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Decision 92-11-003 November 6, 1992

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application)
of American TeleNetworks for a)
certificate of public convenience)
and necessity to operate as a)
reseller of telecommunications)
services within California.)

ORIGINAL
Application 92-02-030
(Filed February 13, 1992)

O P I N I O N

Request

Leonel Figueredo (applicant) doing business as American TeleNetworks, Incorporated, a sole proprietorship, requests a certificate of public convenience and necessity (CPCN) under Public Utilities (PU) Code § 1001 to permit it to provide interLATA long distance telephone services in California.¹

Background

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 directly 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.²

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.

2 D.92-06-069 notes that a 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.

For applications filed after 1991 this minimum requirement increases 5% per year. The current financial requirement is \$78,750. In addition, an applicant is required to make a reasonable showing of technical expertise in telecommunications or related business.

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

Financial Resources

Applicant requested that it be relieved of showing its financial resources because all of its transmission-related debt would be to Execuline of Sacramento (Execuline), a certificated interLATA carrier. Applicant further represented that Execuline would see that applicant's customers will not experience service interruption or tariff increases simply because applicant failed to meet its financial obligations.

However, by a March 5, 1992 Administrative Law Judge (ALJ) letter, applicant was informed that, among other deficiencies, its financial qualifications needed to be supplemented. If Execuline was going to guarantee applicant's performance, applicant would need to substantiate that Execuline has \$78,750 of unrestricted cash or equivalent financial resources restricted for applicant's use, pursuant to D.91-10-041. Absent such substantiation, applicant would need to substantiate that it has the necessary financial resources.

Upon no contact from applicant, the ALJ issued a May 14, 1992 ruling which placed applicant on notice that applicant's request for a CPCN would be denied unless applicant "amended" its application by May 29, 1992 to incorporate the information required by the Commission's Rules of Practice and Procedure and D.91-10-041, as summarized in the ALJ's prior letter.

Applicant failed to amend its application as required by the ALJ ruling. However, applicant did send a May 29, 1992 letter to the ALJ which showed a copy of Execuline's financial commitment statement and performance guarantee.

Execuline's financial commitment attached to applicant's letter represented that Execuline will be the sole proprietor of services for applicant and that Execuline will assure that applicant's customers will continue to receive long distance services at rates and at a level of service it provides as Execuline. The representation further assured the Commission that applicant's customers will continue to receive services in the event of applicant's failure to perform its financial obligation. Execuline accepts a financial commitment of \$78,750 as required by D.91-10-041. However, neither applicant nor Execuline demonstrated that Execuline had the necessary amount of cash or uncommitted funds restricted for applicant's use.

Applicant also requested, in his letter, that a copy of a certificate from the Office of the Secretary of State reserving the name American TeleNetworks for incorporation be accepted in lieu of an endorsed copy of applicant's fictitious business statement. It should be noted that the certificate merely reserved the name for applicant until July 27, 1992.

Rule 16 of the Commission's Rules of Practice and Procedure requires a domestic corporation applicant to annex to its application a copy of its current articles of incorporation certified by the Secretary of the State and non-corporations to attach a certificate of qualification to transact intrastate business certified by the Secretary of the State.

Subsequent to receipt of applicant's letter the ALJ issued a new ruling on June 17, 1992. Applicant was again placed on notice that if its application was not amended, to incorporate the information required by the Commission's Rules of Practice and Procedure and D.91-10-041, then applicant's request for a CPCN

would be denied. Applicant was given 90 days from the date of the ruling, or until September 15, 1992, to amend its application without the possibility of a further extension of time.

Applicant had ample opportunity to amend its application but did not do so. Therefore, we find that applicant has not carried its burden of proof to substantiate that it is fit to receive a CPCN. The application should be denied.

Findings of Fact

1. Applicant served a copy of the application upon 60 telephone corporations with which it is likely to compete.
2. A notice of the filing of the application appeared in the Daily Calendar of February 25, 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. 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 do not hold themselves out to the public to provide intraLATA service, pending our final decision in OII 83-06-01.
7. Applicant provides no evidence of having a minimum \$78,750 in uncommitted cash or equivalent financial resources, as required by D.90-08-031 and modified by D.91-10-041.
8. Applicant is not financially able to provide the proposed services.
9. Applicant has not substantiated that it is qualified to do business in California.

Conclusion of Law

Applicant's request for a CPCN should be denied.

ORDER

IT IS ORDERED that:

1. The application of Leonel Figueredo (applicant) for a certificate of public convenience and necessity (CPCN) to provide interLATA long distance 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 for a CPCN.

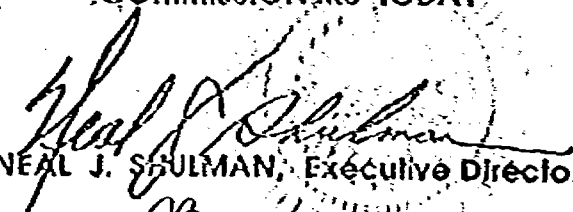
3. Application 92-02-030 is closed.

This order is effective today.

Dated November 6, 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. SCHULMAN, Executive Director