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Decision 95-08-030 August 11, 1995

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application)
of V.I.P. Telephone Network, Inc.)
for a Certificate of Public)
Convenience and Necessity to Operate)
as a Reseller of InterLATA and)
IntraLATA Telecommunications)
Services Within the State of)
California.)

Application 95-02-032
(Filed February 27, 1995)

ORIGINAL

O P I N I O N

V.I.P. Telephone Network, Inc. (applicant), a Delaware corporation qualified to do business in the State of California, seeks a certificate of public convenience and necessity (CPCN) under Public Utilities Code § 1001 to permit it to resell interLocal Access and Transport Area (LATA) and intraLATA telecommunications services in California.¹ Applicant seeks authority to provide long distance telephone service between points in California, operating as a switchless reseller. By Decision (D.) 84-01-037 (14 CPUC2d 317 (1984)) and later decisions, we authorized 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. By D.94-09-065, issued after this application was filed, we authorized the provision of

¹ California is divided into ten 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.

competitive intralATA service, effective January 1, 1995, to carriers meeting specified criteria.

The Commission has established two major criteria for determining whether a CPCN should be granted. An applicant who is a switchless reseller² must demonstrate that it has a minimum of \$25,000 of cash or cash equivalent (as described in D.91-10-041, Appendix A, Paragraph 5.1), reasonably liquid and readily available to meet the firm's start-up expenses. Such applicants shall also document any deposits required by local exchange companies or interexchange carriers and demonstrate that they have additional resources to cover all such deposits. (D.93-05-010.) 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 it entails.

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

² D.93-05-010 defines a switchless reseller as a nondominant interexchange carrier with the following characteristics: it uses the switch of another carrier; it usually, but not always, uses access circuits that the underlying carrier purchases from a local exchange carrier; it provides service in its own name, and its customers view it as their telephone company for interLATA and interstate calls. D.92-06-069 noted that it is possible to control, operate, or manage telephone lines without owning them. The decision also notes that resellers which do not own or directly operate their own telephone wires may still have plant which is owned, controlled, operated, and/or managed in order to facilitate communication by telephone.

fitness. The meager financial information provided raises serious concerns. In D.91-10-041, we provided guidance as to a wide array of means by which the requisite financial capability can be demonstrated. The applicant can rely on cash in any form, certificates of deposit or other liquid deposits, preferred stock proceeds, letters of credit, lines of credit, and many others. Applicant's financial statements provided with the application, however, show cash of only \$10,000, which is not adequate to meet our very reasonable thresholds, and show no other assets that can be reasonably evaluated as liquid and readily available to meet the immediate cash flow needs of a business.

Based primarily on applicant's failure to demonstrate adequate liquid resources, we will deny the services that applicant seeks to provide. This denial is without prejudice to applicant's filing a subsequent new application for a CPCN at such time as applicant can demonstrate it meets the minimum requirements for a CPCN, as discussed above.

In addition, should applicant file a subsequent application, applicant must disclose any deposits required by underlying carriers or represent that local exchange carriers or interexchange carriers with which applicant will connect do not require any such deposits.

Findings of Fact

1. Applicant served a copy of the application and its amendment upon all known telephone corporations with which it is likely to compete.

2. A notice of the filing of the application appeared in the Commission's Daily Calendar on March 30, 1995.

3. No protests have been filed.

4. A hearing is not required.

5. By prior Commission decisions we have authorized competition in providing interLATA telecommunications service but

have generally barred those offering such service from holding out to the public the provision of intraLATA service.

6. By D.94-09-065, we authorized the provision of intraLATA service, effective January 1, 1995, to telecommunications carriers meeting specified criteria.

7. In D.90-08-032, 37 CPUC2d 130, as modified by D.91-10-041 and D.93-05-010, the Commission established minimum criteria for the granting of a CPCN for resellers of intrastate interLATA services relating to financial fitness and technical expertise.

8. There is no basis for treating this applicant differently than those treated earlier.

9. Applicant's financial statement indicates that applicant lacks the uncommitted cash or equivalent financial resources as required by D.90-08-032, as modified by D.91-10-041 and D.93-05-010.

10. Applicant has submitted with its application a complete and draft of applicant's initial tariff which complies with the requirements established by the Commission including prohibitions on unreasonable deposit requirements.

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 V.I.P. Telephone Network, Inc. for a certificate of public convenience and necessity (CPCN) to operate as a reseller of interLocal Access and Transport Area (LATA) and intraLATA telecommunications 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.

This order is effective today.

Dated August 11, 1995, at San Francisco, California.

DANIEL Wm. FESSLER
President
P. GREGORY CONLON
JESSIE J. KNIGHT, JR.
HENRY M. DUQUE
Commissioners

I CERTIFY THAT THIS DECISION
WAS APPROVED BY THE ABOVE
COMMISSIONERS TODAY

Wesley Franklin
Acting Executive Director