

SEP 20 1996

Decision 96-09-075 September 20, 1996

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of PrimeTel Communications, Inc. for a Certificate of Public Convenience and Necessity to Provide InterLATA & IntraLATA Telecommunications Services within the State of California.

ORIGINAL

Application 96-02-027 (Filed February 13, 1996); Amended May 17, 1996; Supplemented June 28 & July 22, 1996

OPINION

PrimeTel Communications, Inc. (applicant), a Delaware 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 services in California and to resell intraLATA telephone service when intraLATA competition is permitted by this Commission. Applicant seeks to offer 800 service and message telecommunications 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 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.

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.

SEP 08 1992

Decision 96-025027 ALJ/ANW/bwg September 30, 1992

The Commission has established two major criteria for determining whether a CPCN should be granted. In D.93-05-010, 49 CPUC2d 197 at 204 (1993), the Commission declared 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.91-10-041, 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 addition, an applicant is required to make a reasonable showing of technical expertise in telecommunications or a related business.

As part of its amendment and supplemental filed information, applicant provided a set of financial statements of National Telephone Enterprises, Inc. (NTE) for the year ended December 31, 1995 as well as a statement from the Strong Municipal Advantage Fund dated June 14, 1996, showing NTE has over \$1,000,000 in the fund. As part of its supplemental filed information, applicant provided an audited set of financial statements for applicant which disclosed it has only \$6,000 in cash. However, by way of further supplement, applicant also provided the guarantee of NTE pledging to commit funds of up to \$250,000 as working capital

Subsequently, by D.93-05-010, we authorized the following information: services effective January 1, 1992, for carriers meeting specific

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. I D.92-06-069 noted that it is possible to control or 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 and operated, and/or managed in order to facilitate communication by telephone.

for applicant. The guarantee is irrevocable for a period of 12 months after certification of applicant by this Commission. This qualifies under the standards established in D.91-10-041 (41 CPUC 2d 513 (1991)) as cash equivalent. This shows that applicant has more than \$25,000 consisting of cash equivalent in the form of a corporate guarantee. It satisfies our criteria for being reasonably liquid and readily available to meet the applicant's needs.

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

Richard Cohen established NTE in 1990 as a provider of audiotext services for personal relationship advertising using 900/976 services. It then expanded to include voicemail and 800 inbound services. He serves as NTE's president and CEO and applicant's CEO. He co-founded applicant in November 1995. Cohen attended Drexel University.

Sandra Kessler, applicant's president, formerly served as an independent consultant to NTE. She is a co-founder of applicant. She has been certified by the NASC. She attended Pennsylvania State University.

Robert Greenstein, applicant's manager of sales and marketing, was formerly NTE's legal and business co-ordinator. He still acts as legal counsel for NTE. He graduated from Temple University and holds a J.D. from John Marshall School of Law.

Jennifer Luna is the administrative assistant for applicant and NTE. She holds a B.A. from Elizabethtown College and is a certified paralegal.

We will authorize the interLATA and intraLATA services that applicant seeks to provide with certainty that the proposed significant effect upon the environment.

**Findings of Fact**

1. Applicant served a copy of the application upon 298 telephone corporations with which it is likely to compete.

12) A notice of the filing of the application appeared in the Daily Calendar on February 16, 1996. A notice of the filing of the amendment appeared in the Daily Calendar on May 20, 1996. All filings and amendments were filed on June 28, 1996 and July 22, 1996.

3. No protests have been filed.

4. A hearing is not required. 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 equivalent consisting of a corporate guarantee of funds, reasonably liquid and readily available to meet its start-up expenses.

8. Applicant has also represented that no deposits will be required by interexchange carriers.

9. Applicant's technical experience consists of 4 employees with a combined experience of over 20 years in telecommunications.

10. 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.

11. 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.

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.

Applicant served a copy of the application upon telephone corporations with which it is likely to compete.

13. The Commission has routinely granted nondominant interexchange carriers, such as applicant, an exemption from Rule 18(b) to the extent that the rule requires applicant to serve a copy of its application on cities and counties in the proposed service area.

14. 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.)

15. The transfer of encumbrance of property of nondominant carriers has been exempted from the requirements of PU Code § 851 whenever such transfer of 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.

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; to the extent authorized by 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 fee provided in PU Code §§ 431-435, which is 0.11% of gross intrastate revenue for the 1995-1996 fiscal year (Resolution M-4782); and

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.

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.

**ORDER**

IT IS ORDERED that:

1. A certificate of public convenience and necessity is granted to PrimeTel Communications, 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:  
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 notification 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 affecting rates or relocations of text in the tariff

schedules, shall become effective on forty (40) days' notice, and shall be effective on the date of filing of the tariff schedule. If the applicant is revising the text or location of text material which do not cause an increase in any rate or charge, the applicant shall become effective on not less than five (5) days' notice.

4. Applicant may deviate from the following provisions of 47 CFR 96-A: (a) paragraph 11(C)(1)(b), which requires consecutive sheet numbering and prohibits the reuse of sheet numbers, and (b) paragraph 11(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 the Commission's Tariff Schedule.

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 (as interLATA and intraLATA resale operations) is U-5682-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 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 in which it proposes to operate.

18. If applicant is 90 days or more late in filing an annual report or in remitting the fees listed in Conclusion of 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 applicant has received the written permission of the Telecommunications Division to file or remit late.

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

20. Application 96-02-027 is closed.  
This order is effective today.  
Dated September 20, 1996, at San Francisco, California.

The corporate identification number assigned to applicant is U-2882-C and initial ATA resale operations which are filed in this Commission proceeding in the caption of all original filings with this Commission shall be filed in the caption of all other filings filed in existing proceedings.

**P. GREGORY CONLON**  
**DANIEL W. PESSLER**  
**JESSIE J. KNIGHT, JR.**  
**HENRY M. DUQUE**  
**JOSIAH L. NEPPER**  
**Commissioners**

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 exempt from the provisions of PU Code § 816-830.

16. Applicant is exempt from PU Code § 831 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 exempt 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.

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)