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Decision 95-12-039 December 18, 1995

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of Free Plus Calling, Inc. for a Certificate of Public Convenience To Operate As A Reseller of InterLATA Telecommunications Service Within the State of California.

Application 95-09-028 (Filed September 5, 1995)

ORIGINAL

Free Plus Calling, Inc. (Free Plus Calling) seeks a certificate of public convenience and necessity to provide interLocal Access and Transport Area (interLATA) long distance telephone services between points within California as a nondominant interexchange carrier (NDIEC). In particular, Free Plus Calling requests authorization to operate as a non-facilities based switchless reseller of intrastate interLATA long distance toll service. Applicant is incorporated in Texas and is in good standing under the laws of that state. It is authorized to do business in California. Free Plus Calling is in the business of reselling telecommunications services including interstate, interLATA, and wide area telephone service (WATS) of other underlying facilities based carriers. Free Plus Calling does not own or operate any facilities in this jurisdiction (leased lines or switching mechanisms).

Applicant requests authorization to resell interLATA intrastate WATS, and other long distance services throughout California as an NDIEC. It requests authorization to operate as a switchless reseller, relying upon the facilities of selected underlying facilities based carriers. It does not propose to acquire, own, construct, or extend any telecommunications facilities.

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Free Plus Calling asserts that it is a conservative telecommunications service company. Based upon its management experience in the industry and observing other similar companies come and go because of poor management decisions in expanding too quickly without a customer base or capital to back expansion plans, Free Plus Calling believes it has chosen a conservative approach to business. Its marketing and customer service activity have resulted in steady customer growth this fiscal year, in its opinion. It is presently authorized to resell long distance service in a number of states, including Texas, New Jersey, Oklahoma, Oregon, Utah, and Montana. Authority in several other states is awaiting final approval. Free Plus Calling claims that it has a competent and experienced management staff. None of the principals of applicant has ever filed for bankruptcy. Applicant alleges that it has sufficient financial resources to provide the service for which it is requesting authorization and that its managers have the requisite experience to operate the company.

Applicant asserts that resellers such as Free Plus Calling purchase basic telecommunications service in bulk from underlying facilities based carriers and resell to customers who may be too small to purchase such bulk services. NDIEC's such as Free Plus Calling encourage the telecommunications market to develop in a manner which increases efficiency in the utilization of its service and facilities, give rise to greater customer choice and more diversified service offering, encourage providers of the service to offer higher quality service, and to develop more innovative ways of marketing and using such services.

The Commission has established criteria for determining whether a certificate of public convenience and necessity should be issued to selected facilities of selected switches reseller, relying upon the underlying facilities based carriers. It does not propose to acquire, own, construct, or extend any telecommunications facilities.

granted. An applicant who is a switchless reseller must demonstrate that it has a minimum of \$25,000 of cash or cash equivalent (as described in Decision (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 (LECs) 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 financial information demonstrating that it satisfies our criteria for being reasonably liquid and has readily available funds to meet its needs.

We will authorize the interLATA service that applicant seeks to provide.

Findings of Fact

1. Applicant served a copy of the application upon telephone corporations with which it is likely to compete.

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

3. No protests have been filed.

4. A hearing is not required.

1 D.93-05-010 defines a switchless reseller as a 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.

5. 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.

6. Applicant has demonstrated that it has a minimum of a net \$100,000 of cash readily available to meet its start-up expenses.

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

8. Applicant has represented that no one associated with or employed by applicant was previously associated with a NDIEC that filed for bankruptcy or went out of business.

9. 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.

10. The Commission has routinely granted NDIECs such as applicant, an exemption from Rule 18(b), where no construction is involved, to the extent that the rule requires applicants to serve a copy of its application on cities and counties in the proposed service area and to the extent that it requires applicants to provide a conformed copy of all exhibits attached to applicant's filed application to potential competitors.

11. Exemption from the provisions of Public Utilities (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 service be offered by applicant.

4. Applicant is subject to the following conditions:

a. The current 3.0% surcharge applicable to all intrastate services except for those excluded by D.94-09-065 to fund the Universal Lifeline Telephone Service (PU Code § 1879; D.94-09-065);

b. 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 Order Devices Fund (PU Code § 2881; D.94-09-065);

c. The user fee provided in PU Code §§ 431-435, which is 0.1% of gross intrastate revenue for the 1995-1996 fiscal years (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).

5. Applicant should be exempted from Rule 18(b)'s requirement of service of the application in cities and counties in the proposed service area and service of all exhibits attached to this application on potential competitors.

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

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

O R D E R

IT IS ORDERED that:

1. A certificate of public convenience and necessity (CPCN) is granted to Free Plus Calling, Inc. (applicant) to operate as a reseller of interLocal Access and Transport Area (interLATA) telecommunication service offered by communication common carriers in California.

2. Within 30 days after the effective date of this order, 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 service. Applicant may not offer interLATA service until tariffs are on file.

Applicant's initial filing shall be made in accordance with General Order (GO) 96A 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 Decision (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. 91-01-029 for existing services shall become effective on not less than 5 working days' notice. Customer notifications in California

shall either be required for such minor rate increases.

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.

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.

Applicants 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 a 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.

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.

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

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 Public Utilities (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-55434C 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, the 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.

8. In the event the books and records of the applicant are required for inspection by the Commission or its staff, applicant

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 CPCN, unless applicant has received the written permission of CACD to file or remit late.

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

18. Application 95-09-028 is closed.

This order is effective today.

Dated December 18, 1995, at San Francisco, California.

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

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)