

Mailed  
A 95-10-025  
FEB 8 1996

Decision 96-02-014 February 7, 1996

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA  
In the Matter of the Application of SmartTalk TeleServices, Inc., for a certificate of public convenience and necessity to provide interLATA Resold Telecommunications Services.

ORIGINAL

Application 95-10-025 (Filed October 5, 1995)  
to meet the firm's start-up expenses. Such applications shall also document support by local exchange companies or interexchange carriers that they have additional resources to cover all such deposits. (D.93-02-010.)

In addition, SmartTalk TeleServices, Inc. (SmartTalk or applicant), a California corporation, seeks a certificate of public convenience and necessity (CPCN) under Public Utilities (PU) Code § 1001 to permit it to resell interLATA Access and Transport Area (LATA) in California.

By Decision (D.93-02-037 (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.

The SmartTalk and CheapTalk Debit Cards offer a method of prepayment of long distance charges. End users will be able to buy SmartTalk Cards in various denominations from a variety of retail and other outlets. Each card will contain two unique identifying

D.93-02-010 defines a switchless reseller as a non-terminating interexchange carrier (INDEC) 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 IEC; it provides service in its own name, and its customers view it as their service provider. LATA is defined as a geographic area containing numerous local telephone exchanges. InterLATA describes services, revenues, and functions that relate to telecommunications originating in one LATA and terminating in another LATA. IntralATA describes services, revenues, and functions that relate to telecommunications originating and terminating within a single LATA.

Decision 95-05-010 February 7, 1995

The Commission has established two major criteria for determining whether a CPCN should be granted. An applicant who is a switchless reseller<sup>2</sup> must demonstrate that it has a minimum of \$25,000 of cash or cash equivalent (as described in D.93-10-041, 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.

According to the application, SmartTalk is a non-LEC and facilities based reseller of long-distance telephone service offered by facilities-based interexchange carriers, such as AT&T and MCI. SmartTalk will obtain inbound and outbound WATS, and WATS-type services from interexchange carriers that are certified to render service in California. These services will in turn be resold to SmartTalk's customers who purchase its phone cards and other calling products.

The SmartTalk and CheapTalk Debit Cards offer a method of prepayment of long distance charges. End users will be able to buy SmartTalk Cards in various denominations from a variety of retail and other outlets. Each card will contain two unique identifying

<sup>2</sup> 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 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 a plant which is owned, controlled, operated and/or managed in order to facilitate communication by telephone.

numbers and may be used at any touch-tone telephone. Callers will obtain access to the SmartTalk system by dialing an area and a conventional 800 or POTS number. As a call is placed, SmartTalk's preprocessor tracks the call and the costs associated with the call are deducted on a real time basis from the prepaid amount on the card. SmartTalk will also permit corporate accounts to assign unique personal identification numbers to authorized personnel for use under a master account number, with sub-accounts. The master account and sub-accounts can be either prepaid or invoiced, with a preset wage limit for a business but will not be subject to a wage and motion administrative law judge hearing.

Callers may add value to a card at the initiation or termination of a call in order to continue use of the card. The caller receives notification when the remaining value of the card will only permit five additional minutes of conversation time; notification when two minutes are left; and notification when a thirty seconds of time remains. Additional value can be added to a SmartTalk card by entering a valid commercial or credit card number. Thus, if a caller wishes to continue using the same SmartTalk card for an extended period, he/she can easily do so by automatically adding value to the card. Additional value may not be added to Cheaptalk cards.

SmartTalk Debit Phone Card Products will be available for purchase and distribution at various retail establishments, such as restaurant chains, convenience stores, shopping clubs, hotels, or gas stations. SmartTalk also plans to market its Phone Cards directly to a variety of groups, such as businesses whose employees travel, or associations whose members have a common interest, or for fund-raising for affinity groups. Charges for calls of this type will be prepaid upon purchase by the subscriber of a SmartTalk Debit Phone Card, or by invoice to corporate accounts with master account numbers assigning specified account and security numbers to proprietary personnel.

By providing interATA telecommunications service but generally

As part of its application, applicant provided a balance sheet and income statement demonstrating that applicant has more than \$25,000 in cash, which satisfies our criterion for assets reasonably liquid and readily available to meet the applicant's needs.

Applicant filed a motion for a limited protective order for its financial statements citing that it contains confidential information and would do harm to applicant if revealed. No opposition to the motion was filed and on October 5, 1995, the law and motion administrative law judge issued a ruling which grants the applicant's request for a one-year period.

Applicant has provided information on its key managers indicating his experience. That manager is Robert Lorsch, the President and Director of the applicant, an experienced advertising and sales promotion executive who has had some professional experience in facsimile transmission and other telecommunications technologies. Although his telecommunication experience is not notably strong, his background is appropriate to the type of services which the applicant proposes to offer.

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

Findings of Fact

1. Applicant served a copy of a notice of availability of the application upon all 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 30, 1995.

3. No protests have been filed.

4. No opposition to the motion for confidentiality of the applicant's financial documents has been filed.

5. A hearing is not required.

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

9. Applicant's technical experience consists of a manager with an experience of over 10 years in advertising, sales promotion, and telecommunications.

10. 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.

11. Applicant has represented that no one associated with or employed by applicant was previously associated with a nondominant interexchange carrier that filed for bankruptcy or went out of business.

12. 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.

13. The Commission has routinely granted nondominant interexchange carriers, 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 on to potential competitors.

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

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

3. Applicant is subject to:

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 the 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 Device 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 1995-96 fiscal year (Resolution M-4778); and

d. The current 0.27% 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; Resolution T-15826).

4. Applicant should be exempted from Rule 18(b)'s 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.

5. Applicant should be permitted to satisfy the service requirement by serving the notice of availability of the application, attached as Exhibit "F" to its application, upon potential competitors.

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

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

**ORDER**

IT IS ORDERED that:

1. A certificate of public convenience and necessity is granted to SmartTalk TeleServices, Inc. (applicant) to operate as a reseller of the interLocal Access and Transport Area (LATA) telecommunication services 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 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;

4. Applicant may deviate from the following provisions of GO 96-A: (a) paragraph II.C.(1)(b), which requires consecutive

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, on 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

12. Within 60 days of the effective date of this order, applicant shall copy all sheets of its tariff and prohibit 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 3.

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. 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.

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

10. 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.

11. The corporate identification number assigned to applicant is U-5563-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.

P. GREGORY COX  
 JESSIE J. KNIGHT, JR.  
 HENRY M. DUQUE  
 JOSEPH L. HEEPER  
 Commissioners

12. 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.

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

14. 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. Applicant is permitted to serve the application upon competitors by means of a Notice of Availability attached to its application as Exhibit F.

15. 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.

16. Applicant's motion for a limited protective order keeping its financial documents confidential is granted to the extent provided in the administrative law judge's ruling dated October 5, 1995.

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

18. Application 95-10-025 is closed.

This order is effective today.

Dated February 7, 1996, at San Francisco, California.

The corporate identification number assigned to applicant is U-5563-C which shall be included in the caption of all original filings.

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

A.95-10-025 ALJ/VDR/jac

**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)