offer, holdout, 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, billed 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 HCC, (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 HCC.

c. HCC shall inform all customers who inquire that intraLATA call and intraLATA operator-handled calls are to be provided by the LEC. In addition, HCC shall take all necessary action to insure that such calls are returned to the LEC's 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, HCC 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.

17. The Commission Advisory and Compliance Division (CACD) shall review HCC's proposed tariff, which is appended to the application. Upon review of those tariff schedules by CACD and the written approval of them by the Chief of CACD's Telecommunications Branch, HCC is authorized to file with this Commission tariff schedules for the provision of interLATA AOS. Applicant may not offer such services until these tariffs are on file.

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

This order is effective today.

Dated July 1, 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

RB

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)