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Decision 95-11-004 November 8, 1995

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
Nationwide Long Distance, Inc.)
for a certificate of public convenience)
and necessity to operate as a reseller)
of telecommunications services within)
the State of California.)

Application 95-03-066
(Filed March 30, 1995)

ORIGINAL

O P I N I O N

Nationwide Long Distance, Inc. (applicant), a Texas Corporation qualified to do business in California, seeks a certificate of public convenience and necessity (CPCN) under Public Utilities (PU) Code § 1001 to permit it to resell inter Local Access and Transport Area (LATA) and intraLATA telephone services in California.¹

On May 11, 1995, a protest to this application was filed by Nationwide Cellular Service, Inc. (Nationwide), a California certificated cellular carrier which provides cellular service to more than 33,000 subscribers in the combined Los Angeles, San Diego, and San Francisco Cellular Geographical Service Areas and nationwide to more than a quarter of a million cellular subscribers.

Nationwide protested this application on the basis that Commission approval of this application would enable applicant "to enter the same market as Nationwide, usurp Nationwide's valuable

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.

tradename and hard-won goodwill, and conduct business directly competitive with that of Nationwide using that very name and goodwill."

Nationwide sought a hearing to substantiate its reputation, trade name, and confusion among customers and potential customers which will result in Nationwide suffering serious and irreparable damage to its reputation, loss of customers and revenue, and increases of its regulatory burdens and the cost of compliance therewith. Subsequently, by its September 18, 1995 motion Nationwide withdrew its protest to the application. The motion should be granted.

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. Subsequently, by D.94-09-065 we authorized competitive intraLATA services effective January 1, 1995, for 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, 41 CPUC2d 520 (1991)), reasonably liquid and readily available to meet

² D.93-05-010 defines a switchless reseller as a non-dominant interexchange carrier (NDIEC) 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 an LEC; 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.

the firm's start-up expenses. Such applicants shall also document any deposits required by local exchange companies or interexchange carriers (IECs) 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.

As part of its application applicant provided an audited financial statement which showed that applicant had \$500,000 in cash at June 30, 1994. In addition, applicant had \$735,000 in stockholders equity at June 30, 1994. This indicates that applicant satisfies our criteria for being reasonably liquid and readily available to meet the applicant's needs.

Applicant has also provided information on its four key officers indicating their education, technical training, and experience as detailed in Exhibit V to the application. These key officers are Chief Executive Officer and President Kim Wilhelm, Vice President and Treasurer Ellen Jo Wilhelm, Secretary Chester M. Ranger, and Customer Relations Director James A. Kennedy.

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

Findings of Fact

1. Applicant served a copy of the application upon 158 telephone corporations with which it is likely to compete.
2. A notice of the filing of the application appeared in the Daily Calendar on April 18, 1995.
3. A protest has been filed by Nationwide.
4. Nationwide withdrew its protest on September 18, 1995.
5. A hearing is not necessary.
6. 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.

7. By D.94-09-065, we authorized competitive intraLATA services effective January 1, 1995, for carriers meeting specified criteria.

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

9. Applicant's technical experience consists of 4 employees with a combined experience of over 35 years in the telecommunications and related field.

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

11. 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.

12. The Commission has routinely granted nondominant interexchange carriers, such as applicant, an exemption from Rule 18(b) to the extent that the rule requires applicant to serve a copy of its application on cities and counties in the proposed service area.

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

2. Applicant has made a reasonable showing of technical expertise in telecommunications or in a related business.

3. Public convenience and necessity require the interLATA and intraLATA services to be offered by applicant.

4. Applicant is subject to:

- a. The current 3.0% 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 fee provided in PU Code §§ 431-435, which is 0.1% of gross intrastate revenue for the 1995-96 fiscal year (Resolution M-4778); and
- d. California High Cost Fund is 0.5% (D.94-09-065).

5. Applicant should be exempted from Rule 18(b)'s requirement of service of the application on cities and counties in the proposed service area.

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

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

ORDER

IT IS ORDERED that:

1. A certificate of public convenience and necessity is granted to Nationwide Long Distance, Inc. (applicant) to operate as a reseller of the interLocal Access and Transport Area (LATA) and, to the extent authorized by Decision (D.) 94-09-065, intraLATA telecommunication services offered by communication 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 services 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 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, 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 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 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 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 intraLATA 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 32.

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-5529-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. 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.

16. If applicant is 90 days or more late in filing an annual report or in remitting the fees listed in Conclusion of Law 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. Nationwide Cellular Service, Inc.'s protest to this application is dismissed pursuant to its request.

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

19. Application 95-03-066 is closed.
This order is effective today.
Dated November 8, 1995, at San Francisco, California.

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

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)

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.