

Decision 96-02-046 February 23, 1996

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of Northwest Communications, Inc. for a Certificate of Public Convenience and Necessity to Operate as a Reseller of Telephone Services Within the State of California.

ORIGINAL

Application 95-09-036 (Filed September 8, 1995)
Additional resources to conduct business in California
Northwest Communications, Inc. (applicant), a Nevada corporation duly qualified to conduct business in California, seeks a certificate of public convenience and necessity (CPCN) under Public Utilities Code § 1001 to permit it to resell interLATA and intralATA telephone services in California.²
Reviewed 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.

1 Northwest Communications, Inc. filed its application under the assumed name "N.W. Communications, Inc." through what is apparently an oversight. The record shows Applicant's legal name to be as stated in the caption. 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 originating and terminating within a single LATA.

The Commission has established two major criteria for determining whether a CPCN should be granted. An applicant that is a switchless reseller 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, applicant submitted a balance sheet at June 30, 1995, which showed cash of \$169,580. The balance sheet also showed, however, current liabilities substantially in excess of current assets. Applicant represents that due to payment arrangements with telecommunication providers permitting payment one billing cycle after customers are billed by Applicant, its current accounts payable include one billing cycle more than its current accounts receivable and without such extra cycle, its current liabilities at June 30, 1995, would be reduced from \$1,558,097 to approximately \$1,100,000, compared to current assets at such date of \$893,405. In addition, Applicant represents that

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 (LEC); it provides services 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 or managed in order to facilitate communication by telephone.

it has privately placed approximately \$2,100,000 of its stock since the date of the balance sheet. We are satisfied that Applicant meets our criteria for being reasonably liquid and readily available to meet the applicant's needs.

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.)

Applicant has provided information on its key managers indicating their education and experience. It can be summarized as follows:

a. Applicant's president, James Tomasi, has over 10 years' experience in the wholesale distribution industry, including distribution of cellular telephone and related equipment.

b. Applicant's executive vice-president and chief financial officer, Larry Linenschmidt, has approximately 13 years' experience in banking.

c. Applicant's vice president of operations, Jeff Elliot, has approximately four years' experience with Applicant's billing, credit and collections, accounts payable and computer network departments.

d. Applicant's vice president, Tim Vranizan, has approximately four years' experience with Applicant.

e. Applicant's vice president, Steve Lusenhop, has approximately one year's experience with Applicant.

f. Applicant's sales manager, William Hawk, has approximately two years' experience with Applicant's operations center.

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

Applicant has also requested exemption from the requirement to comply with the Uniform System of Accounts. Findings of Fact

1. Applicant served a copy of the application on 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 23, 1995.

3. No protests have been filed.

4. A hearing is not required. 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 D194-09-065, 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 of cash, reasonably liquid and readily available to meet its start-up expenses.

8. Applicant has represented that it is not required to make any deposit with an IEC.

9. Applicant's technical experience consists of six employees with a combined experience of over 38 years in telecommunications and related businesses.

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 an NDIEC that filed for bankruptcy or went out of business.

12. 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 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 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 potential competitors.

14. Exemption from the provisions of PU Codes §§ 1816-830 has been granted to other resellers. (See, e.g., D.86-10-007 and D.88-12-076.) Because of the public interest in competition...

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 requires the interLATA and intraLATA services to be offered by applicant.

a. Applicant is subject to 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 (ULTS) (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 § 28817; Resolution T-15801);

c. The user fee provided in PU Code §§ 431-435 which is 0.1% of gross billing shall be made available to 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).

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 service of all exhibits attached to this application on potential competitors.

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

7. Applicant should not be exempted generally from the requirement to maintain accounts in accordance with the USOA.

8. Because of the public interest in competitive interLATA and intraLATA services, 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 Northwest Communications (applicant) 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 the respective 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

All NDIECs are hereby placed on notice that their California tariff filings will be processed in accordance with the following effective schedules:

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 as 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 notifications are 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 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 a service area map as part of its initial tariff, after the effective date of this order and consistent with Ordering Paragraph 3.

6. Applicant shall notify this Commission in writing within 5 days of the date on which each of interLATA and intraLATA service is first rendered to the public.

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 0321-00.

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-5577-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 §1708, 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.

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 shall have received the written permission of CACD to file or remit late.

17. Applicant shall not conduct business under any name other than Northwest Communications Inc., until it shall have filed the original of a certificate of status (foreign corporation) under the hand and seal of the Secretary of State of the State of California showing that it is qualified to transact intrastate business in California under such other name which shall be included in the application.

19. Application 95-09-036 is closed.

This order is effective today.

Dated February 23, 1995 at San Francisco, California

and notify the Chief of CAGD's Telecommunications Branch in writing of its compliance.

DANIEL W. FESSLER
President

P. GREGORY CONLON, JR.

JESSIE J. KNIGHT, JR.
HENRY M. DUQUE

JOSIAH L. NEPPER
Commissioners

applicant is to be reviewed for compliance with the provisions of the Code of Regulations. The applicant's request for waiver of the Commission's Rule 18(d) 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. If applicant is 90 days or more late in filing an annual report or in meeting the fees listed in Conclusion of Law 4, CAGD shall prepare for Commission consideration a resolution that revokes the applicant's certificate of public convenience and necessity, unless the applicant shall have received the written permission of CAGD to file or remit late.

ATTACHMENT A

Information Requested of California Interexchange Telephone Utilities

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: Name and title of the officer having the general books of account and the address of the 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.

- 1. Exact legal name and UIC of reporting utility.
2. Type of organization (e.g., partnership, sole proprietorship, etc.).
3. Date of filing articles of incorporation with state.
4. State in which incorporated.
5. Commission decision number granting operating authority and the date of that decision.
6. Date operations were begun.
7. Description of other business activities in which the utility is engaged.
8. A list of all affiliated companies and their relationship to the utility. State if affiliate is:
a. Regulated public utility.
b. Publicly held corporation.
9. Balance sheet as of December 31st of the year for which information is submitted.
10. Income statement for California operations for the calendar year for which information is submitted.

(END OF ATTACHMENT A)

ATTACHMENT A

Information Requested of California Interexchange Telephone Utilities.

TO: ALL 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.

Utilities doing business in California shall file with the Commission on the utility's California operations the following information:

1. Exact legal name and U # of reporting utility.

A specific annual report form has not yet been prescribed for the California interexchange telephone utilities. However, utilities hereby directed to submit an original and two copies of the following information:

2. Address, 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. Regulated public utility.
 - b. Publicly held corporation.
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(END OF ATTACHMENT A)