

Decision 96-06-019 June 6, 1996

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of Colorado River Communications Corp. for a Certificate of Public Convenience and Necessity to Provide IntraLATA Telecommunications Services within the State of California (U+5422-C)

ORIGINAL

Application 95-06-042 (Filed June 16, 1995)

OPINION

Colorado River Communications Corporation (applicant), a Nevada corporation qualified to transact intrastate business in the State of California, seeks a certificate of public convenience and necessity (CPCN) under Public Utilities (PU) Code § 1001 to permit it to resell intraLATA telephone services in California. Applicant was previously granted authority to provide interLATA services in Decision (D.) 94-10-055 and now seeks authority to operate as a non-facilities based (or switchless) reseller and operator services provider of intraLATA long distance toll service. 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

California is divided into ten Local Access and Transport Areas (LATAs) of various sizes, each containing numerous local telephone exchanges. "InterLATA" describes services and functions that relate to telecommunications originating in one LATA and terminating in another. "IntraLATA" describes services and functions that relate to telecommunications originating and terminating within a single LATA.

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.

Applicant intends to operate as a switchless reseller. 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 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 provided financial statements demonstrating that applicant has made the necessary showing of financial fitness. These indicate that applicant has more than \$25,000 consisting of cash. It satisfies our criteria for having assets reasonably liquid and readily available to meet the applicant's needs. Applicant requested a limited protective order for its financial statements, citing that it contains confidential information and

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 LEC; it provides service in its own name, and its customers view it as their telephone company for interLATA and interstate calls. Areas 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 to

would do harm to applicant if revealed. No opposition to this request has been filed. In response to the assigned Administrative Law Judge's (ALJ) ruling issued on January 9, 1996, applicant has furnished additional information about its operations and safeguards to protect consumers from unauthorized marketing practices. Applicant has explained its relationship with WCT, the underlying long distance carrier for applicant's service; UIS Billing Inc., which is a billing and collection service used by applicant to bill customers via their local exchange carrier billing; American Telecom Membership Corporation (ATMC), which is an agent for applicant's services as well as a switchless reseller; and as the Intercontinental Marketing Associates (IMA), which is a marketing group for ATMC. Applicant represents that it no longer takes residential orders from ATMC or IMA, because it found that certain letters of authorization were not in compliance with state and federal regulations. Applicant further states that it is undertaking a review of all orders and letters of authorization to ensure that all requirements are being met with regard to changing telephone services. Finally, applicant has discontinued providing services to other resellers. Any new customer must complete a signed application for service, and the Colorado River Corporation service center calls the customer to confirm the Primary Interexchange Carrier (PIC) change before service is established. In addition, applicant has furnished a current customer service number which it represents is staffed with eight full time employees and a full time manager. In response to customer complaints, applicant has taken over the customer service function from ATMC and asserts that no further complaints have been received regarding customer's inability to contact a customer service representative.

These safeguards appear adequate to protect consumers from unfair marketing practices. We remind applicant of its

obligations under Public Utilities (PU) Code §2889.5 and in particular, the requirement that the subscriber must sign a paper document which fully explains the nature and extent of the change in telephone service (§2889.5(iii) and (2)(C)). We have (LJA) previously found that strong competitive pressures in the interLATA and intraLATA markets have led to allegations of unfair marketing practices for "slamming" against NDIECs (D:96-02-057 mimeo and at 37). We caution applicant that we will not tolerate such unfair practices.

Colorado River Communications Corporation is managed by Henry A. Molarty, who has several years of experience in banking and as president of various companies. He has been president of Colorado River Communications Corp since 1992. We will authorize the intraLATA service that applicant seeks to provide to the extent such service is authorized by D.94-09-065.

Findings of Fact
 Applicant served a copy of the application upon the NDIEC telephone corporations with which it is likely to compete. A notice of the filing of the application appeared in the Daily Calendar on July 7, 1995. No protests have been filed.

4. No opposition to applicant's request for confidentiality of its financial documents have been filed.

5. A hearing is not required.

6. 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.

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

8. We remind applicant of its obligations to refrain from unfair marketing practices.

8. Applicant was previously granted authority to provide interLATA services in D.94-10-055. Applicant has demonstrated that it has a minimum of \$25,000 of cash and cash equivalents demonstrated by its financial statements, reasonably liquid and readily available to meet its start-up expenses.

9. Applicant has also represented that the local exchange carriers and interexchange carriers with which applicant will connect, do not require any deposits.

10. Applicant's technical experience consists of a manager with several years of experience in banking and managing various companies.

11. 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.

12. 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.

13. 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.

14. The Commission has routinely granted nondominant 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, e.g., D.86-10-007 and D.88-12-076.)

below

Conclusions of Law

1. Applicant has the financial ability to provide the proposed service. Applicant has a minimum net worth of \$25,000 and has made a reasonable showing of technical expertise in telecommunications and marketing. Applicant has represented that safeguards are in place which adequately protect consumers from unauthorized changes in telephone services.

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

4. Applicant is subject to:

a. The current 3.2% surcharge applicable to service rates of intraLATA toll and intrastate interLATA toll to fund the Universal Lifeline Telephone Service (PU Code S 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 S 2881; Resolution T-15799, November 21, 1995);

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 M-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 S 739-30; Resolution T-15826, December 20, 1995).

5. Applicant should be exempted from Rule 18(b) 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.

IT IS ORDERED that:

1. A certificate of public convenience and necessity is granted to Colorado River Communications Corporation (applicant) to operate, to the extent authorized by Decision (D.) 94-09-065, intraLocal and Transport Area (LATA) telecommunication service 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 intraLATA service. Applicant may not offer 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 (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: 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 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 4/20/95 ni babulont ed Hada hohw ,D-SS2-U at 5.0 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 to ayrb 00 nhdhW . 6.1 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 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. 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. 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 revised contained in Attachment A to the GOAD. 11. Applicant shall ensure that its employees comply with the provisions of PU Code § 2889.5 regarding solicitation of customers. 12. 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.

13. The corporate identification number assigned to applicant is U-5422-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, applicant shall comply with PU Code § 708's Employee Identification Cards, and notify the Chief of CACD's Telecommunications Branch in writing of its compliance.

15. Applicant is exempted from the provisions of PU Code §§ 816-830.

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

17. 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.

18. 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 applicant has received the written permission of CACD to file or remit late.

19. Applicant's request for a limited protective order keeping its financial documents confidential is granted.

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.

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

21. Application 95-06-042 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. NEPPER

Commissioners

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

A.95-06-042 ALJ/ANG/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. 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)