

FEB 26 1996

Decision 96-02-037 February 23, 1996

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of J.D. Services, Inc. doing business as American Freedom Network, for a Certificate of Public Convenience and Necessity to Provide InterLATA Telecommunications Services through out the State of California.

ORIGINAL

O.P.I.N.I.O.N.

J.D. Services, Inc. (applicant or JDS), doing business as American Freedom Network, a Utah corporation qualified to do business in California, seeks a certificate of public convenience and necessity (CPCN) pursuant to Public Utilities (PU) Code § 1001 to permit it to offer both interLocal Access and Transport Area (LATA) and intraLATA telephone services within California. JDS proposes to operate as a "switchless reseller" of intraLATA and interLATA long distance services, purchasing long distance

1. California is divided into 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.

2. Decision (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 still have plant which is owned, controlled, operated, and managed in order to facilitate communication by telephone.

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service from interexchange carriers such as AT&T and MCI and reselling this service to its own customers. JDS's principal product is a prepaid phone card, which it offers in various denominations on both a wholesale and retail basis. When the remaining value on a card reaches a critical threshold, a customer can add value by calling a JDS operator and charging the value of additional time to a credit card.

By D. 84-01-037 (14 CPUC2d 317 (1984)) and later decisions, we authorized interLATA entry generally. However, these decisions limited the authority conferred to interLATA service, and we subjected the applicants to the condition that they not hold themselves out to the public as providing intralATA service. Recently, in D.94-09-065, we authorized competitive intralATA services effective January 1, 1995, for carriers meeting specific criteria.

The Commission has established two major criteria for determining whether a CPCN should be granted to a switchless reseller such as JDS. First, the applicant must demonstrate that it has a minimum of \$25,000 in cash or cash equivalents (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. As part of this showing, the applicant must document any deposits required by local exchange companies or interexchange carriers (IECs) and demonstrate that the applicant has additional resources to cover all such deposits. (D.93-05-010) Second, the applicant is required to make a reasonable showing of technical expertise in telecommunications or a related business.

(Footnote continued from previous page) 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.

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As part of its application, JDS filed financial statements consisting of a balance sheet (dated March 1, 1995) and an income statement for calendar year 1994. These were later supplemented with a balance sheet dated March 31, 1995, and an income statement covering the second quarter of 1995. These statements indicate that JDS has more than \$257,000 in readily available cash with which to satisfy any additional start-up bonded expenses it may incur in California. Thus, JDS satisfies one of the criteria for being reasonably liquid and readily able to meet its start-up needs.

JDS has also provided information which indicates that its management has the necessary expertise in telecommunications or a related business. Both the President and Vice President of JDS, Debra and Jerold Ricks, respectively, have been in the telecommunications business for six years, each working about half that time as a marketing representative for Sprint selling long distance service and "800" numbers. They have also worked as payphone brokers of payphone contracts.

Based upon applicant's showing that our requirements have been met, we will authorize the interLATA and intraLATA services that applicant seeks to provide.

Findings of Fact

Applicant served a copy of the application upon 222 telephone corporations with which it is likely to compete.

3 JDS submitted the financial statements under seal with a motion requesting confidential treatment pursuant to Section 2.2, Subdivision (b) of General Order 66-C. On September 1, 1995, the Law and Motion Judge granted JDS a limited protective order, ruling that the statements would remain under seal for a period of one year. A similar request for confidentiality has been made with respect to the supplemental financial statements filed on December 19, 1995, and it is hereby granted.

2. A notice of the filing of the application appeared in the Daily Calendar on August 30, 1995.
3. No protests have been filed.
4. A hearing is not required.
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. By Decision 94-09-065 we authorized competitive intraLATA services effective January 1, 1995, for carriers meeting specified criteria.
7. Applicant has demonstrated that it has a minimum of \$25,000 in cash readily available to meet its start-up expenses.
8. Applicant has represented that no IEO with which it does business has required applicant to make deposits.
9. Applicant's president and vice president each have six years of experience in the telecommunications industry.
10. Applicant has submitted with its application a complete draft of applicant's initial tariff. This tariff 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 an IEO that filed for bankruptcy or went out of business.
12. Since no facilities are to be constructed by applicant, it can be seen with certainty that the proposed operation will not have a significant effect upon the environment.

Applicant submitted the financial statements under seal with a motion requesting confidential treatment pursuant to Section 5.5, Subdivision (b) of General Order 66-C. On September 1, 1995, the law and motion judge granted JDS a limited protective order, ruling that the statements would remain under seal for a period of one year. A similar request for confidentiality has been made with respect to the supplemental financial statements filed on December 19, 1995, and it is hereby granted.

13. Where no construction is involved, the Commission has routinely granted NDIECs, 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 applicant's proposed service area, and to the extent that Rule 18(b) requires applicant to provide a conformed copy of all exhibits attached to the filed application to potential competitors. Exemption from the provisions of PUC Code §§ 816-830 has been granted to other resellers. (See, e.g., D.86-10-007 and below 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 related businesses.
3. The public convenience and necessity require the interLATA and intraLATA services to be offered by applicant.
4. 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 (PUC 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 (PUC Code § 2881; Resolution T-15801);
 - c. The user fee provided in PUC Code §§ 431-435 which is 0.1% of gross intrastate revenue for the 1995-1996 fiscal year (Resolution 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 (PUC Code § 739.30; Resolution T-15826).

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

6. Applicant's request for confidential treatment of its proposed balance sheets and income statements should be granted to the extent set forth below.

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 J D Services, Inc. (applicant) doing business as American Freedom Network, 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 service until such 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 nondominant interexchange carrier (NDIEC). The effectiveness of its future tariffs is subject to the following 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 NDIBCs are hereby placed on notice that their California tariff filings will be processed in accordance with the following effective schedules:

"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 notification 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 locations 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 11.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 Telecommunications Branch of the Commission Advisory and Compliance Division (CACD). 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. Within 5 days after interLATA service is first rendered to the public, applicant shall notify this Commission of that fact in writing, and again within 5 days after 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.

Applicant may devise from the following provisions of GO 98-A: (a) paragraph 11.C.(1)(d), which requires consecutive

12. The corporate identification number assigned to applicant is U-5572-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 Public Utilities (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 and to the extent that the rule requires applicant to serve a copy of all exhibits attached to its application on potential 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 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. The balance sheet and income statement filed by applicant as a supplement to its application on December 19, 1995, shall remain under seal for a period of one year from the effective date of this decision. Such balance sheet and income statement shall not be made accessible or disclosed to anyone other than Commission staff except upon further order or ruling of the Commission, the Assigned Commissioner, the assigned Administrative Law Judge (ALJ) or the ALJ then designated as Law and Motion Judge.

The application is granted, as set forth above. Application 95-08-030 is closed. This order is effective today.

Dated February 23, 1996, at San Francisco, California

Within 60 days of the effective date of this order, applicant shall comply with Public Utilities (PU) Code § 108, Employee Identification Cards, and notify the Chief of CAGD's Telecommunications Branch in writing of its compliance.

DANIEL W. PESSLER, President
P. GREGORY CONLON

Rules of Practice and Procedure to the extent that the rule requires a copy of its application on the date 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.

16. If applicant is 90 days or more late in filing an annual report or in reciting the fees listed in Conclusion of Law 6, CAGD 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 CAGD to file or recite late.

17. The balance sheet and income statement filed by applicant as a supplement to its application on December 19, 1995, shall remain under seal for a period of one year from the effective date of this decision. Such balance sheet and income statement shall not be made accessible or disclosed to anyone other than Commission staff except upon further order or ruling of the Commission, the assigned Commissioner, the assigned Administrative Law Judge (ALJ) or the ALJ then designated as law and Motion Judge.

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)