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SEP 3 1992

Decision 92-09-023 September 2, 1992

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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

Application 92-03-028
Filed March 13, 1992)

O P I N I O N

US WATS, Inc. (applicant), a New York corporation authorized to do business in California,¹ 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.² The application also seeks exemption from the requirements of PU Code §§ 816-830, dealing with the issuance of stocks and other evidences of ownership and bonds, notes, and other evidences of indebtedness.

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 conventionally defined telephone lines (switchless reseller) must demonstrate that it has a minimum of

1 Applicant received Certificate of Qualification 1816046 from the office of the California Secretary of State on February 27, 1992.

2 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.

\$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 related business.

The initial application was incomplete. The assigned administrative law judge (ALJ) requested additional information in the areas of financial sufficiency, experience of management personnel and service of the application upon competitors. In a number of amendments, the last of them filed on May 20, 1992, applicant has responded to the ALJ's requests.

Applicant in Amended Financial Exhibit A has submitted a consolidated balance sheet, as of February 29, 1992, showing total current assets of \$1.5 million, including \$100,000 in cash. Applicant represents that its cost of operations and overhead is low. As a switchless reseller of long-distance services offered by facilities-based interexchange carriers, applicant does not own or operate any switching, transmission or other physical facilities in California. Instead, applicant will resell AT&T Software Defined Network (SDN) service within the state. Applicant has entered into an agreement with AT&T by which it has acquired SDN service in bulk and at high-volume discounts. It will resell this service at rates which incorporate the discount.

Applicant states that its executives have nearly 60 years of combined financial, sales, and telecommunications experience. Aaron Brown, president, is a certified public accountant with extensive corporate financial experience. Donald Flynn, vice president for marketing and network services, was regional sales manager for Honeywell Information Systems and also served as director of marketing for General Telephone and Electronics Information Systems.

With these representations, applicant has met its burden of showing adequate financial resources and technical expertise in the telecommunications field.

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.

Protest Regarding Service

On July 1, 1992, a protest was filed under Rule 8.1 et seq., of the Rules of Practice and Procedure, by the California Association of Long Distance Telephone Companies (CALTEL), an association of 25 interexchange carriers classified as non-dominant interexchange carriers. CALTEL does not request a public hearing, nor does it oppose applicant's entry into the intrastate interLATA market in California. However, it does object to applicant's service of a "Summary of Application" that requires those seeking a copy of the complete application to first pay "the cost of reproduction and postage."³

In D.92-04-084, dated April 29, 1992, the Executive Director granted applicant's request to serve a summary of its application on competitors to comply with Rule 18(b). The decision did not authorize charging competitors a reproduction and postage fee. CALTEL asks that we require applicant to send its complete application (including amendments) to competitors, but it adds that it "is amenable to (and indeed urges) the Commission to prepare a decision granting the application so that it can be released in a timely fashion in the absence of any protest." (Protest, p. 6.)

³ Summary of Application, Application 92-03-028. The summary states: "US WATS is prepared to provide a copy of its Application, for the cost of reproduction and postage, upon request." Persons seeking the application are directed to communicate with applicant's counsel.

CALTEL's protest has merit, but, pursuant to Rule 8.2, we will tailor our response to the complaint. We will require applicant to notify those to whom it sent its summary of application that a copy of the complete application (including amendments) is available upon request at no charge. Applicant shall respond to each such request within 10 calendar days of receipt.

Since competitors have been on notice of this filing since at least March 17, 1992, and since CALTEL does not oppose applicant's entry into the market, we will grant the application. Competitors who receive a copy of the complete application may proceed by way of complaint if they believe any part of the application is objectionable.

Findings of Fact

1. Applicant served a copy of its application, or an application summary, upon some 150 telephone corporations and others which it is likely to compete.
2. A notice of the filing of the application appeared in the Daily Calendar on March 17, 1992, and a notice of applicant's most recent amendment to the application appeared in the Daily Calendar on June 4, 1992.
3. One protest has 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 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 telecommunications 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 \$78,750 in uncommitted cash or equivalent financial resources, as required by D.90-08-032, as modified by D.91-10-041.

10. Applicant has made a reasonable showing of technical expertise in telecommunications, as required by D.90-08-032, 37 CPUC2d 130, 147-148, 156, 158 in R.85-08-042. This showing includes a complete draft of applicant's initial tariff. (Id., p. 147.)

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

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 US WATS, Inc. (applicant) to operate as a reseller of the interLATA telecommunications services 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 15 days after this order is effective, applicant shall notify all parties on its Certificate of Service service list that a complete copy of its application (including amendments) will be sent at no charge within 10 days of receipt of a request for a copy of the application.

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, as modified by D.92-06-034:

*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, and/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 notice 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."

6. Applicant may deviate from the following provisions of G0 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 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-5287-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.

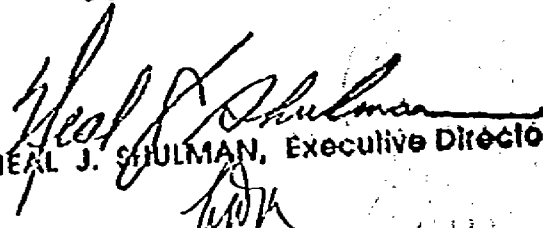
15. Applicant is exempted from the provisions of PU Code §§ 816-830.

16. The application is granted, as set forth above.
This order is effective today.
Dated September 2, 1992, at San Francisco, California.

DANIEL Wm. FESSLER
President
JOHN B. OHANIAN
NORMAN D. SHUMWAY
Commissioners

Commissioner Patricia M. Eckert,
being necessarily absent, did not
participate.

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


NEAL J. SHULMAN, Executive Director

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)