

Decision 96-02-060 February 23, 1996

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of Pacific General Telecom, Inc. d/b/a Westar Network for a Certificate of Public Convenience and Necessity to operate as a reseller of interLATA and intralATA telecommunications services within California

ORIGINAL

Application 95-08-038
(Filed August 30, 1995;
Supplemented December 13,
1995)

OPINION

Pacific General Telecom, Inc. d/b/a Westar Network (applicant), a California corporation, seeks a certificate of public convenience and necessity (CPCN) under Public Utilities (PU) Code § 1001 to permit it to resell interlocal Access and Transport Area (LATA) telephone services in California and to resell intralATA telephone service as intralATA competition is permitted by this Commission. Applicant seeks to offer inbound and outbound long distance telecommunications services, 800 services, and travel cards. Directory assistance will be provided through the underlying carrier. Applicant requests an exemption from the 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 from PU Code § 851, dealing with certain transfers of utility assets.

By Decision (D.) 84-01-037 (14 CPUC 2d 317 (1984)) and later decisions, we authorized interLATA entry generally. However, California is divided into ten 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, owned within a single LATA.

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.

The Commission has established two major criteria for determining whether a CPCN should be granted. An applicant who is a switchless reseller² 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 LECs 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 provided an unaudited balance sheet and profit and loss statement as of July 31, 1995. They were filed under seal pursuant to the ruling of the Law and Motion Administrative Law Judge. Applicant is currently operating under Federal Communications Commission authority. No further deposits will be required by underlying IECs in order to extend its services into California markets. Since the

2. 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 local exchange company (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 not owned, controlled, operated, and/or managed in order to facilitate communication by telephone.

financials showed operations at a slight loss, in a supplement to the application, applicant provided proof that more than \$25,000 had been deposited in a money market account held in Charter Bank Pacific Bank. This indicates that applicant has more than \$25,000 consisting of cash equivalents that satisfies our criteria for being reasonably liquid and readily available to meet the applicant's needs.

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

Howard Speyer, applicant's president, has been licensed to practice law in California for over 17 years. He is engaged in the private practice of law in his own firm specializing in corporate law, capital funding and financing, and strategic financial planning. He has also been a California real estate broker for 16 years and holds a Series 7 stockbroker license. He graduated from UCLA with a B.A. degree and from University of San Fernando Valley with a J.D. degree. Darrell Briske, applicant's vice president and chief operating officer, was previously vice president of Prime Cellular, Inc. (now Prime Matrix Cellular, Inc.) for two years. Prior to that time he was chief operating officer of Texas Petroleum Corporation. He has over 25 years of management experience and over 21 years of telecommunications experience.

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

Findings of Fact: Applicant served a copy of the application upon 232 telephone corporations with which it is likely to compete.

A notice of the filing of the application appeared in the Daily Calendar on September 8, 1995. 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 services. This indicates that 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 equivalents in a money market account held by a financial institution, reasonably liquid and readily available to meet its start-up expenses.

8. Applicant has also represented that no deposits will be required by the LEC or IEC to extend service into California.

9. Applicant's technical experience consists of 2 employees with a combined experience of over 40 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 a NDIEC 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 NDIECs, such as this 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 to potential competitors.

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.) However, exemption from the provisions of PU Code § 851 has not been granted to other resellers. 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. Public convenience and necessity require the interLATA and intraLATA services to be offered by applicant. Applicant is subject to a surcharge as a reseller to operate as a reseller. The current 3.72% 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).

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 to the application on potential competitors.

and 613-The application should be granted to the extent set forth below. Because of the public interest in competitive interLATA and intraLATA services, the following order should be effective immediately.

ORDER

IT IS ORDERED that a certificate of public convenience and necessity is granted to Pacific General Telecom, Inc. d/b/a Westar Network (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 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:

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.

"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 49 CFR 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 47.

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-5570-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.

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.

the Commission Advisory and Compliance Division's (CACD) incorporating these deviations shall be subject to the approval of

13. Applicant is exempted from the provisions of PU Code §§ 816-830, but is not exempted from the provisions of PU Code § 851.

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 and to the extent that the rule requires applicant to serve a copy of all exhibits attached to its application on potential competitors.

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 95-08-036 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)