

Decision 96-04-008 April 10, 1996

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application and Request for Immediate Ex Parte Authority by BROOKS FIBER COMMUNICATIONS OF STOCKTON, INC., a Delaware corporation, for a Certificate of Public Convenience and Necessity to construct facilities and to provide inter and intralATA digital private line communication service.

ORIGINAL

Application 95-08-028 (Filed August 17, 1995; Supplemented December 8, 1995)

Brooks Fibers Communications of Stockton, Inc. (applicant), a Delaware corporation qualified to do business in California, seeks a certificate of public convenience and necessity (CPCN) under Public Utilities (PU) Code §1001 for authority to construct fiber optic cable communications facilities and to operate as a nondominant interexchange carrier providing inter Local Access and Transport Areas (LATA) and intralATA digital private line communications services, pursuant to Decision (D.) 94-09-065 and D.88-09-059.¹ Applicant will initially offer high speed digital services at two speeds: 1.544 megabytes per second (Mbps) (DS-1 service) and 44.736 Mbps (D-3 service).

By D.88-09-059, we authorized competitive entry in the provision of interLATA and intralATA high speed digital private line communications services. Applicant also provided an unaudited consolidated balance sheet and statement of income for RFP as of May 31, 1995. These financial statements were filed under seal pursuant to the

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¹ 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.

line services. However, we limited the authority conferred to provision of high speed digital private line services at 1.544 Mbps and higher. BY 0394 09-065, we authorized competitive interLATA and intralATA (digital) private line services at any speed 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 19a 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, 148, 156, 158).

As part of its application, applicant provided an audited consolidated balance sheet, statement of operations, statement of changes in shareholders' equity, and statement of cash flows for applicant's parent company Brooks Fiber Properties, Inc. (BFPI) for the year ended December 31, 1994. The audited financial statements are unqualified. Applicant also provided an unaudited consolidated balance sheet and statement of income for BFPI as of May 31, 1995. These financial statements were filed under seal pursuant to the

Ruling of the Law and Motion Administrative Law Judge. These financial statements demonstrate that BFPI has well in excess of \$100,000 in unencumbered cash. Applicant states that its operations will be funded by BFPI. As part of its supplement to the application, applicant filed an irrevocable guarantee from BFPI.

that it will provide \$100,000, plus the amount of any deposits that may be required by any local exchange companies or LECs, to applicant for a 12-month period after certification by this Commission. This documentation demonstrates that applicant meets the criteria for financial solvency. This indicates that applicant has more than \$100,000 consisting of cash equivalent in the form of an irrevocable guarantee of its parent, BFPI. It 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:

Robert A. Brooks, applicant's chairman, has 39 years of experience as an entrepreneur, business planner and developer, cable system operator, investor, engineer, consultant, project manager, expert witness, and management advisor in cable television and broadband telecommunications. He was a founder and chairman of Cencom Cable Associates. For ten years he was a founding director and senior vice president of TC Industries and its wholly owned subsidiary, Telcom Engineering, Inc. (TEI). Prior to that time, he spent 18 years in the cable television industry. He holds a B.S.E.E. from Northeastern University.

James C. Allen, applicant's vice chairman and chief executive officer, has 25 years of experience as an entrepreneur, business planner and developer, cable system operator, financier, expert witness, and advisor in cable television and broadband communications. He is a founder and former president of Cencom Cable Associates and former vice president of operations of TEI. Prior to that time, she held management positions with United Cable Television, Continental Telephone Corporation and National Communications Services. He holds a B.S. degree from David Lipscomb University.

D. Craig Young, applicant's president and chief operating officer, has 16 years of experience as an entrepreneur and senior manager in the telecommunications industry. He was previously

vice president of sales operations of Ameritech Custom Business Services. Prior to that time he was employed in management positions with U.S. West Communications, U.S. West Information Systems, and Executive Information Systems. He holds a B.S. degree in marketing from California State University.

John C. Sharpleigh, applicant's executive vice president, has 22 years of entrepreneurial, management, regulatory, government policy, and legal experience. He was formerly vice president of LDX NET, a developer of long distance fiber optic telephone networks, and president of the Association for Local Telecommunications Services. His prior positions include associate administrator of the National Telecommunications and Information Administration. He is a former Commissioner of the Missouri Public Service Commission. He holds an A.B. from Dartmouth College and a J.D. from Washington University School of Law.

James A. Brasunas, applicant's senior vice president of carrier sales, has over 12 years of sales and management experience within the telecommunications industry. He began his career at Northern Telecom in 1984, and worked in progressively more responsible positions within the company, until joining applicant. He holds a B.S. degree from Massachusetts Institute of Technology.

Richard Anthony, applicant's senior vice president of marketing and strategy, has 24 years of experience in management, marketing, engineering and operations for telecommunications, cable television, competitive access and long distance companies. He is the former vice president of telecommunications for Cablevision Industries, Inc. He also has held management positions with Intermedia Communications of Florida, Inc., Telecom USA, Comlink 21/STS, and US West. He holds a B.S. and a M.S. from the University of Missouri.

Tom Parvin, applicant's vice president of service operations, has 13 years of experience in engineering and operations of complex telecommunications industry. He was previously

telecommunications networks. He has held several management positions with MCI, Telecom USA, LDX, NET, AT&T, and Southwestern Bell. He holds a bachelor's degree in electrical engineering from the University of Texas.

Applicant will construct metropolitan area networks consisting of fiber optic cable communications facilities. Although applicant's initial service area will be Stockton, California, it requests statewide authority as it intends in the future to expand its service areas to other metropolitan areas within the state. Applicant has provided a map showing the areas of likely expansion and furnished the required cost estimates. Applicant states that all necessary health and safety permits required for the construction and operation of applicant's initial Stockton metropolitan area network will be obtained from the appropriate Stockton city or county agencies. As a Commission-certificated public utility, no municipal franchises are necessary.

At the time this application was filed, applicant also had pending before the Commission a petition to provide competitive local exchange service under which the city and county were notified. The Commission's Advisory and Compliance Division (ACD) issued a Notice of Publication of a Negative Declaration for all such petitions, including applicant's, on October 16, 1995. The comment period closed on November 18, 1995. Due to comments by some cities and counties, supplemental information was provided by applicant. The negative declaration was issued by ACD on December 7, 1995, and became effective after Commission approval in D19541203 057, issued December 20, 1995. The construction in Stockton proposes placement of fiber optic cables in existing city rights of way or the use of existing conduits or ducts in existing utility rights of way, which will exist under the negative declaration. Applicant's use of existing city rights of way or existing utility conduits or ducts shows a reasonable certainty that the proposed private line construction will have no significant environmental

impacts. However, we expect applicant to comply with all applicable state and federal environmental laws and regulations as to future construction.

A proposed tariff for applicant's digital private line services is attached as an exhibit to the application. After additions to its deposit requirements made by way of a supplement to the application, it complies with our requirements for reasonable deposit provisions. The pricing components for the DS-1 and DS-3 services include nonrecurring installation charges and recurring charges for channel terminations and mileage charges reflecting the length of the individual customer's service based on the distance between the origin and destination points. Customized multiplexing and diagnostic equipment must be installed to meet a customer's particular needs. Therefore, applicant will price its services on an individual case basis. Therefore, the draft tariff contains generalized conditions under which service will be rendered. Applicant is willing to file individual advice letters to show the charges for services contracted by customers as they subscribe for services. Applicant should file such advice letter updates to its tariff showing the charges for service to each individual customer.

We will authorize the interLATA and intralATA digital private line services that applicant seeks to provide.

Findings of Fact

Applicant served a copy of the application upon 286 telephone corporations with which it is likely to compete and upon the city in which the initial metropolitan service area will be constructed.

A notice of the filing of the application appeared in the Commission's Daily Calendar on August 30, 1995.

No protests have been filed. A hearing is not required because private line construction will have no significant environmental

5. By prior Commission decisions, we authorized competition in providing interLATA and intralATA high speed digital private line service but generally barred those offering such service from holding out to the public the provision of interLATA or intralATA digital private line services at speeds lower than 1.544 Mbps.

6. By D.94-09-065, we authorized competitive low speed digital private line services, effective January 1, 1995, for carriers meeting specified criteria.

7. Applicant has demonstrated that it has a minimum of \$100,000 of cash equivalent resulting from a guarantee from its parent company, which is irrevocable for a 12-month period after certification by this Commission. Thus, the \$100,000 is reasonably liquid and readily available to meet its start-up expenses.

8. Applicant has a guarantee from its parent company, effective for a 12-month period after its certification, to provide the amount of any deposit that might be required by either a local exchange company or interexchange carrier.

9. Applicant's technical experience consists of seven employees with a combined experience of over 150 years in cable television, telecommunications, competitive access and fiber optic networks.

10. Applicant has submitted with its application and supplement, 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 nondominant interexchange carrier that filed for bankruptcy or went out of business.

12. Since applicant intends to use already existing rights of way to provide the proposed services, it can be seen with certainty that the proposed operation will not have a significant effect upon the environment. However, applicant should comply with all

applicable state and federal environmental laws and regulations as to future construction. Applicant will initially offer its services to customers within the metropolitan area of Stockton and then intends to extend its services to customers in other metropolitan areas within the state. Applicant should be required to file an advice letter with appropriate tariff revisions prior to any expansion from its initial service areas.

14. Applicant should not switch intraLATA or interLATA voice traffic. Applicant has the financial ability to provide the proposed service.

2. Applicant has made a reasonable showing of technical expertise in telecommunications.

13. Public convenience and necessity require the interLATA and intraLATA digital private line services to be offered by applicant.

14. 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 (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 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

shall be 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 T15826)

Applicant should be prohibited from holding out the availability of other interLATA and intralATA services it is not authorized to provide and should be required to advise its customers that the communications it is not authorized to provide must be placed over facilities of an authorized carrier.

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 Brooks Fiber Communications of Stockton, Inc. (applicant) to provide digital private line inter Local Access and Transport Area (LATA) and intralATA telecommunications services, to the extent authorized by Decision (D.) 94-09-065, within all LATAs in California. Applicant shall refrain from holding out to the public the provision of any intralATA or interLATA services it is not authorized to provide.
2. Applicant shall file a written acceptance of the certificate granted in this proceeding.
3. Applicant is authorized to file with this Commission tariff schedules for the provision of interLATA and intralATA digital private line communications services. Applicant may not offer such interLATA and/or intralATA service until 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 one day after filing. For individual case basis services, applicant shall file advice letter updates to its tariff, showing the charges for service to each individual customer. Applicant shall file an advice letter with appropriate tariff revisions, prior to expansion from its initial service area.

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.

"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 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 five days after service begins and again within five 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. 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 or incur other

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. Applicant shall send a copy of this decision to concerned local permitting agencies not later than 30 days from today. Applicant shall comply with all applicable state and federal environmental laws and regulations as to future construction.

13. The corporate identification number assigned to applicant is U-5546-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.

14. Within 60 days of the effective date of this order, the applicant shall comply with PU Code § 7087 Employee Identification Cards, and notify the Chief of CACD's Telecommunications Branch in writing of its compliance.

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, with necessity, unless the applicants have received the written permission of CACD to file or remit late.

16. Applicant shall monitor the implementation of its required interLATA and intraLATA 1.544 megabytes per second (Mbps) (DC-1) services and 44.736 Mbps (DC-3) services and shall submit semi-annual reports for a two-year period beginning with the

effective date of the rates and charges for this service. These reports shall be filed with the CACD, with copies to the DRA Telecommunications Rate Design Branch, and shall include the following recorded data for applicant's DC-1 and DC-3 services, by service:

- a. Monthly in-service volumes.
- b. Monthly inward movement volumes.
- c. Monthly recurring billings by tariff rate item.
- d. Monthly nonrecurring billings by tariff rate item.

The format of these semi-annual reports shall be determined in consultation with the CACD staff.

17. The reporting requirements of Ordering Paragraph 16 shall commence within 45 days after December 31, 1995, and shall terminate upon submission of the report for the semi-annual period ending December 31, 1997, to be submitted on or before February 14, 1998.

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

19. Application 95-08-028 is closed.

This order is effective today.

Dated April 10, 1996, at Sacramento, California.

DANIEL Wm. FESSLER
President
P. GREGORY CONLON
JESSIE J. KNIGHT, JR.
HENRY M. DUQUE
JOSIAH L. NEEPER
Commissioners

A.95-08-028 ALJ/ANW/gab

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)