

AUG 11 1992

Decision 92-08-006 August 11, 1992

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application)
of Saladin Westco, Inc.,)
dba Megawats, for a certificate)
of public convenience)
and necessity to resell telecom-)
munications services within the)
State of California.)

ORIGINAL

Application 92-04-027
(Filed April 22, 1992)

Thelen, Marrin, Johnson & Bridges,
by Hilary N. Rowen, and Lee Burdick,
Attorneys at Law, for applicant.

O P I N I O N

Request

Saladin Westco, Inc. (applicant), a California corporation, doing business as Megawats, requests a certificate of public convenience and necessity (CPCN) under Public Utilities (PU) Code § 1001 to provide intrastate interLATA telephone services within California.¹

Applicant stated in its application that it began providing telecommunication service to 300 customers prior to finding out that it needs a CPCN to operate within California.

The Administrative Law Judge (ALJ) issued a ruling imposing certain requirements on applicant and setting a prehearing conference (PHC) to determine the status of applicant's current

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.

telecommunication activities. Among other requirements, the ALJ ordered applicant to cease and desist from providing interLATA telecommunications service within California to any new customers, to notify its current customers that it is not qualified to provide such service in California, and to provide a copy of its customer list to the ALJ at the PHC.

At the PHC, applicant provided written documentation to substantiate that it complied with all of the requirements identified in the ALJ ruling. Because of the potential adverse impact to applicant if its customer service list was available in the formal file, applicant's customer service list was placed under seal, temporarily.

Subsequently, after the PHC, on May 29, 1992, applicant filed an amended application to provide a more detailed description of the telecommunication activities that it is currently conducting in California and to substantiate that it is technically and financially capable of providing its requested service.

The amended application explained that applicant is a partition of the Telsave AT&T Software Defined Network (SDN). SDN is a bulk service provided by AT&T to large business users who link several office sites for the purpose of transmitting private voice and data communications. Because AT&T offers this service only to large bulk users, a market had developed for smaller users to aggregate their demand and purchase the service together. A communications service provider called "Telsave" serves as a primary aggregator for SDN service, and is the underlying carrier that provides applicant with the SDN service that applicant sells to its customers. Applicant currently has 300 customers. However, that number represents all nationwide customers. Of these 300 customers, only 97 are California customers.

Filed concurrently with its amended application was a motion for waiver of Commission rules on providing service of an application. Applicant seeks an exemption from Rule 18(b) of the

Commission's Rules of Practice and Procedure (Rules) to the extent that the rule requires applicant to serve a copy of its application on cities and counties in the proposed service area. Such an exemption has been granted to other similarly situated non-dominant interLATA carriers, such as in Decision (D.) 91-06-035 and D.87-08-022.

Applicant also requested an exemption to Rule 18(b) to the extent that the rule requires applicant's amended application to be served on all parties with which applicant is likely to compete. In support of this request, applicant explained that it served a copy of its application on all parties with which it is likely to compete and that it would be unnecessarily duplicative, expensive, and burdensome to serve those parties again with an amendment because no party has filed an opposition to its application. We concur with applicant. The requested exemption should be granted.

Background

In D.90-08-032, 37 CPUC 2d 130, 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. For applications filed after 1991, such as this application, this minimum cash requirement increased 5% per year and the current minimum cash requirement is \$78,750. In addition, an applicant is required to make a reasonable showing of technical expertise in the telecommunications or related business.

Financial Resources

With respect to the requirement that applicant demonstrate that it has a minimum of \$78,750 in uncommitted cash or equivalent financial resources, applicant substantiated in its amended application that it possesses a sufficient amount of

unencumbered cash or cash equivalent to meet the financial requirement. As shown in Exhibit B to the amended application, applicant has deposited \$78,750 of cash into a certificate of deposit for the purpose of ensuring the availability of funds for operating the company for at least one year after the grant of a certificate of public convenience and necessity.

Technical Expertise

Applicant addressed in its amended application the business biographies of its three key management personnel; Mazen Kabbani, Shirley Ah Sing, and Corlis Green. Both Ah Sing and Green have 17 years of telecommunications experience. Kabbani has 7 years of telecommunications experience.

In addition, applicant attached a draft of its initial California tariff schedule, Exhibit E to the amended application, to substantiate that it has the technical expertise to provide resale services within California.

Applicant possesses the necessary technical expertise to operate as a non-dominant telecommunications carrier. We will authorize the interLATA services that applicant seeks to provide; but to the extent that the application seeks authority to provide intraLATA service, we will deny it.

Fees

Similarly situated non-dominant interexchange carriers are subject to a fee system (user fee) which is used to fund the cost of regulating common carriers and businesses related thereto and public utilities, as set forth in PU Code § 401 et seq. In addition these same carriers are subject to a fee system to fund the Universal Lifeline Telephone Service (ULTS) and to fund Telecommunication Devices for the Deaf (TDD) pursuant to PU Code §§ 879 and 2881, respectively.

Although applicant was not certificated to provide telecommunications service within California, it was providing public utility service and operating as a legitimate business

entity. In fairness to the certificated carriers providing intrastate interLATA telecommunication service, the fees should be enforced uniformly, if they are to be enforced at all. To underscore our concern, we would be entirely justified in conditioning our approval for a CPCN upon the payment of a penalty, pursuant to PU Code § 2107. However, applicant has filed an application for a CPCN, has complied with the ALJ ruling, and has filed an appropriate amended application. Instead, we will require applicant to submit payment of user fees, ULTS fees, and TDD fees due for intrastate interLATA telecommunications services provided within California prior to the filing of its application and granting of a CPCN.

Applicant should provide sufficient detail of its intrastate interLATA telecommunication service revenues from the date applicant first began providing intrastate interLATA service to June 30, 1992 to the Commission's Advisory and Compliance Division (CACD) so that CACD may confirm that the proper fees have been paid. Any intrastate interLATA services after June 30, 1992 should be included in applicant's first routine payment of fees.

Upon confirmation that the fees applicable from the date applicant first began providing intrastate interLATA services to June 30, 1992, applicant should be granted its CPCN and CACD should accept applicant's tariffs for filing. The CACD should also notify the ALJ in writing that the appropriate fees have been paid. Upon such confirmation, the customer service list should be taken out of seal and should be retrieved by applicant from the ALJ. If the list is not retrieved within 15 days after the ALJ receives CACD's written confirmation that the appropriate fees have been paid, the customer list should be placed in the formal file of this application. Failure to pay the appropriate fee should result in suspension of applicant's CPCN.

Findings of Fact

1. Applicant served a copy of the application upon the 158 telephone entities with which applicant stated it is likely to compete.

2. A notice of the filing of the application appeared in the Commission's Daily Calendar of April 29, 1992.

3. An amended application was filed on May 29, 1992.

4. No protests have been received.

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 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.

11. Applicant has made a reasonable showing of technical expertise in telecommunications, as required by D.90-08-032 (37 CPUC 2d 130 at 147-148, 156, 158).

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.

15. The Commission has routinely granted non-dominant interLATA carriers, such as applicant, an exemption from Rule 18(b) to the extent that the rule requires applicant to serve a copy of its application on cities and counties in the proposed service area.

16. Public convenience and necessity require the service to be offered by applicant.

17. Applicant began providing telecommunications service prior to the filing this application.

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 4.0% surcharge applicable to service rates of intraLATA toll and intrastate interLATA toll (PU Code § 879; Resolution T-14960) 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-4760).

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.

5. Applicant's requested exemption from Rule 18(b)'s requirement of service of the application on cities and counties in the proposed service area and exemption from serving its amended application should be granted.

6. Applicant should be required to pay the appropriate fees on intrastate interLATA telecommunications services provided prior to the receipt of a CPCN.

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 Saladin Westco, Inc. (applicant) to provide intrastate interLATA telecommunications service in California, subject to Ordering Paragraphs 16 and 17, and 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 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 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 and D.92-06-034, 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. Customer notification is not required for such minor rate increases.
- "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 corporate identification number assigned to applicant is U-5279-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 provision of PU Code §§ 816-830.

15. Applicant is exempted from Rule 18(b) of the Commission's Rules of Practice and Procedure to the extent that the rule requires applicant to serve a copy of its application on the cities and counties in which it proposes to operate, and to the extent that the rule requires a copy of its amended application to be served.

16. Applicant shall pay the appropriate fees applicable to non-dominant interexchange carriers on intrastate interLATA telecommunications services provided by applicant prior to July 1, 1992. In this regard applicant shall provide sufficient detail of such revenues to the CACD so that CACD may confirm that the proper fees have been paid. Applicant shall not receive its CPCN until CACD has confirmed that applicant has paid the appropriate fees.

17. CACD shall review applicant's filing required by Ordering Paragraph 16 to confirm that applicant has paid the proper fees. Upon confirmation, CACD shall notify Administrative Law Judge (ALJ) Galvin in writing that the proper fees have been paid.

18. Applicant shall request the ALJ to remove from seal applicant's customer service list and to return such list to applicant within 15 days after the ALJ receives CACD's written confirmation identified in Ordering Paragraph 17. Absent such a request from applicant the ALJ shall place the customer list in the formal file for this application.

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

Dated August 11, 1992, at San Francisco, California.

DANIEL Wm. FESSLER
President
PATRICIA M. ECKERT
NORMAN D. SHUMWAY
Commissioners

Commissioner John B. Ohanian,
being necessarily absent, did not
participate.

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


NEAL J. SHULMAN, Executive Director
BB

A.92-04-027 ALJ/MFG/jac

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 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)