

Decision 96-02-050 February 23, 1996

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of and
Bakersfield Cellular Telephone
Company for a Certificate of Public
Convenience and Necessity to
Provide InterLATA and Long Distance
IntralATA Telecommunications
Services Within the State of
California

ORIGINAL

Application 95-11-018
(Filed November 6, 1995,
supplemented December 11,
1995)

OPINION

interexchange carriers (IXCs) and demonstrate that they have
additional resources to cover all such deposits. Any applicant who

Bakersfield Cellular Telephone Company (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)
telephone services in California and to resell intralATA telephone
service as intralATA competition is permitted by this

Commission.¹ Applicant seeks to offer long distance services
both by means of its existing cellular network and by means of
facilities leased from other certificated long distance carriers.

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

country's largest telephone companies. BSCC's financials show it
engaged in profitable operations and has the financial ability to
fund applicant's expansion operations. In addition, applicant is
already a certificated facilities-based cellular carrier, serving

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.

D.94-09-065, we authorized competitive intralATA services effective January 1, 1995, for carriers meeting specified criteria:

The Commission has established two major criteria for determining whether a CPCN should be granted. The applicant must demonstrate that it has a minimum of \$100,000 of cash or cash equivalent (as described in D.91-10-041, Appendix A, paragraph 5.1 (41 CPUC2d 505 at 519)), 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. Any applicant who can demonstrate that \$100,000 of cash is not needed for its first year of operation may be granted a CPCN with a lesser amount, based on the sufficiency requirements set forth in Ordering Paragraph 1.a. of D.91-10-041. In addition, an applicant is required to make a reasonable showing of technical expertise in telecommunications or a related business. (D.90-08-032, 37 CPUC2d (130, at 147-48, 156, 158.)

As part of its application, applicant provided an audited consolidated balance sheet, as of December 31, 1994, of its parent company BellSouth Cellular Corp. (BSCC) and the related consolidated statements of income, changes in shareholders' equity, and cash flows. The financial statements were filed under seal pursuant to ruling of the Law and Motion Administrative Law Judge. BSCC is in turn wholly owned by BellSouth, Inc., one of the country's largest telephone companies. BSCC's financials show it engages in profitable operations and has the financial ability to fund applicant's expansion operations. In addition, applicant is already a certificated facilities-based cellular carrier, serving the Bakersfield Metropolitan Statistical Area (MSA). BSCC has provided documentation that it will advance start-up costs of up to \$100,000 to applicant and will also advance any and all deposits that may be required by local exchange companies or IECs. The note

evidencing the advance is irrevocable and payable on an interest-only basis for at least 12 months beyond the date of applicant's certification by this Commission. This indicates that applicant has more than \$100,000 consisting of cash equivalent in the form of a loan from its parent BSCC. It satisfies our criteria for being reasonably liquid and readily available to meet the applicant's needs.

As part of its showing of technical expertise, applicant provided a draft initial tariff. Applicant should maintain rates for its customers that are at or below regular measured time service rates filed by AT&T of California, Inc. (AT&TC) to alleviate any possible concern regarding long distance rates for Bakersfield MSA cellular customers; we will require applicant to charge its Bakersfield MSA cellular customers on applicant's system no more than the then prevailing comparable AT&TC rates to its interLATA resale customers. By comparable AT&TC rates, we mean that AT&TC's rates are a floating cap. If AT&TC's rates in the future are lower than those in effect on the date of this order, applicant cannot charge more than the then prevailing future rate.

Applicant has provided information on its key managers, indicating their experience. It can be summarized as follows: Brian Ducharme manages applicant's current operations. He has over 8 years of experience in the telecommunications industry. He has been applicant's general manager since 1993. He was employed by Cellular One from 1987 to 1993. He began his career with Monroe Systems for Business, where he worked from 1982 to 1987.

Applicant has demonstrated that it has a minimum of \$100,000 of cash equivalent, in the form of a loan from its parent company BSCC, reasonably liquid and readily available to meet its start-up expenses. The loan is irrevocable and payable on an

2 The Commission placed such a condition on the reseller CPCNs granted to other cellular companies. See, e.g., D.88-02-023 and D.94-03-011.

Tom Poor has been applicant's manager of technical operations since its inception in 1987. He was employed previously by Communication Enterprises, a certificated radiotelephone utility, for over 10 years.

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

Findings of Fact

1. Applicant served a copy of the application upon 139 telephone corporations with which it is likely to compete.

2. A notice of the filing of the application appeared in the Daily Calendar on November 16, 1995.

3. No protests have been filed concerning any possible violation of the Act.

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.

5. By D.94-09-065, we authorized competitive intraLATA services effective January 1, 1995, for carriers meeting specified criteria.

6. Applicant is already certificated by this Commission as a cellular radiotelephone service provider. Since applicant also wishes to resell telecommunications services statewide, it must set up separate accounting for such business, file separate tariffs for such business, and operate its resale business under a corporate identification number different from its cellular carrier corporate identification number.

7. Applicant has demonstrated that it has a minimum offer of \$100,000 of cash equivalent, in the form of a loan from its parent company BSCC, reasonably liquid and readily available to meet its start-up expenses. The loan is irrevocable and payable on an interest-only basis for 12 months after certification of applicant by this Commission.

19. The loan from BSCG to applicant will also cover the amount of any deposits that may be required by local exchange companies and IECs to extend applicant's services inside California.

10. Applicant's technical experience consists of two employees with a combined experience of over 25 years in telecommunications. Applicant is already operating as a facilities-based certificated cellular carrier.

11. Applicant has submitted with its application a complete draft of applicant's initial tariff, which consists of the same terms and conditions found in its current cellular tariff along with the rates to be charged for the long distance services it proposes to offer, and which complies with the requirements established by the Commission, including prohibitions on unreasonable deposit requirements. Applicant should charge rates no higher than those charged by AT&TC. To alleviate any possible concerns regarding long distance rates for applicant's cellular customers, it is appropriate to require that applicant's rates for Bakersfield MSA cellular customers on applicant's system be no higher than those rates being charged at the time by AT&TC, as these rates may fluctuate up or down in the future, for its interLATA service.

12. 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.

13. Since no new facilities are to be constructed, it can be seen with certainty that the proposed operation will not have a significant effect upon the environment.

14. 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.

15. 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.

3. Public convenience and necessity require that interLATA and intraLATA services to be offered by applicant.

4. Applicant is subject to the following conditions:

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 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 1995-96 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. (PU Code § 739.30; Resolution T-15826.)

The Commission has routinely granted an exemption from interexchange carriers such as applicant, an exemption from Rule 18(b), where no construction is involved, to the extent that

5. Applicant should be exempted from Rule 18(b) of the requirements of service of the application on cities and counties in the proposed service area.

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

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

IT IS ORDERED that:

1. A certificate of public convenience and necessity is granted to Bakersfield Cellular Telephone Company (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. Such interLATA and intraLATA service tariffs shall be filed separately from its cellular service tariffs, and shall contain measured time service rates applicable to Bakersfield Metropolitan Statistical Area (MSA) cellular customers on applicant's system which are no higher than the rates then being charged by AT&T Communications of California, Inc. (AT&TC) for similar services, as these rates may fluctuate up or down in the future. Therefore, AT&TC's rates shall be a floating cap upon applicant's rates for applicant's Bakersfield MSA cellular customers. Applicant may not offer interLATA and/or intraLATA service until such tariffs are on file. Applicant's initial filing

shall be made in accordance with General Order (GO) 96-1A, excluding Sections IV, V, and VI, and shall be effective not less than 10 days after filing.

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.

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.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 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.
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 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. Applicant will establish accounting methods to separate its interLATA services from its cellular services.
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. This report shall be separate from the annual report filed for its cellular services.

9. Applicant shall ensure that its employees comply with the provisions of Public Utilities (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-5580C, 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.

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 in which it proposes to operate.

15. 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.

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

17. Application 95-11-018 is closed.
This order is effective today.
Dated February 23, 1996, 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)