

SEP. 3 1992

Decision 92-09-039 September 2, 1992

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
 PHONETEL TECHNOLOGIES, INC., for a)
 Certificate of Public Convenience)
 and Necessity to Operate as a)
 Reseller of Telecommunications)
 Services Within California.)

Application 92-05-020
 (Filed May 6, 1992)

O P I N I O N

PhoneTel Technologies, Inc. (applicant), an Ohio 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 While applicant represented in its application that it had applied to the California Secretary of State to qualify to do business as a foreign corporation, appended to the application is a copy of Certificate of Qualification No. 1818705, issued April 7, 1992, authorizing applicant to transact intrastate business in the State of California.

Specifically, applicant seeks authority to subscribe to and resell intrastate interLATA interexchange services throughout the State of California. Applicant seeks to provide a variety of direct-dial and operator-assisted services to both presubscribed and nonpresubscribed customers.

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.

Applicant served a copy of its application on all interexchange carriers identified in Exhibit 3 to the application, a list provided applicant by the Commission.

Applicant did not serve a copy of its application and exhibits on the cities and counties within which it proposes to operate as required by Rule 18(b). However, the Commission has granted similarly situated non-dominant carriers an exemption of Rule 18(b) to the extent that it requires applicant to serve a copy of its application on cities or counties within the proposed service area. For example, such an exemption has been granted in Decision (D.) 91-06-035 and D.87-08-022. There is no reason to treat applicant any differently than other non-dominant carriers. Therefore, applicant should also be granted a waiver of Rule 18(b) to the extent that it requires applicant to serve a copy of its application on the cities and counties within which it proposes to operate.

In 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 directly own telephone switching equipment and lines (switchless reseller) must demonstrate that it has a minimum of \$75,000 in uncommitted cash or equivalent financial resources.² 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.

These minimal requirements are intended to ensure that those authorized CPCNs as resellers will have both the financial

² D.92-06-069 notes that switchless reseller may both have plant that is utilized in providing telecommunications service and facilitate the use of other's equipment in providing such service.

resources to provide adequate service at least during their initial period of operation and have the ability to manage a utility business with the rate, service and information obligations that entails.

At page 4 of the application, applicant makes reference to attached Exhibit 5 to the application, which is represented to be its most recent Form 10-Q filed with the United States Securities and Exchange Commission for the period ended September 30, 1991. Applicant states: "The information provided in this form demonstrates that PhoneTel has sufficient unencumbered assets to meet the Commission's financial qualifications requirements." However, a review of Exhibit 5 attached to the application has led us to a contrary conclusion.

While the question of applicant's future financial status may be subject to speculation, the information provided with this application indicates substantial cause for concern. Applicant's balance sheet (Page 3 of 13) shows a negative shareholder's equity for September 30, 1991 and an accumulated deficit that grew significantly from December 31, 1990 to September 30, 1991. These figures are the product of balancing total assets with liability and shareholder's equity. They do not demonstrate unencumbered assets in any realistic sense.

Applicant's Statement of Operations (Pages 4 and 5 of 13) shows losses from operations and net losses for each of the periods indicated for both the most current reporting period (three months and nine months ending September 30, 1991) and the prior year's corresponding periods.

Applicant's Statement of Cash Flows (Page 6 of 13) shows a positive net cash situation for operating activities for the nine months ending September 30, 1991, and this is a change from the previous year which shows net cash provided by operating activities at deficit of nearly \$400,000. In each of the periods reported the change in net cash was negative.

Examination of the notes to the financial statements provides additional information on the sources of these financial results, but the explanations do not mitigate the underlying financial status. Instead, they identify significant contingent liabilities relating to pending litigation and claims.

As a result of the examination of the financial reports provided by applicant in support of its application, we have determined that applicant does not meet the criterion of financial fitness.

With respect to technical expertise, applicant attached Exhibit 6 which consists of tariffs and rates which applicant proposes should this application be granted. While applicant represents in its application that it is a "well managed and qualified carrier," and indicates that it is already engaged in providing various pay telephone and other communications services in other states, applicant provides no information on which its technical expertise can be assessed.

We will, therefore, deny the interLATA service that applicant seeks to provide.

Findings of Fact

1. Applicant served a copy of the application upon more than 150 telephone corporations with which it would have likely competed.
2. A notice of the filing of the application appeared in the Daily Calendar on May 18, 1992.
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. In D.90-08-032, 37 CPUC 2d 130, as modified by D.91-10-041, the Commission established minimum criteria for the granting of a CPCN for resellers of intrastate interLATA interexchange services relating to financial fitness and technical expertise.

7. There is no basis for treating this applicant differently than those that filed earlier.

8. Applicant's financial statement indicates that applicant lacks the requisite uncommitted cash or equivalent financial resources, as required by D.90-08-032, as modified by D.91-10-041.

9. Applicant has failed to make a reasonable showing of technical expertise in telecommunications (or in a related business), as required by D.90-08-032, 37 CPUC 2d 130, at 147-148, 156, 158, in R.85-08-042. While applicant has included a complete draft of applicant's initial tariff, applicant has merely asserted rather than provided the information to demonstrate it has the requisite technical expertise.

Conclusion of Law

Applicant's request for a CPCN should be denied.

ORDER

IT IS ORDERED that:

1. The application of PhoneTel Technologies, Inc. (applicant) for a certificate of public convenience and necessity (CPCN) to provide direct-dial and operator-assisted interexchange telephone service within California is denied.

2. This denial is without prejudice to applicant filing a subsequent new application for a CPCN at such time applicant can demonstrate that it meets the minimum requirements established for a CPCN.

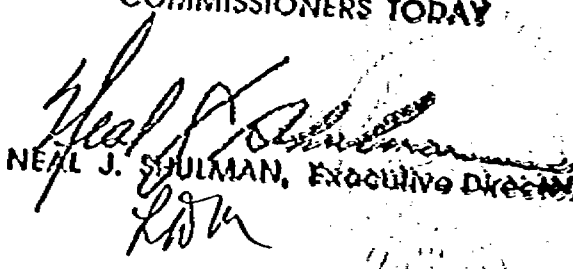
This order is effective today.

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