

Decision 96-06-016 June 6, 1996

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of Michael P. Flynn, dba Communications Consultants, for a certificate of public convenience and necessity to operate as a reseller of interLATA and intralATA telecommunications services within California

**ORIGINAL**

**OPINION**

The Commission has established two major criteria for Michael P. Flynn (applicant), a sole proprietor doing business as Communications Consultants, seeks a certificate of public convenience and necessity (CPCN) under Public Utilities (PU) Code § 1001 to permit it to resell interLATA and intralATA telephone services in California. Applicant also seeks an exemption from the requirements of Rule 18(b) of the Commission's Rules of Practice and Procedure to the extent that this rule requires the service of this application on cities and counties in the proposed service area.

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.

Subsequently, by D. 94-09-065, we authorized competitive intralATA interexchange carrier (IXC) 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 IXC; it provides service in its own name, and its customers view it as their telephone company for interLATA and interstate calls.

1 California is divided into ten Local Access and Transport Areas (LATAs) of various sizes, each containing numerous local telephone exchanges. "InterLATA" describes services and 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.

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services effective January 1, 1995, for carriers meeting specified criteria.

By its application, applicant requested authority to provide its proposed telecommunications services on a "switched" resale basis. As a switch-based reseller applicant would be required to substantiate that it has a minimum of \$100,000 in cash or cash equivalent reasonably liquid and readily available to meet its startup expenses. However, by its April 12, 1996 supplement to the application, applicant clarified that it seeks authority to provide telecommunications services as a "switchless" reseller.

The Commission has established two major criteria for determining whether a CPCN should be granted to an applicant seeking authority to be a switchless reseller. An applicant who is a switchless reseller must demonstrate that it has a minimum of \$25,000 of cash or cash equivalent (as described in D.91-10-441, 41 CPUC2d 505 at 520 (1991), 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, 49 CPUC2d 197 at 208 (1993).) In addition, an applicant is required

21AD: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 plants which is owned, controlled, operated, and/or managed in order to facilitate communication by telephone. and functions that relate to telecommunications originating and terminating within a single LATA.

to make a reasonable showing of technical expertise in telecommunications or a related business. As part of its application, applicant provided a balance sheet demonstrating that it has approximately \$65,000 of cash at February 8, 1996. This indicates that applicant has more than the \$25,000 minimal cash requirement and satisfies our financial criteria for a switchless reseller.

Applicant has provided information on himself indicating his technical training and experience, as detailed in the application and supplemental application. In addition, applicant has attached a complete draft of its initial California tariff schedule as Exhibit E to the application to further substantiate his technical experience.

Applicant possesses the necessary financial and technical expertise to operate as a switchless nondominant telecommunications carrier. 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 231 telephone corporations with which it is likely to compete.
- 2. A notice of the filing of the application appeared in the Daily Calendar on February 20, 1996.
- 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.

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

8. Applicant's technical experience consists of four years of telecommunications experience. Applicant has submitted with its application a complete draft of applicant's initial tariff which complies with the requirements established by the Commission.

10. 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. 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.

13. Applicant has presented documentation from Express Tel (an interexchange carrier) showing that applicant will not be required to provide a deposit for the switching of calls.

14. 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.

15. 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) and

16. The transfer or encumbrance of property of non-dominant carriers has been exempted from the requirements of PU Code § 851 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 service.

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

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 25, 1995).

c. 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 118(b) requirement of service of the application in counties in the proposed service area.

6. Applicant should be exempted from PU Code §§ 816-830. 7. Applicant should be exempted from PU Code § 851 when the transfer or encumbrance serves to secure debt.

8. The application should be granted to the extent set forth below. All notices are hereby placed on notice that their California tariff filings will be processed in accordance with the following effectiveness schedule:

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

**O R D E R**

**IT IS ORDERED that:**

1. A certificate of public convenience and necessity is granted to Michael P. Flynn (applicant) to operate as a switchless reseller of interLocal Access and Transport Area (LATA) and, to the extent authorized by Decision (D.) 94-09-065, intraLATA telecommunications services offered by communication common carriers in California.

2. Applicant shall file a written acceptance of the certificate granted in this proceeding to the Commission's Advisory and Compliance Division Director for placement in the formal file of this proceeding.

3. a. Applicant is authorized to file with this Commission tariff schedules for the provision of interLATA and intraLATA telecommunications services. Applicant may not offer interLATA or intraLATA services 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. Applicant shall comply with the provisions of its tariffs.

b. Applicant is a nondominant interexchange carrier (NDIEC). The effectiveness of its future tariffs is subject to the schedules set forth in Ordering Paragraph 15 of D. 90-084632 (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).

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.

"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 schedule, 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."

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 separate sheets or a 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. Prior to initiating service, applicant shall provide the Commission's Consumer Affairs Branch with the applicant's designated contact person(s) for purposes of resolving consumer complaints and the corresponding telephone number. This information shall be updated if the name or telephone number changes or at least annually.

7. Applicant shall notify this Commission in writing of the date interLATA and intralATA service is first rendered to the public within 5 days after 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. 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 U5634#C which shall be included in the caption of all original tariff filings.



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.

16. 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.

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 certificate of public convenience and necessity, unless the applicants have received the written permission of CACD to file or remit late.

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

19. Application 96-02-033 is closed.

This order is effective today.

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

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.

**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. 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)