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Decision 96-09-062 September 20, 1996

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ORIGINAL

In the Matter of the Application of NorLight, Inc., for a Certificate of Public Convenience and Necessity to Resell Telecommunications Services Within the State of California.)	Application 96-06-022 (Filed June 17, 1996)

O P I N I O N

NorLight, Inc. (NorLight or applicant), a Wisconsin corporation qualified to do business in California, seeks a certificate of public convenience and necessity (CPCN) under Public Utilities (PU) Code § 1001 to permit it to resell interLATA telephone service and intraLATA telephone service within the State of California as a nondominant interexchange carrier (NDIEC).[1]

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;

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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.

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. An applicant who is a switchless reseller[2] 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 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

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[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. 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.

addition, an applicant is required to make a reasonable showing of technical expertise in telecommunications or a related business.

NorLight is a wholly-owned subsidiary of MRC Telecommunications, Inc., a Wisconsin corporation which is a wholly-owned subsidiary of Journal Communications, Inc. The application states that there are imminent plans to merge MRC and NorLight's subsidiaries into NorLight, which will then become a wholly-owned subsidiary of Journal Communications, Inc.

NorLight's present corporate parent, MRC, owns and operates digital microwave, analog microwave, asynchronous fiber optic systems, SONET based fiber optic systems, frame relay advanced data systems and a Northern Telecom DMS-250 switch. In total, MRC owns and operates an interstate network consisting of 1,145 miles of high-capacity digital microwave, 845 route miles of fiber optic facilities, and 670 miles of video transmission facilities. All technical support for this network is provided by personnel of NorLight and MRC located at their main office in Wisconsin.

NorLight currently provides telecommunications services in Colorado, Illinois, Idaho, Iowa, Michigan, Minnesota, Missouri, Montana, New Jersey, North Dakota, Texas, Utah, Wisconsin, and Wyoming. In Illinois, Michigan, Minnesota, and Wisconsin, NorLight is a facilities-based provider of long-distance services. In all other states, NorLight is a reseller of interexchange telecommunications services. In all states, NorLight provides sophisticated business long-distance services similar to those proposed to be offered in California.

NorLight requests authorization to operate as a "switchless" reseller, using both its own facilities (outside California) and reselling the services of other facilities-based carriers such as Wiltel/LDDS and AT&T. NorLight does not own transmission or switching facilities in California, nor does it propose to acquire, own, construct, or extend any telecommunications facilities in California to implement its plans to provide service in California. NorLight has agreements with facilities-based carriers to resell their interexchange services within California. These services in California will include private line services and in- and outbound dialed services, and will be made available to business and institutional customers throughout the State of California on an originating or terminating basis.

As part of its application, applicant provided a consolidated balance sheet and income statement for Journal Communications, Inc., its corporate parent, which includes NorLight's financial information. The financials indicate that applicant has more than $25,000 in cash, satisfying our criteria for reasonable liquidity and availability to meet the applicant's needs.

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

1. Robert E. Rogers, Senior Vice President of MRC Telecommunications, has an employment history in broadcasting and telecommunications technology extending back to 1972. His technical experience includes that with satellite, microwave, and fiber optic systems.

2. Michael S. Ulicki, Vice President of Engineering and Operations for NorLight, Inc., has been involved in the development of many communications systems, including analog and digital long haul microwave, asynchronous fiber transport, SONET fiber transport, switched long distance voice, and satellite transmission. He was in charge of the development team that implemented NorLight's switched packet network. He has had more than ten years of experience in telecommunications engineering.

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 all telephone corporations with which it is likely to compete.

2. A notice of the filing of the application appeared in the Daily Calendar on June 19, 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.

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

8. Applicant's technical experience consists of at least two employees with a combined experience of over 30 years in telecommunications engineering and related fields.

9. 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.

10. 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.

11. 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. 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.

13. 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.)

14. The transfer or encumbrance of property of nondominant 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.

2. Applicant has made a reasonable showing of technical expertise in telecommunications or in a related 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 and Communication Devices Fund (PU Code § 2881; Resolution T-15801, October 5, 1995);

c. The user fee provided in PU Code §§ 431-435, which is 0.11% intrastate revenue for the 1996-1997 fiscal year (Resolution M-4782); 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 18(b)'s 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. 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.

9. 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 NorLight, 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 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. Applicant shall comply with the provisions in 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 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:
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> "a. Inclusion of FCC-approved rates for interstate services in California public utilities tariff schedules shall become effective on one (1) day's notice.
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> "b. Uniform rate reductions for existing services shall become effective on five (5) days' notice.
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> "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.
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> "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 sheer 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 Telecommunications Division. 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 Services Division 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 service is first rendered to the public within 5 days after service begins and again within 5 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 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 Commission Staff 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 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-5674-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, Employee Identification Cards, and notify the Director of the Commission Telecommunications Division 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. 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 filling an annual report or in remitting the fees listed in Conclusion of

Law 4, the Commission Telecommunications Division 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 the Commission Telecommunications Division to file or remit late.

19. The application is granted as set forth above.

20. Application A.96-06-022 is closed.

This order is effective today.

Dated September 20, 1996, at San Francisco, California.

P. GREGORY CONLON
President
DANIEL Wm. FESSLER
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)