

SEP 3 1992

Decision 92-09-037 September 2, 1992

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
 HBT Associates for a Certificate of)
 Public Convenience and Necessity to)
 Provide InterLATA Telecommunications)
 Services on a Resale Basis Within)
 the State of California.)

Application 92-04-028
(Filed April 24, 1992)

O P I N I O N

In this proceeding, applicant HBT Associates (HBT), a California partnership and offeror of shared tenant services (STS) within Harbor Bay Business and Research Park (Harbor Bay) in Alameda, California, seeks a certificate of public convenience and necessity (CPCN) authorizing it to provide interLATA telecommunications services on a resale basis within the State of California.¹ For the reasons set forth below, we believe that HBT has adequately demonstrated both the technical competence and financial resources that we require of nondominant interexchange carriers (NDIECs) who wish to offer interLATA services. We therefore grant the requested certificate.

Background and Description of Application

HBT is the successor-in-interest to Harbor Bay Telecommunications (HB Telecom), a partnership that was in

1 LATA stands for "Local Access and Transport Area". California is divided into 10 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 the same LATA. Applicant does not seek to offer--and our decisions currently prohibit it from offering--intraLATA services.

existence from May of 1984 until October of 1991. HB Telecom and now HBT have offered STS to the tenants of Harbor Bay since 1984, an activity for which no certificate from this Commission is necessary. Now that HBT wishes to offer interLATA service, however, it is required to obtain a CPCN pursuant to Decision (D.) 87-01-063 (23 CPUC 2d 554, 567-68).

As the successor to HB Telecom, HBT alleges that it owns and operates an Intecom digital PBX switch, which--along with the services of other carriers--it will use to offer the proposed interLATA services. HBT asserts that it should be credited with its predecessor's experience in operating this switch. HBT also represents that, in keeping with our directives in D.87-01-063 and D.87-05-009, it will partition its switch in such a way that its interLATA customers outside Harbor Bay will not have access to the STS applicant now provides through Pacific Bell.

As to financial resources, HBT avers that its predecessor had an unblemished record in paying Pacific Bell, interexchange carriers and other vendors, and that the same presumption should apply to it. HBT has also submitted financial statements (which it seeks to file under seal) showing that it has \$365,000 in uncommitted cash available to meet HBT's obligations. This cash, along with a guarantee of \$76,000 from the developer of Harbor Bay, Harbor Bay Isle Associates, is alleged to be sufficient to meet the financial requirements we imposed in D.90-08-032 on applicants who wish to provide interLATA service.

Discussion

In D.90-08-032, the Commission established two major criteria for determining whether a CPCN should be granted. First, an applicant is required to make a reasonable showing of technical expertise in telecommunications or a related business. Second, 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 \$441,000 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.

We are satisfied that HBT has demonstrated the technical competence required by D.90-08-032. HBT's experience (and that of its predecessor) in providing STS through a digital PBX switch is testimony to its technical competence.

We are somewhat more concerned about HBT's financial resources, but on balance conclude that the applicant has also made a sufficient showing on this issue. Although HBT's current operations have shown steady losses and resulted in negative shareholder equity,² this is probably due to applicant's (and its predecessor's) limited number of STS customers. The application points out that if authority for interLATA service is granted, HBT expects its customer base to grow from 60 (the number of current STS customers) to 200 within five years. This should enable HBT to spread the costs of its equipment and staff among multiple users,

² Concurrently with its application, HBT has filed a motion requesting that it be allowed to submit its financial statements under seal.

The motion is denied. Our decisions require that before the financial data required in CPCN applications by Rule 18(g) can be treated as confidential, "there must be a demonstration of imminent and direct harm of major consequence, not a showing that there may be a harm or that the harm is speculative and incidental." Re Pacific Bell, 20 CPUC 2d 237, 252 (1986).

HBT has not made the required showing here. Its argument that competing real estate developers who offer STS could deduce HBT's expansion plans and even marketing strategy from its financial statements seems speculative and far-fetched, especially since the statements at issue are those of a telecommunications affiliate, not the developer itself.

thus reducing its charges to individual customers.³ In view of this reasonable business plan and Harbor Bay's relative success in a difficult real estate market, we believe that the guarantee offered by Harbor Bay Isle Associates to make up the difference between HBT's uncommitted cash and the required \$441,000 should (with certain modifications) be accepted.⁴

Findings of Fact

1. A notice of the filing of the application appeared in the Daily Calendar on April 29, 1992.
2. Applicant has served a copy of the application upon 158 interexchange carriers with which it is likely to compete.
3. No protests have been filed.
4. A hearing is not necessary.
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

3 The rates at which HBT proposes to offer interLATA service, which are attached to the application as Exhibit F, are attractive.

4 Under D.91-10-041, a guarantee offered in partial satisfaction of the \$441,000 cash requirement for NDIECs must be irrevocable for a period of 12 months beyond certification of the applicant, and is also subject to "verification and review" by the Commission. Mimeo at pp. 17-18.

The proposed guarantee attached to the application as Exhibit E does not meet the first requirement, because it provides that "this Guaranty shall automatically terminate at such time as HBT holds cash equal to or greater than the then-current CPUC requirements. . ."

As a condition of granting the requested certificate, we will require that Harbor Bay Isle Associates furnish a guarantee irrevocable for 12 months beyond certification. We note, however, that since the proposed guarantee applies only "after the exhaustion by [HBT] creditors of all legal recourse against HBT and its assets", this requirement should impose no added burden on Harbor Bay Isle Associates.

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 as providing 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 application differently from those filed earlier.

9. Applicant has made a reasonable showing of technical expertise in telecommunications, as required by D.90-08-032, pages 34-35, 52, and 57, in R.85-08-042. This showing includes a complete draft of applicant's initial tariff.

10. Applicant has at least \$365,000 in uncommitted cash with which to pay its bills during its first year of operation as an NDIEC offering interLATA services.

11. The guarantee of \$76,000 that Harbor Bay Isle Associates has offered to make up the difference between applicant's \$365,000 in cash and the \$441,000 required by D.91-10-041 will, if made irrevocable for a period of 12 months after applicant's certification, be sufficient to demonstrate that applicant has adequate financial resources to offer the proposed services.

12. Applicant is technically and financially able to provide the proposed service.

13. Since no facilities are to be constructed by applicant, it can be seen with certainty that the proposed operations will not have a significant effect upon the environment.

14. When requested to do so and for good cause shown, the Commission has granted NDIECs such as applicant an exemption from Rule 18(b) to the extent that said rule requires service of the application on cities and counties in the proposed service area.

15. Exemption from the provisions of Public Utilities (PU) Code §§ 816-830 has been granted to other resellers.

16. The 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 to fund the Universal Lifeline Telephone Service (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 for in PU Code §§ 431-435, which is 0.1% of gross intrastate revenue for the 1992-93 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 services, the following order should be effective immediately.

5. Applicant should be exempted from Rule 18(b) to the extent that said rule requires service of a copy of the application on all cities and counties within the proposed service area.

6. Applicant should be exempted from the provisions of PU Code §§ 816-830 to the extent they require Commission authorization of issuances of securities or transfers or incumbrances of utility property for the purpose of securing debt.

7. Applicant is authorized to deviate from the requirements of Paragraphs II.C.(1)(b) and II.C.(4) of General Order 96-A respecting tariff pagination, reuse of sheet numbers and the use of separate sheets for each tariff rule.

O R D E R

IT IS ORDERED that:

1. A certificate of public convenience and necessity is granted to HBT Associates (applicant) to operate as a reseller of interLATA telecommunications service offered by communication common carriers within 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. Within 30 days after this order is effective, applicant shall file a written acceptance of the certificate granted in this proceeding.

3. Applicant is authorized to file with this Commission within five days after the effective date of this order, tariff schedules for the provision of interLATA service. Applicant may

not offer service until such 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 thereof, and shall be effective not less than one day after filing.

4. Concurrently with the tariff schedules described in Ordering Paragraph 3, applicant shall file with the Commission a revised form of guarantee from Harbor Bay Isle Associates. Said revised guarantee shall be identical in form to that annexed to the application as Exhibit E, except that it shall provide that the guarantee will be irrevocable for a period of 12 months beyond the date of the acceptance letter described in Ordering Paragraph 2.

5. Applicant shall partition its switch in such a way that applicant's interLATA customers outside of Harbor Bay Business and Research Park (Harbor Bay) shall not have access to the shared tenant services (STS) that applicant now offers to customers within Harbor Bay.

6. Applicant is a nondominant interexchange carrier (NDIEC). The effectiveness of its future tariffs is subject to the schedules set forth in Ordering Paragraph 5 of Decision (D.) 90-08-032, as modified by D.91-12-013, 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, or 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 does not cause an increase in any rate or charge shall become effective on not less than five (5) days' notice."

7. Applicant may deviate from the requirements of Paragraphs II.C.(1)(b) and II.C.(4) of GO 96-A with respect to tariff pagination, reuse of sheet numbers and the use of separate sheets for each tariff 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.

8. Within five days after the date the service authorized by this Order is first rendered, applicant shall notify the Commission of this fact in writing.

9. Applicant shall keep its books and records in accordance with the Uniform System of Accounts specified in Part 32 of the Federal Communication Commission's rules, and shall segregate its interLATA telecommunications service in accounts distinctly separate from its STS accounts. Any allocation of cost between

interLATA telecommunications service and STS service shall be reported as part of the annual report filing required by Ordering Paragraph 10.

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 contained in Attachment A hereto, and shall fully disclose any allocation of costs between interLATA telecommunications service and STS services.

11. The certificate granted herein 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 all concerned local permitting agencies not later than 30 days from today.

13. The corporate identification number assigned to applicant is U-5293-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 after the effective date of this order, applicant shall comply with Public Utilities (PU) Code § 708, Employee Identification Cards, and shall 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.

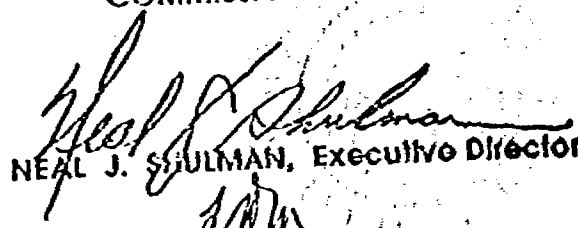
16. The application is granted as set forth above.
This order is effective today.

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. SCHULMAN, 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 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)