

Decision 96-02-059 February 23, 1996

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of Preferred/telecom, Inc. for a certificate of public convenience and necessity to provide IntralATA and IntralATA telecommunications services within California. (Application 95-09-059) (Filed September 19, 1995)

ORIGINAL

... and demonstrate that they have...
... (D.92-02-010) ...
... in addition, an applicant is required to take a reasonable showing...
... Preferred/telecom, Inc. (applicant) a Delaware limited liability 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 provide intrastate interLATA and intralATA long distance telecommunications services in California. Applicant also seeks exemption from the usual requirements of PU Code §§ 816-830, dealing with the issuance of stocks and other evidences of ownership and bonds, notes, and other evidences of indebtedness, and Sections 851 and 852 to the extent that applicant transfers or encumbers utility property for the purpose of securing debt. Such services will be made available to customers. By Decision (D. 84-01-037 (14 CPUC 2d 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. LEC; it provides service in its own name, and its customers view it as their telephone company for intralATA and interstate calls. D. 92-02-059 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 and/or managed in order to facilitate communication by telephone.

The Commission has established two major criteria for determining whether a CPCN should be granted. An applicant who is a switchless reseller¹ 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.

Applicant is a non-facilities based reseller that is seeking to provide long distance telecommunications services to subscribers throughout the entire State of California. The proposed service will be furnished solely through resale and use of facilities furnished by underlying carriers. Applicant does not intend to own, install, or construct any facilities to implement the authority sought herein.

Applicant proposes to offer One Plus (direct dial) Travel Card, Inbound, "800" services, and Toll-free Collect Calling services. Such services will be made available on a full-time basis, 24 hours per day, seven days per week, for the origination and termination of intrastate telephone calls. Applicant will also

¹ 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 plant which is owned, controlled, operated and/or managed in order to facilitate communication by telephone.

provide terminating service to all cities within the United States and to international points. Access to the network will be available through Feature Group D, dedicated access arrangements, and "800" dialing.

According to the application, the applicant provides call processing capabilities to businesses and residential users. Using voice recognition technology, the applicant has developed the first calling card which is completely voice activated. This capability significantly reduces the level of fraud that is historically associated with calling cards. The company has also introduced an automated collect calling service which utilizes voice recognition technology. In addition, Preferred/telecom furnishes basic long distance services such as Direct Dial (One Plus), WATS, and "800" arrangements.

Customers access the company's call processing system via a combination of "800" service and presubscription arrangements. The call is routed from the company's point of presence to its underlying carrier, MCI, for processing and completion. Basic long distance calls are handled within the carrier's network. The switch collects, validates, and stores billing information and routes the call to its destination. MCI's SS7 switching technology and fiber optic transmission facilities assures that calls are processed in the most expedient, high quality and cost effective manner available, according to the applicant.

All calls processed by the company are billed through a local exchange carrier. Each invoice identifies Preferred/telecom as the service provider and furnishes a toll free number for customers to call with billing inquiries. Customer service representatives are available during extended business hours to assist customers with questions about the company's services. Customers may also contact their local exchange company with their questions.

All network and data systems are managed through the company's headquarters in Dallas, Texas. The company is supported by technicians who maintain all aspects of the company's operations.

As part of its application, applicant provided an audited balance sheet and income statement demonstrating that applicant has more than \$25,000 consisting of cash and cash equivalents (including amounts due from banks). This information satisfies our criteria for available resources being reasonably liquid and readily available to meet the applicant's needs. However, we understand that as of the date of its financial statements, March 31, 1995, the applicant was operating in a deficit mode because it is a startup enterprise. As disclosed in Note 1 of the accompanying notes,

The Company has been in the development stage since its inception on May 13, 1994, and has incurred substantial operating losses to date. The Company has entered into an agreement to sell 600,000 shares of its common stock to Star Resources, Inc. (Star), a public company, for \$24,000. The Company will then file a registration statement with the Securities and Exchange Commission to allow Star to distribute to its stockholders the 600,000 shares of common stock. Upon completion of the Star distribution, the Company will become a separate public company and it intends to raise additional capital through subsequent offerings of its common stock in over-the-counter securities markets.

In view of these matters, realization of a major portion of the assets in the accompanying balance sheet is dependent upon continued operations of the Company, which in turn is dependent upon the Company's ability to meet its financing requirements and the success of its future operations. Management believes that actions presently being taken to meet the Company's financial requirements will provide the Company the opportunity to continue as a going concern.

The details of the applicant's financing arrangements and service description indicate that the company is solidly founded upon strong financial arrangements, and that the interests of its major customers and underlying carriers are adequately safeguarded.

Applicant has provided information on its organization, operations, technical qualifications, and experience. These items indicate that the applicant has the technical ability to provide the proposed services.

We will authorize the interLATA and intraLATA services in that applicant seeks to provide. Findings of Fact

1. Applicant served a copy of the application upon the entire Commission's list of 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 31, 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 D.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 of cash, cash equivalent, including amounts due from banks, reasonably liquid and readily available to meet its start-up expenses.

8. Applicant's technical experience consists of skilled employees with substantial experience in telecommunications marketing and operations.

9. 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.

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

11. 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.

12. The Commission has routinely granted non-dominant 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 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.

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

4. Applicant is subject to:

The current 31.2% 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 \$1879; Resolution T-15799, November 21, 1995);

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, October 5, 1995);

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,

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-December 20-1995).

5. 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.

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.

ORDER

IT IS ORDERED that:

1. A certificate of public convenience and necessity is granted to Preferred/telecom, Inc. (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, intraLocal Access

and Transport Area;(LATA) 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 and/or intraLATA 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;

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 notifications is not required for such minor rate increases.

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 41.

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 intrastate 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.

12. The corporate identification number assigned to applicant is U-5573-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 § 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 and §§ 851 and 852 to the extent that applicant transfers or encumbers utility property for the purpose of securing debt.

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 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.

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

18. Application 95-09-059 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)