

Decision 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. Subsequently, 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 to an applicant which is a switchless reseller.² Such an applicant must demonstrate that it has a minimum of \$25,000 of cash or cash equivalent (as described in D.91-10-041, 41 CPUC2d 505 at 520 (1991)), reasonably liquid and readily available to meet the firm's start-up expenses. Such an applicant must also document any deposits required by local exchange companies (LECs) or interexchange carriers (IECs) and demonstrate that it has additional resources to cover all such deposits. (D.93-05-010, 49 CPUC2d 197 at 208 (1993)). 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 internal balance sheet (as of March 1, 1996) and other information.

Finaly, applicant asks for an exemption from some of the requirements of the rules of the NDIEC.

² D.93-05-010 defines a switchless reseller as an NDIEC with the following characteristics: it usually, but not always, uses access circuits that the underlying carrier purchases from local exchange company; 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.

Decision 96-06-002 June 6, 1996

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of Comdata Telecommunications Services, Inc. for a Certificate of Public Convenience and Necessity to Provide Non-dominant, Interexchange, IntraLATA and InterLATA Telecommunications Services within the State of California.

NON ORIGINAL

ORIGINAL

OPINION

The Commission has established two major criteria for determining whether a CPCN should be granted to an applicant which is a switchless reseller. Such an applicant must demonstrate that it has a minimum of 200 lines of service in California. Comdata Telecommunications Services, Inc. (applicant), a Delaware corporation that has qualified to transact business within the state of California, seeks a certificate of public convenience and necessity (CPCN) under Public Utilities (PU) code § 1001 to permit it to resell interLATA and intraLATA telephone service in California. In particular, applicant seeks a CPCN to operate as a nonfacilities based, "switchless" reseller of interexchange intraLATA and interLATA toll communications services, in which capacity applicant would be a nondominant interexchange carrier (NDIEC). Applicant also seeks 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. Finally, applicant asks for an exemption from some of the requirements of Rule 18(b) of our Rules of Practice and Procedure, relating to service of its application, following character of its service as a switchless reseller.

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.

one associated with or employed by applicant has been associated previously with an NDIEO that has filed for bankruptcy.

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 298 telephone corporations with which it is likely to compete.

2. A notice of the filing of the application appeared in the Daily Calendar on March 27, 1996.

3. No protests have been filed.

4. By prior Commission decisions, we authorized competition in providing interLATA telecommunications service but (prior to 1995) 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 has demonstrated that it has a minimum of \$25,000 of cash equivalent, reasonably liquid and readily available to meet its start-up expenses.

7. Applicant has presented information indicating that applicant will not be required to pay any additional deposits to underlying carriers.

8. Applicant's principals and key employees have substantial technical experience in the telecommunications services industry.

9. Applicant has submitted with its application a complete draft of its initial tariffs. The draft complies with requirements established by the Commission, such as the prohibition on unreasonable deposit requirements.

10. Applicant has represented that no one, associated with or employed by applicant was previously associated with an NDIEO that filed for bankruptcy.

demonstrating that applicant meets the financial requirements as summarized above. This information indicates that applicant has \$25,000 in a liquid deposit account with First American National Bank in Nashville, Tennessee. Applicant also indicates that it is a wholly owned subsidiary of Comdata Network, Inc., which is a leading provider of transaction processing services to the trucking and gaming industries. Through its corporate parent, applicant has established relationships with facilities-based carriers, and as such, applicant will not be required to pay any additional deposits to underlying carriers. In light of these circumstances, we conclude that applicant satisfies our criteria for being a reasonably liquid and having assets readily available to meet the applicant's needs. Applicant has provided information on its principals and selected key employees indicating their technical training and experience. This information can be summarized as follows.

Applicant has provided information on 11 individuals. For the most part, their operating experience in telecommunications derives from substantial work performed for applicant's corporate parent, Comdata Network, Inc. For example, applicant's General Manager, Executive Vice President, Chief Financial Officer, Senior Vice President, General Counsel, Treasurer, and Vice President for Financial Reporting have worked for the corporate parent from three to 10 years. Personnel with less or no work history at the corporate parent nevertheless have substantial experience in the telecommunications industry. For example, applicant's Director of Telecommunications Sales has six years of experience as sales and marketing manager and representative for both MCI and Cable and Wireless Communications. Applicant's Manager of Telecommunications Technical Programs has 25 years of experience as a technician and manager with Sprint, MCI, Pacific Telesis, and other telecommunications companies. Applicant also represents that none

of the information provided is false or misleading.

one associated with or employed by applicant has been associated previously with an NDIEO that has filed for bankruptcy.

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

Findings of Fact. Applicant served a copy of the application upon 298 telephone corporations with which it is likely to compete. A notice of the filing of the application appeared in the Daily Calendar on March 27, 1996.

No protests have been filed.

Applicant is not required to conduct a hearing prior to Commission decisions. By prior Commission decisions, we authorized competition in providing interLATA telecommunications service but (prior to 1995) generally barred those offering such service from holding out to the public the provision of intraLATA service.

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

Applicant has demonstrated that it has a minimum of \$25,000 of cash equivalent, reasonably liquid and readily available to meet its start-up expenses.

Applicant has presented information indicating that applicant will not be required to pay any additional deposits to underlying carriers.

Applicant's principals and key employees have substantial technical experience in the telecommunications services industry.

Applicant has submitted with its application a complete draft of its initial tariffs. The draft complies with requirements established by the Commission, such as the prohibition on unreasonable deposit requirements.

11. Applicant has represented that none, associated with or employed by applicant was previously associated with an NDIEO that filed for bankruptcy.

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 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 the application on cities and counties in the proposed service area and to the extent that it requires applicant to provide to potential competitors a conformed copy of all exhibits attached to the application.

14. Exemption from the provisions of PU Code §§816-830 has been granted to other resellers. (See D.86-10-007 and D.88-12-076.)

15. The transfer or encumbrance of property of NDIECs has been exempted from the requirements of PU Code §1851, whenever such transfer or encumbrance serves to secure debt. (See D.85-11-044.)

Conclusions of Law
1. Applicant has the financial ability to provide the proposed services.

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:

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, 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 § 816 since 1981 is \$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).

Applicant should be exempted, as described in Finding of Fact 13, from certain requirements otherwise governing service of its application from the provisions of PU Code § 816.

Applicant should be exempted from PU Code § 816 when the transfer of encumbrance serves to secure debt.

Applicant should be exempted from PU Code § 816 when the transfer of encumbrance serves to secure debt. 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:

1. A certificate of public convenience and necessity (CPCN) is granted to Comdata Telecommunications Services, Inc. (applicant) to operate as a reseller of interLocal Access and Transport Area (interLATA) and, to the extent authorized by Decision (D.) 94-09-065, intraLocal Access and Transport Area (intraLATA) telecommunication services offered by communication common carriers in California.

2. Applicant shall file a written acceptance of the CPCN granted in this proceeding. Applicant shall also serve a copy of its written acceptance on the Chief of the Telecommunications

Branch of the Commission's Advisory and Compliance Division (CACD). The CPCN, 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.

3. a. Applicant is authorized to file with this Commission tariff schedules for the provision of interLATA and intralATA services. 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 one day after filing. Applicant shall comply with the provisions in its tariffs.

b. Applicant is a non-dominant 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 (37 CPUC2d 130 at 158), as modified by D.91-12-013 (42 CPUC2d 220 at 231) and D.92-06-034 (44 CPUC2d 617 at 618):

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.

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 five (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 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 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. Prior to initiating service, applicant shall provide the Commission's Consumer Affairs Branch with the applicant's designated contact person(s) and the corresponding telephone number(s) for purposes of resolving consumer complaints. This require bill inserts, a message on the bill itself, or first class mail notice to customers of the pending increased rates.

information shall be updated at least annually, and whenever there is a change to the name(s) or telephone number(s). Applicant shall notify the Chief of the CACD's Telecommunications Branch in writing of the date interLATA service is first rendered to the public within five days of when such service begins, and again within five days of when intraLATA service begins.

8. 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.

9. In the event the books and records of 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.

10. 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.

11. Applicant shall ensure that its employees comply with the provisions of Public Utilities (PU) Code § 2889.5 regarding solicitation of customers.

12. The corporate identification number assigned to applicant is U-5621-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.

15. Applicant is exempted from PU Code § 851 for the transfer or encumbrance of property, whenever such transfer or encumbrance serves to secure debt.

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 on potential competitors a copy of all exhibits attached to its application.

17. 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 CPCN, unless the applicant has received the written permission of CACD to file or remit late.

The application is granted, as set forth above, provided that the applicant shall either produce such information or file an annual report by the date specified in this order.

This order is effective today.

Dated June 6, 1996, at San Francisco, California.

Applicant shall file an annual report, in compliance with the provisions of the Public Utilities Code, on a calendar-year basis using the information requested in this order.

P. GREGORY CONLON
President

JESSIE J. KNIGHT, JR.

HENRY M. DUQUE

JOSIAH L. NEEPER

Commissioners

Commissioner Daniel Wm. Fessler, being necessarily absent, did not participate.

Applicant shall file an annual report, in compliance with the provisions of the Public Utilities Code, on a calendar-year basis using the information requested in this order.

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.

15. Applicant is exempted from PU Code § 821 for the transfer or encumbrance of property, whenever such transfer or encumbrance serves to secure debt.

A.96-03-046 ALJ/KOT/sid

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)