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Decision 95-11-051 November 21, 1995

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of Ogden Communications, Inc., for a Certificate of Public Convenience and Necessity to Provide Intrastate IntraLATA and InterLATA Telecommunications Services as a Reseller Within the State of California.

Application 95-08-052 (Filed August 22, 1995)

OPINION

1. Summary

Ogden Communications, Inc. (applicant), a Delaware corporation authorized to conduct business in California, seeks a certificate of public convenience and necessity (CPCN) under Public Utilities Code (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.94-09-065, 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

California is divided into 10 Local Access and Transport Areas (LATAs), of various sizes, each containing numerous local telephone exchanges. "InterLATA" describes telecommunications service access originating 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 is newly formed and is wholly owned by a subsidiary of the Ogden Corporation. Applicant has submitted an annual report for its parent company, a corporation with \$2 billion in revenue in 1994, and other documents showing that applicant is able to draw upon sufficient financial resources to finance its first year of operations and to cover any required deposits (Exhibit B.)

Applicant also has provided information on its key officers. (Application pp. 2-4.) Among them are Joseph H. Haggler, vice-president of network operations, who has been associated with telecommunications companies since 1981, and Robert DiGia, vice-president and treasurer, who has held accounting positions with Ogden Corporation for 30 years. Officers of Ogden Corporation also will serve in executive positions with applicant.

Applicant states that it will offer its telecommunications services throughout the state. Its services will be aimed primarily at businesses and other resale carriers for their direct use of communications involving resale of Message Telecommunications Services and Wide Area Telecommunications Services. Proposed tariffs of applicant, comparable to those of

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.

competing carriers, are attached to the application as Exhibit B. Counsel for applicant states that no officer of applicant has been involved in any other telecommunications company that has gone out of business or has filed for bankruptcy.

Applicant requests a waiver of Rule 518 (b) in order that it need not 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 to entities with which it may compete. These requests have been granted routinely in the past (American Telephone Network, Inc. (1992) 43 TC 202 81 380.)

We will authorize the interLATA and intraLATA services that applicant seeks to provide from the Rules. Findings of Fact

1. Applicant served a copy of its application without exhibits, to 279 telecommunications corporations with which it may compete.

2. A notice of the filing of the application appeared in the Daily Calendar on October 6, 1995.

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 services.

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

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.

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.)

14. No officer of applicant has been involved in any other telecommunications company that has gone out of business or has filed for bankruptcy.

Conclusions of Law

1. No hearing is required.

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

3. Applicant has made a reasonable showing of technical expertise in telecommunications.

4. Public convenience (and necessity) require the interLATA and intraLATA services to be offered by applicant.

5. Applicant is subject to

- a. The current 3.0% surcharge applicable to all intrastate services except for those excluded by D.94-09-065 to fund Universal Lifeline Telephone Service (PU Code § 879);

The current 0.3% surcharge applicable to all intrastate services except for those excluded by D.94-09-065 to fund the California Relay Service and Communications Devices Fund (PU Code § 2881, D.94-09-065). The user fee provided in PU Code §§ 431-435, which is 0.1% of gross intrastate revenue for the 1995-1996 fiscal year (Resolution 4778) and

d. The current 0.5% surcharge applicable to all intrastate services except for those excluded by D.94-09-065 to fund the California High Cost Fund (PU Code § 739.30, D.94-09-065)

6. Applicant should be exempted from the Rule 18(b) 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:

ORDER

IT IS ORDERED that:

1. A certificate of public convenience and necessity is granted to Ogden Communications, Inc. (applicant) to operate as a reseller of Local Access and Transport Area (LATA) services, both interLATA and to the extent authorized by Decision (D.) 94-09-065, intraLATA, offered by communications 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 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;

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.90-11-023 for existing services shall become effective on not less than 5 working days' notice. Customer notifications is not required for such minor rate increases.

Applicant shall file a letter of advice of the 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. 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 5.

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-5539-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 in which it proposes to operate, and to the extent the rule requires service of exhibits to the application on 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 5, CACD shall prepare for Commission consideration a resolution that revokes the applicant's certificate of public convenience and necessity, unless the applicant has received the written permission of CACD to file or remit late.

17. The application is granted, as set forth above.
This order is effective today.
Dated November 21, 1995, at San Francisco, California.

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

A.95-08-052 ALJ/GEW/jft

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)