

SEP. 8. 1995

Decision 95-09-021 September 7, 1995

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of Voyager Networks, Inc. for a Certificate of Public Convenience and Necessity to operate as a reseller of intraLATA and interLATA telecommunication services within California.

ORIGINAL

OPINION

1. Summary

Voyager Networks, Inc. (applicant), a Delaware corporation authorized to conduct business in California, seeks a certificate of public convenience and necessity (CPCN) under Public Utilities (PU) Code § 1001 to permit it to resell interLATA and intraLATA telephone services in California. Granted.

2. Nature of Application

By Decision (D.) 84-01-037, 14 CPUC2d 317 (1984), and later decisions, we authorized interLATA entry generally. By D.94-9-065, we authorized competitive intraLATA services effective January 1, 1995. The Commission has established two major criteria for determining whether a CPCN should be granted. An applicant

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

1 California is divided into Local Access and Transport Areas (LATAs) of various sizes, each containing numerous local telephone exchanges. "InterLATA" describes telecommunications service operating in one LATA and terminating in another "IntraLATA" describes telecommunications service originating and terminating within a single LATA.

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that is a switchless reseller² must demonstrate that it has a minimum of \$25,000 in cash or cash equivalent available to meet the firm's start-up expenses (D.91-10-041/Appendix A, Paragraph 5(1)) and that it has additional resources to cover deposits required by other telephone carriers (D.93-05-010). In addition, an applicant is required to make a reasonable showing of technical expertise.

Applicant here has provided a balance sheet (Exhibit E) indicating cash on hand and accounts receivable in the combined amount of \$760,734, as well as a personal guarantee from Joseph Perri, Chairman of applicant in the amount of \$25,000 (Exhibit J), indicating it has more than \$25,000 in available cash, and that it has additional resources for required deposits.

Applicant also has provided information on its key managers. David Walsh, Chief Executive Officer, is responsible for overall management of the company. Prior to joining Voyager Networks, Inc., he designed the New York Commodities Exchange telecommunications network. Prior to that, he was Director of Technology for Garban & Garvin Gaybulla, where he headed all strategic technological development for the firm, including their New York City fiber optic network.

Barry Solomon, Vice President and Chief Operating Officer, was a founder and principal of Vista International

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 plants which are owned, controlled, operated and/or managed in order to facilitate communication by telephone.

Telecommunications, a reseller of AT&T and ROI Long Distance leased services to business customers. Earlier telecommunications work and experience includes Director of Corporate Communications for the National Broadcasting Company.

Arnold Frumin is Treasurer of Voyager. His telecommunications experience started in 1968 when he was a consultant to Teltronics, one of the largest and leading interconnect companies in the New York area. He has been active in telecommunications resale activities since 1990 when he was one of the founders of MaBell Marketing. Frumin holds an MBA from the University of Michigan.

Applicant states that it will offer its telecommunications services throughout the state. Proposed tariffs of the company, comparable to those of competing carriers, are attached to the application as Exhibit H.

Applicant requests a waiver of Rule 18(b) to serve a copy of the application on city and county planning agencies. Applicant also asks that it be permitted to serve a copy of the application without exhibits on entities with which it may compete. These requests have been granted routinely in the past. (American Telephone Network, Inc. (1992) 43 CPU02d 380.)

We will authorize the interLATA and intraLATA services that applicant seeks to provide.

Findings of Fact

1. Applicant served a copy of its application, without exhibits, to 158 telecommunications corporations with which it may compete.

2. A notice of the filing of the application appeared in the Daily Calendar on April 25, 1995.

3. No protests have been filed.

4. By prior Commission decisions we authorized competition in providing interLATA telecommunications service but generally

barred those offering such service from holding out to the public the provision of intralATA service. By D. 94-09-065, we authorized competitive intralATA services effective January 1, 1995, for carriers meeting specified criteria.

6. Applicant has demonstrated that it has a minimum of \$25,000 in cash available to meet its start-up expenses.

7. Applicant has demonstrated that it can meet the level of deposits required for implementing its service.

8. Applicant has demonstrated that its management possesses the requisite technical experience to operate its service.

9. Applicant has submitted with its application a draft of its initial tariff, and this tariff complies with Commission requirements, including prohibitions on unreasonable deposit requirements.

10. 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.

11. The Commission has routinely granted nondominant interexchange carriers, such as applicant, an exemption from the Rule 18(b) requirement that the application be served on cities and counties in the proposed service area.

12. The Commission has granted nondominant interexchange carriers an exemption from the Rule 18(b) requirement to permit applicant to serve its application on competitors without attaching exhibits to the application.

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

Conclusions of Law

1. No hearing is required.

2. Applicant has the financial ability to provide the proposed service.

Applicant has made a reasonable showing of technical expertise in telecommunications and the extent of the service. Public convenience and necessity require the interLATA and intraLATA services to be offered by applicant.

- 5. Applicant is subject to:
 - a. The current 13.0% surcharge applicable to service rates of intraLATA toll and intrastate interLATA toll to fund the Universal Lifeline Telephone Service (PU Code § 879; D.94-09-065);
 - b. The current (0.3% surcharge on gross intrastate interLATA revenues to fund the California Relay Service and communications devices fund (PU Code § 2881; Resolution T-15254);
 - c. The user fees provided in PU Code §§ 431-435, which is 0.1% of gross intrastate revenue for the 1995-96 fiscal year (Resolution M-4777); and

d. The California High Cost Fund fee of 0.5% (D.94-09-065).

6. Applicant should be exempted from Rule 18(b)'s requirement of service of the application on cities and counties, and should be permitted to serve its application, without exhibits, on entities with which it may compete.

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

8. Because of the public interest in competitive interLATA and intraLATA services, the following order should be effective immediately.

O R D E R

IT IS ORDERED that:

- 1. A certificate of public convenience and necessity is granted to Voyager Network, Inc. (applicant) to operate as a

reseller of interLocal Access and Transport Area (LATA) services and, to the extent authorized by Decisions (D) 94-09-065/ intraLATA services offered by communications common carriers in California.

2. Applicant shall file a written acceptance of the certificate granted in this proceeding.

3. a. Applicant is authorized to file with this Commission tariff schedules for the provision of interLATA and intraLATA service. Applicant may not offer interLATA or intraLATA 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 nondominant 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.

"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 tariffs 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, or first class mail notice to customers of the pending increased rates.

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 notifications 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 on not less than five (5) days notice.

4. Applicant may deviate from the following provisions of (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 these 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 4.

5. Applicant shall file as part of its initial tariff, after the effective date of this order and consistent with ordering Paragraph 3, a service area map.

6. Applicant shall notify this Commission in writing of the date interLATA service is first rendered to the public within 5 days after service begins and again within 5 days of when interLATA service begins.

7. Applicant shall keep its books and records in accordance with the Uniform System of Accounts specified in Title 47, Code of Federal Regulations, Part 327.

8. In the event the books and records of the applicant are required for inspection by the Commission or its staff, applicant shall either produce such records at the Commission's offices or reimburse the Commission for the reasonable costs incurred in having Commission staff travel to applicant's office.

9. 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.

10. Applicant shall ensure that its employees comply with the provisions of PU Code § 2889.5 regarding solicitation of customers.

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. The corporate identification number assigned to applicant is U-5500-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.

13. 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.

14. Applicant is exempted from the provisions of PU Code §§ 816-830.

15. In response to the applicant's request for waiver, applicant is exempted from Rule 18(b) of the Commission's rules of Practice and Procedure to the extent that the rule requires applicant to serve a copy of its application on the cities and counties it proposes to operate in and to the extent that the rule

requires applicant to serve a copy of all exhibits attached to its application on potential competitors.

16. If applicant is 90 days or more late in filing an annual report or in remitting the fees listed in Conclusion of Law Number 4, CACD shall prepare for Commission consideration a resolution that revokes the applicant's certificate of public convenience and necessity, unless the applicants have received the written permission of CACD to file or remit late.

17. Applicant's motion for a limited protective order keeping its financial documents confidential is granted.

18. The application is granted, as set forth above.

This order is effective today.

Dated September 7, 1995, at Los Angeles, 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

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 a:
 - 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)