

DEC. 3 1992

Decision 92-12-008 December 3, 1992

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

National Communications Association, )  
Inc. Application for a Certificate )  
of Public Convenience and )  
Necessity to Operate as a Reseller )  
of Telecommunications Services )  
Within the State of California. )

Application 92-03-053  
(Filed March 27, 1992)  
(Amended March 27, 1992  
and August 6, 1992)

O P I N I O N

National Communications Association, Inc. (applicant), a New York 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.<sup>1</sup>

Applicant is qualified to do 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 resell AT&T's Software Defined Network (SDN) and Distributed Network

<sup>1</sup> 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's application as amended did not specify that it sought only interLATA authority. On September 10, 1992, Pacific Bell (Pacific) filed a protest to the August amendment to the application on the ground that the CPCN request did not limit the authority to interLATA services only. By letter to the Administrative Law Judge (ALJ), dated September 9, 1992 and copied to Pacific, applicant represented that it is not seeking authority to provide intraLATA telecommunications services. On September 14, 1992, Pacific filed its Withdrawal of Protest.

Service (DNS) long-distance services. Applicant is a switchless reseller.

On July 23, 1992, the ALJ issued a ruling (ALJ Ruling), which required the application, as amended, be further amended to correct various procedural and substantive deficiencies. Although applicant requested approval to serve a summary of its application on competitors required to be noticed under Rule 18(b), it failed to provide proof of such service and a copy of the summary notice. In the August amendment, applicant provided a summary notice and verification that it served the summary on all interexchange carriers identified in Exhibit B to that amendment on August 5, 1992.

The summary of application contains substantial defects. First, the application number is shown as 92-3-53 rather than 92-03-053. This could prevent interested parties, unfamiliar with our docket numbering system, from obtaining further information from this Commission on the application. Second, and most serious, is the summary's statement that the application "was filed on February 15, 1992, and three amendments have been filed thereto." The original application and two amendments were filed on March 27 and the third amendment was filed August 6, the day after the notice was mailed. Due to the wording of the notice, the parties so notified are unable to ascertain that a protest period is running. Therefore, we find the summary notice to be defective.

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) and requested a waiver of the requirement. The Commission has granted similarly situated non-dominant carriers an exemption from Rule 18(b) to the extent that the Rule requires applicant to serve a copy of its application on cities or counties within the proposed service area. For example, such exemptions have been granted in Decision (D.) 91-06-035 and D.87-08-022, 25 CPUC2d 119. There is no reason to treat applicant

any differently than other nondominant 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, 37 CPUC2d 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 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.<sup>2</sup> 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 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.

In the ALJ Ruling requiring an amendment, the ALJ called applicant's attention to the financial requirement of \$78,750 in unencumbered cash. The ALJ noted the September 30, 1991 balance sheet and "statement of income and deficiency," which applicant attached to the March application, each showed a total shareholders' deficiency of \$395,698, and that applicant had a negative net worth. The ALJ declared that "[p]rior to amending

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<sup>2</sup> 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.

this application and providing up-to-date financials, applicant should insure that it will be able to meet our financial criteria."

Exhibit C to the August amendment contains December 31, 1991 unaudited financial statements. The total shareholders' deficiency has grown to \$804,506. The statement of operations and deficit shows a net loss of \$120,928 and a total year-end deficit of \$805,506 as opposed to a beginning-of-the-year deficit of \$684,578. The balance sheet shows cash of \$11,400 as of December 31, 1991 and no statement is made as to whether it is unencumbered. The financial statements are accompanied by the Certified Public Accountants' disclaimer letter to the board which contains the following statements:

"Management has elected to omit substantially all of the disclosures ordinarily included in financial statements prepared on the cash basis of accounting. If the omitted disclosures were included in the financial statements, they might influence the user's conclusions about the Company's assets, liabilities, equity, revenue and expenses. Accordingly, these financial statements are not designed for those who are not informed about such matters."

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. The financial statements disclose a growing deficit and are characterized by their preparers as not complying with generally accepted financial disclosure standards. These financial statements do not demonstrate unencumbered assets in any realistic sense. As a result of the examination of applicant's financial statements, we

determine that applicant does not meet the criterion of financial fitness.<sup>3</sup>

With respect to technical expertise, applicant attached Exhibit D to its August amendment, which contains brief resumes of the president and executive vice president of sales for applicant. The August amendment asserts these resumes show the applicant is managed by individuals with both technical and managerial experience in telecommunications. Although the ALJ Ruling required the amendment to address the technical expertise of the applicant and whether it has been rendering service for more than 12 months, only the resumes are provided. In the August amendment, applicant merely asserts that "[a]s addressed by these resumes, NCA is managed by individuals with both technical and managerial experience in telecommunications." The brief resume of the president states he is an accountant who "[i]n 1972 entered a Telecommunications field." It also declares cryptically that he is the president and CEO of "3 separate equipment and long distance company's Import & Distribution of complete telephone systems." The executive vice president states his work experience as "1971-78 Sales Manager Mutual of N.Y. 1978 Telecommunication Sales-Sales Manager. 1980 MIT Sales Manager .... Presently Executive VP of National Communications Association with full responsibility for Sales and overall Corporate Operations." The only other technical information is Exhibit 2 to the application which consists of tariffs and rates which applicant proposes should this application be granted. We find there is insufficient information on which applicant's technical expertise can be assessed.

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<sup>3</sup> The resume of applicant's president shows him to be a partner in an unnamed accounting firm. Should applicant reapply, it must identify the accounting firm so we may ascertain whether it is the firm preparing the financial statements.

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

Findings of Fact

1. Applicant served a summary of the application upon 154 telephone corporations with which it would have likely competed. The summary notice fails to provide proper notice of the docket number of this proceeding and the fact a protest period is open.

2. We have granted exemptions from the requirements of Rule 18(b), regarding service on cities or counties, to other similarly situated nondominant interLATA carriers. There is no basis for treating this application differently from those of other similar applicants.

3. A notice of the filing of the application and two amendments thereto appeared in the Daily Calendar on April 2, 1992. A notice of the filing of the third amendment to the application was calendared on August 11, 1992.

4. On September 10, 1992, Pacific filed a protest, which was withdrawn on September 14, 1992.

5. A hearing is not required.

6. Applicant requests authority to engage only in interLATA service.

7. In D.90-08-032, 37 CPUC2d 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.

8. Applicant's financial statement indicates that applicant lacks the requisite uncommitted cash or equivalent financial resources, as required by D.90-08-032, 37 CPUC2d 130, 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 CPUC2d 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. . .

O R D E R

IT IS ORDERED that:

1. The application of National Communications Association, Inc. (applicant) for a certificate of public convenience and necessity (CPCN) to resell interLATA interexchange telephone service within California is denied.

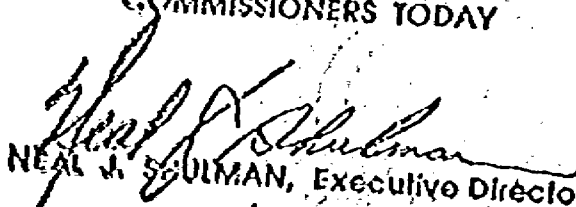
2. This denial is without prejudice to applicant filing a subsequent new application for a CPCN at such time applicant can demonstrate that it meets the minimum requirements established for a CPCN.

This order is effective today.

Dated December 3, 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. SCULMAN, Executive Director