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Decision 92-12-039 December 16, 1992

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of Quantum Communications, Incorporated for a certificate of public convenience and necessity to operate as a reseller of telecommunications services within California.

ORIGINAL

Application 91-12-045 (Filed December 15, 1991)

O P I N I O N

Request

Quantum Communications, Incorporated (applicant), a California corporation, 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 D.90-08-032, 37 CPUC 2d at 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 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. For applications filed after 1991 this minimum requirement increases 5% per year. In addition, an applicant is required to make a

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.

reasonable showing of technical expertise in telecommunications or related business.

Financial Resources

With respect to the requirement that applicant demonstrate that it has a minimum of \$75,000 in uncommitted cash or equivalent financial resources, applicant substantiated that it possesses a sufficient amount of unencumbered cash or cash equivalent to meet the financial requirement. Applicant had approximately \$113,000 in uncommitted cash as of June 30, 1991, as shown in Exhibit III to the application. Applicant meets the financial resources requirement.

Technical Expertise

Applicant presented the business biography of its president, William D. Yotty (Yotty), in its application. From February 1986 to June 1988, Yotty was vice-president of marketing for Liberty Pacific Telephone Company. In July 1988, Yotty marketed voice and data transmission for TMC Corporation. Yotty is currently the president of applicant which acts as an agent for Execuline of Sacramento. Yotty's responsibilities include corporate management, and finance and marketing activities.

The application also explained that applicant is a resale carrier providing 24 hour intrastate and long distance telephone service originating from points within California. However, by a February 25, 1992 letter and an August 3, 1992 response to an administrative law judge ruling which required applicant to submit additional information on its current operations, applicant clarified that it is providing intrastate and long distance telephone service in California as Execuline of Sacramento, Inc.'s (U-5008-C) agent. Applicant has no written agency agreement with Execuline of Sacramento, Inc.

Applicant markets telecommunication services at Execuline of Sacramento, Inc.'s tariffed rates to non-profit organizations, such as to the Assemblies of God. For its marketing efforts,

applicant receives commissions ranging from 30.0% to 52.0% of Execuline of Sacramento, Inc.'s tariff rates, depending on the service provided. In turn, applicant provides commissions of up to 10% to the non-profit organizations for the organizations' marketing efforts to attract organization members to applicant's telecommunications services.

Advertisements to the non-profit organizations have not disclosed applicant's agency capacity because applicant is not aware of any disclosure requirement. Therefore, customers receiving telecommunications service from applicant, as agent of Execuline of Sacramento, Inc., are not aware of applicant's agency status.

Since January 1990 applicant has been billing residential and business intrastate long distance customers, as part of its unwritten agency agreement. As part of its billing procedure, applicant collects the surcharges specified in Public Utilities (PU) Code §§ 431-435, 879, and 2881 which Execuline of Sacramento, Inc. is required to collect and/or pay for universal lifeline telephone service (ULTS), telecommunications devices for the deaf (TDD), and regulation of the public utility telecommunications industry.

Applicant does not remit the surcharge fees to Execuline of Sacramento, Inc. Instead, applicant retains the fees. Applicant stands ready to remit such fees to the Commission or other appropriate entity either upon approval of the application or at such other time as the Commission may direct.

An agent is commonly defined as one that acts or has the power or authority to act for or as the representative of another. In this case, applicant obtained authority to act for and to represent Execuline of Sacramento, Inc. This means that all customers which applicant obtained during the existence of its agency agreement and which have been billed at Execuline of

Sacramento, Inc.'s tariffed rates are, in fact, customers of Execuline of Sacramento, Inc.

Although Execuline of Sacramento, Inc. is not a party to this application, it is Execuline of Sacramento, Inc. that has the public utility responsibility to provide service to such customers and which is responsible for payment of the ULTS, TDD, and user fees addressed in this order. Execuline of Sacramento, Inc., as a public utility, is responsible for actions of its employees and agents and is solely responsible for collecting and paying the fees identified in its tariffs.

Applicant possesses the necessary technical expertise to operate as a non-dominant telecommunications carrier. Therefore, we should authorize the interLATA service that applicant seeks to provide. To the extent that applicant seeks authority to provide intraLATA service, we will deny it. However, as a condition of our granting applicant its requested authority applicant should notify in writing all of its customers obtaining service under Execuline of Sacramento, Inc.'s tariffed rates, and inform them that applicant has been acting as an agent for Execuline of Sacramento, Inc. and that said customers are customers of Execuline of Sacramento, Inc. The notice should also inform the customers that they will continue to be billed at Execuline of Sacramento, Inc.'s tariffed rates. Any transfer of said customers to applicant from Execuline of Sacramento, Inc. should be made through the application process and in accordance with PU Code §§ 851-856.

Applicant should not be authorized to file proposed tariffs or to provide its requested telecommunications service until it has submitted a compliance filing with the Commission Docket Office to substantiate that applicant has complied with the customer notification requirement.

The Commission Advisory and Compliance Division (CACD) should actively pursue collection of all user fees due from Execuline of Sacramento, Inc. with interest, as appropriate. In

this regard, CACD should conduct an audit of Execuline of Sacramento, Inc.'s and applicant's accounting records. Upon completion of the audit and upon any failure of Execuline of Sacramento, Inc. to pay any fees due, the CACD should prepare an order instituting an investigation into the practices of Execuline of Sacramento, Inc. for our consideration.

Findings of Fact

1. Applicant served a copy of the application upon 148 telephone corporations with which it is likely to compete.
2. A notice of the filing of the application appeared in the Daily Calendar of January 22, 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 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 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 than those filed earlier.

9. Applicant has a minimum \$75,000 in uncommitted cash or equivalent financial resources, as required by D.90-08-031, 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 at 147-148, 156, 158 in R.85-08-042.

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 provision of PU Code §§ 816-830 has been granted to other resellers. (See, e.g. D.86-10-007 and D.88-12-076.)

14. Applicant is providing telecommunication services to non-profit organizations as an agent of Execuline of Sacramento, Inc.

15. Advertisements to the non-profit organizations do not disclose applicant's agency capacity.

16. Applicant has an un-written agency agreement with Execuline of Sacramento, Inc.

17. Applicant retains the surcharge fees that it collects for Execuline of Sacramento, Inc. The actual amount of such outstanding surcharge fees has not been verified.

18. Public convenience and necessity require the service to be offered by applicant.

Conclusions of Law

1. Applicant should be treated no differently than other non-dominant interLATA carriers which have requested and received a CPCN to provide interLATA telecommunications service in California.

2. All of applicant's customers receiving telecommunication service under applicant's agency agreement with Execuline of Sacramento, Inc. should be notified that applicant has been acting

as an agent and that said customers are customers of Execuline of Sacramento, Inc.

3. CACD should conduct an audit of Execuline of Sacramento, Inc.'s accounting records.

4. Applicant is subject to:

- a. The current 3.0% surcharge applicable to service rates of intraLATA toll and intrastate interLATA toll (PU Code § 879; Resolution T-14400) to fund the Universal Lifeline Telephone Service (ULTS);
- 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 1992-93 fiscal year (Resolution M-4760).

5. The application should be granted to the extent set forth below.

6. 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 Quantum Communications, Incorporated (applicant) to operate as a reseller of interLATA telecommunications service offered by communications common carriers in California, subject to Ordering Paragraph 2, Ordering Paragraph 16, and 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 45 days after the effective date of this order and prior to applicant filing any proposed tariffs to provide the telecommunication services being requested, applicant shall notify all of its customers obtaining service from applicant as an agent for Execuline of Sacramento, Inc. in writing that applicant has been acting as an agent for Execuline of Sacramento, Inc. and that said customers are customers of Execuline of Sacramento, Inc. The notice shall also inform the customers that they will continue to be billed at Execuline of Sacramento, Inc.'s tariffed rates. Any transfer of said customers to applicant from Execuline of Sacramento, Inc. shall be requested through the application process and in accordance with PU Code §§ 851-856.

3. To the extent that applicant requests authority to provide intraLATA telecommunications service, it is denied.

4. Within 30 days after this order is effective, applicant shall file a written acceptance of the certificate granted in this proceeding with the Commission Docket Office.

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 and D.92-06-034, 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, 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 or not less than five (5) days' notice."

6. Applicant may deviate from the following provisions of GO 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 those 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-5265-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. CACD shall audit Execuline of Sacramento, Inc.'s accounting records to determine whether the fees discussed in this order and collected by applicant as an agent for Execuline of Sacramento, Inc. have been paid by Execuline of Sacramento, Inc. Upon completion of the audit and upon any failure of Execuline of Sacramento, Inc. to pay any fees due, the CACD shall prepare an order instituting an investigation into the practices of Execuline of Sacramento, Inc. for our consideration.

17. The Executive Director shall serve a copy of this order on CACD.

This order is effective today.

Dated December 16, 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. Sulmasy
NEAL J. SULMASY, 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)