

Decision 96-01-020 January 24, 1996

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of U.S. Advantage Long Distance, Inc. for a Certificate of Public Convenience to Operate as a Reseller of InterLATA Telecommunications Services within the State of California

ORIGINAL

Application, 95-09-027 (Filed September 5, 1995)

In addition, an applicant is required to have a reasonable amount of technical expertise in telecommunications or a related business.

OPINION

As part of its application, U.S. Advantage provided an unaudited balance sheet and unaudited income statement. U.S. Advantage 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 intrastate interLATA telephone services in California.

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, we authorized competitive intralATA services effective January 1, 1995, for carriers meeting specified criteria.

Commission Criteria

The Commission has established two major criteria for determining whether a CPCN should be granted. An applicant who is always a reseller of another carrier's services, but not always a carrier, is not eligible for a CPCN. An applicant who provides service in its own name, and its customers view it as their telephone company for interLATA and intralATA service, is eligible for a CPCN. 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, reseller originating and terminating within a single LATA.

Decision 98-01-020 January 24, 1998
 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 (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, U.S. Advantage provided an unaudited balance sheet and unaudited income statement demonstrating that the company meets the Commission's criteria. The records indicate that applicant has more than \$25,000 consisting of cash. It satisfies our criteria for being reasonably liquid and readily available to meet the applicant's needs.

Applicant has provided information on its key officers indicating their experience. It can be summarized as follows:
 James Conn: Mr. Conn has been an owner and manager in the telecommunications industry since 1987. He is the president and a director, stockholder, and co-founder of U.S. Advantage.
 Raye Sorenson: Mr. Sorenson has been involved in the design, installation, operations, and management of electronics and

The Commission has established two major criteria for a switchless reseller. D.93-05-010 defines a switchless reseller as a nondominant 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 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. U.S. Advantage is a switchless reseller.

communications facilities for 19 years, principally with the U.S. Navy telecommunication community. We will authorize the interLATA service that applicant seeks to provide. Findings of Fact

1. Applicant served a copy of the application upon 291 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 17, 1995.

3. A hearing is not required.

4. By prior Commission decisions, we authorized competition in providing interLATA telecommunications services but generally barred those offering such services from holding out to the public the provision of intralATA service.

5. 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 of cash reasonably liquid and readily available to meet its start-up expenses.

7. Applicant's technical experience consists of 2 employees with a combined experience of over 37 years in the telecommunications and electronics industry.

8. 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.

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

11. Since no facilities are to be constructed, the proposed operation will not have a significant effect upon the environment.

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

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 and in a related business.

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

4. Applicant is subject to a liability of cash reasonably in excess of \$25,000.

a. The current 3.2% surcharge applicable to all intrastate services except for those excluded by D.94-09-065, as modified by D.95-02-050, to fund Universal Lifeline Telephone Service (PU Code § 879; Resolution T-15799).

b. The current 0.36% surcharge applicable to all intrastate services except for those excluded by D.94-09-065, as modified by D.95-02-050, to fund the California Relay Service and Communications Devices Fund (PU Code § 2881; Resolution T-15801).

c. 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,

The current 09274 surcharge applicable to all intrastate services, except for those excluded by D.94-09-065, as modified by D.95-02-050, to fund the California High Cost Fund, (PU Code § 739.30)

Applicant should be exempted from Rule 18(b) requirement of service of the application on 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 service, 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 U.S. Advantage Long Distance, Inc. (applicant) to operate as a reseller of the interLocal Access and Transport Area (LATA) telecommunication service offered by communication common carriers in California, subject to the following conditions:

- a. Applicant shall offer its services only on an interLATA basis;
- b. Applicant shall not offer intralATA services; and
- c. Applicant shall not hold out to the public that it has authority to provide, or that it does provide, intralATA services.

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 service. Applicant may not offer such 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 Decision in re (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 (Federal Communications Commission) 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. Applicant shall not hold out to the public as "essential 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 are not required for such rate increases.

e. Advance 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.

Applicant shall file a letter of advice with the Commission regarding any proposed changes in text not affecting rates or relocations of text in the tariff schedules, shall become effective on forty (40) days' notice.

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.

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 Public Utilities (PU) Code's 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-5557-U 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's 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. Although applicant has not requested it, 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 because applicant is not constructing any facilities.

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

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

18. Application 95-09-027 is closed.

This order is effective today.

Dated January 24, 1996, at San Francisco, California.

P. GREGORY CONLON
JESSIE J. KNIGHT, Jr.
HENRY M. DUQUE
JOSIAH L. NEEPER
Commissioners

Commissioner Daniel Wm. Fessler
is necessarily absent on official
business.

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)