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Decision 96-09-067 September 20, 1996

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of Sterling Telecommunications Incorporated for a Certificate of Public Convenience and Necessity to Provide Resold IntralATA and InterLATA Telecommunications Services Within the State of California to the Extent Authorized by the Commission

ORIGINAL

Application 96-06-007 (Filed June 10, 1996)

Applicant states that it will offer intralATA and interLATA services and intralATA type long distance services relying on the switches of underlying O.P.N.I.O.N. carriers.

1. Summary

Applicant has filed recent financial statements as Exhibit A. Sterling Telecommunications Incorporated (applicant), a California corporation, 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. 1. Granted.

2. Nature of Application

George Martin is vice-president of Sterling Telecommunications and By Decision (D.) 84-01-037 (14 CPUC2d 317) (1984) and later decisions, we authorized interLATA entry generally. By D. 94-09-065, 56 CPUC2d 117 (1994), we authorized competitive intralATA services effective January 1, 1995. The Commission has established two major criteria for determining whether a CPCN

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

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should be granted. An applicant who is a switchless reseller² must demonstrate that it has a minimum of \$25,000 in cash or cash equivalent available to meet the firm's start-up expenses (D.91-10-041 Appendix A, Paragraph 5.1) and that it has additional resources to cover deposits required by other telephone carriers (D.93-05-010). In addition, an applicant is required to make a reasonable showing of technical expertise.

Applicant was incorporated on October 16, 1995. Applicant states that it will offer interLATA and intralATA services and intrastate MTS type long distance services, relying on the switches of underlying facilities-based carriers. Applicant also intends to market postpaid and prepaid calling card services. Applicant has filed recent financial statements as Exhibit 5 to the application showing assets as of March 31, 1996 of \$164,241 and liabilities of \$67,020.

Applicant provided information on its key executives as follows:

George Matin

George Matin is vice-president of Sterling and oversees the Company's Agents and Sales Department. Mr. Matin has worked in sales for over 15 years, 12 of which have been in the telecommunications sector. During his tenure in the telecommunications industry, Mr. Matin has developed close ties and excellent working relationships with numerous individuals representing international and multi-national companies.

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 a local exchange carrier; it provides service in its own name; and its customers view it as their telephone company for interLATA and interstate calls.

Farzad Mobin

Farzad Mobin has 16 years of telecommunications experience. Mr. Mobin holds a post-graduate BS from MIT in computer science and has extensive background and experience in switches, particularly PC-based hardware and software.

Bijan Kharazi

Bijan Kharazi has nine years of telecommunications experience. Mr. Kharazi has held various positions in operations, management, product management, and international sales with reputable companies, including Pacific Bell, International Long Distance and Justice Technology, Inc. Mr. Kharazi is currently a candidate for a Masters Degree in Telecommunications at the University of Colorado at Boulder.

Farzad Amid

Farzad Amid has 25 years of experience in business administration and management. Mr. Amid has worked in the capacity of chairman and CEO for a number of successful businesses and has extensive experience in team leadership. Mr. Amid has a BS in computer science from the University of Manchester in England and a Masters Degree in Business Administration.

Proposed tariffs of applicant, comparable to those of competing carriers, are attached to the application as Exhibit 6. Applicant states that no person associated with the company has been involved in any other telecommunications company that has gone out of business or has filed for bankruptcy.

Applicant requests a partial waiver of Rule 18(b) in order that it need not serve a copy of the application on city and county planning agencies, since applicant will not be constructing any plant or network facilities in the state. Requests of this nature have been granted routinely in the past by American Telephone Network, Inc. (1992) 43 CPUC2d 380. (08-11-88.D)

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

Findings of Fact

1. Applicant served a copy of the application on 145 telecommunications corporations with which it may compete.
 2. A notice of the filing of the application appeared in the Daily Calendar on June 12, 1996.
 3. No protests have been filed.
 4. 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.
 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 in cash available to meet its start-up expenses.
 7. Applicant has demonstrated that its management possesses the requisite technical experience to operate its service.
 8. Applicant has submitted with its application a draft of its initial tariff, and this tariff complies with Commission requirements, including prohibitions on unreasonable deposit requirements.
9. 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.
10. The Commission has routinely granted NDIECs, such as applicant, an exemption from Rule 18(b) requirement that the application be served on cities and counties in the proposed service area.
11. Exemption from the provisions of Code §§ 1816-830 has been granted to other resellers (see D.88-10-007 and D.88-12-076.)
- We will authorize the interLATA and intraLATA services that applicant seeks to provide.

12. (No officer of applicant has been involved in any other telecommunications company that has gone out of business or has been filed for bankruptcy or is in the process of being liquidated.)

13. 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

No hearing is required.

2. Applicant has the financial ability to provide the proposed service.
3. Applicant has made a reasonable showing of technical expertise in telecommunications.
4. Public convenience and necessity require the interLATA and intraLATA services to be offered by applicant.

5. Applicant is subject to the following conditions:

- 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);
- c. The user fees provided in PU Code §§ 431-435, which is 0.11% of gross 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 Funds (PU Code § 739.30; Resolution T-15826, December 20, 1995).

6. Applicant should be exempted from the Rule 18(b) requirements of service of the application on cities and counties.

7. Applicant should be exempted from PU Code §§ 816-830.

8. Applicant should be exempted from PU Code § 851 when the transfer or encumbrance serves to secure debt.

9. The application should be granted to the extent set forth below.

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

O.R.D.E.R. Applicant has shown technical expertise in telecommunications.

IT IS ORDERED that Public convenience and necessity is shown.

1. A certificate of public convenience and necessity is granted to Sterling Telecommunications Incorporated (applicant) to operate as a reseller of interLocal Access and Transport Area (interLATA) services and IntraLocal Access and Transport Area (intraLATA) services offered by communication common carriers in California.

2. Applicant shall file a written acceptance of the certificate granted in this proceeding with the Director of the Telecommunications Division.

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 tariffs is subject to the

schedules set forth in Ordering Paragraphs 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:

"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 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 no 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's Telecommunications Division. Tariff filings shall reflect all fees and surcharges to which applicant is subject, as reflected in Conclusion of Law 5.
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 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 and intralATA services are 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 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-5675-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 Telecommunications Division in writing of its compliance.

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

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 and to the extent that the rule requires applicant to serve a copy of all exhibits attached to its application on potential competitors.

17. If applicant is 90 days or more late in filing an annual report or in remitting the fees listed in Conclusion Law 4, the Telecommunications Division 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 the Telecommunications Division to file or remit late.

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

19. This proceeding is closed.

This order is effective today.

Dated September 20, 1996 at San Francisco, California.

The certificate granted and the authority to render service under charges, and rules authorized will expire after the effective date of this order.

P. GREGORY CONLON
President
DANIEL W. FESSLER
JESSIE J. KNIGHT, JR.
HENRY M. DUQUE

The application number assigned to applicant is U-2625-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.

JOSIAH L. NEPPER
Commissioners

14. Within 60 days of the effective date of this order, applicant shall copy with PU Code 3 708, Employee Identification Cards, and notify the Director of the Telecommunications Division in writing of its compliance.

15. Applicant is exempted from the provisions of PU Code 22 818-830.

16. Applicant is exempted from Rule 18(d) 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.

17. If applicant is 90 days or more late in filing an annual report or in settling the fees listed in Conclusion Law 4, the Telecommunications Division 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 the Telecommunications Division to file or refile late.

A.96-06-007 ALJ/WRI/jft

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)