

Decision 96-10-019, October 9, 1996

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ORIGINAL

In the Matter of the Application of Rapid Link

USA, Inc. for a Certificate of Public Convenience and Necessity to operate as a reseller of interLATA and intraLATA telecommunication services within California.

Application 96-07-017
(Filed July 16, 1996)

OPINION

SUMMARY

Rapid Link USA, Inc. (Applicant) seeks a certificate of public convenience and necessity (CPCN) under Public Utilities (PU) Code § 1001 to operate as a reseller of intrastate interLATA and intraLATA interexchange telecommunications services in California.¹ In that capacity, Applicant would be a nondominant interexchange carrier (NDIEC). Applicant also seeks exemptions, such as we have granted previously to similarly situated resellers, from certain statutory and regulatory requirements. Finally, Applicant requests ex parte approval of its application. We grant the application as set forth below.

Discussion

Applicant is a Georgia corporation. As shown by late-filed Exhibit B, Applicant has qualified, as of June 28, 1996, to transact business within the State of California.

¹ California is divided into 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.

(By Decision (D.) 84-01-037 and later decisions, we authorized interLATA entry generally. However, we limited the authority conferred to interLATA service and we subjected the new entrants 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.

Applicant proposes to operate as a "switchless" reseller of telecommunications services.² We have established two major criteria for determining whether a CPCN should be granted to a carrier that is a switchless reseller. Such a carrier must demonstrate that it has a minimum of \$25,000 of cash or cash equivalent (as described in D.91-10-041), reasonably liquid and readily available to meet the firm's start-up expenses. Such a carrier must also document any deposits required by local exchange companies (LECs) or interexchange carriers (IECs) and demonstrate that it has additional resources to cover all such deposits. See D.93-05-010. In addition, the carrier is required to make a reasonable showing of technical expertise in telecommunications or a related business.

Applicant asserts that it has the financial, managerial, and technical resources to provide the proposed telecommunications services. Regarding financial resources, Applicant has provided a Balance Sheet as of February 29, 1996, and a Statement of Operations for February 1996 (Exhibit E and Exhibit F, respectively, to the Application). These exhibits indicate Applicant is currently profitable and has cash reserves well in excess of those

² D.93-05-010 defines a switchless reseller as an 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 the local exchange company; 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 (1) a carrier may control, operate, or manage telephone lines without owning them, and (2) such a carrier may still have plant that is owned, controlled, operated, and/or managed in order to facilitate communication by telephone.

required in D.91-10-041.³ Furthermore, Applicant indicates that it does not purchase access or facilities from California LECs and consequently does not have to pay any deposit to such LECs. Applicant has been in operation outside of California since 1994, having been certified or authorized to operate in Florida, Georgia, South Carolina, and other states. In the course of such operation, Applicant has established ongoing relationships with various underlying IECs. Applicant has paid deposits to these IECs through letters of credit. Applicant asserts that no additional deposits would be required for its proposed California operations.

Regarding managerial and technical resources, Applicant has provided profiles of two members of its top management. Thomas Dewey Wise is Applicant's Chief Executive Officer and Chairman of the Board. He is a lawyer and has served as an Assistant County Attorney, and later as a South Carolina State Senator. In 1983, he founded First Trident Savings and Loan Corporation and served as its General Counsel until 1992, when it was acquired by National Bank of South Carolina. He has been a member of the Board of Directors of South Carolina State Chamber of Commerce, Vice-Chairman of the Board of Directors of First Trident Savings and Loan Corporation, and a member of the Board of Directors of South Trust Bank of Charleston. Keith Busch is Applicant's President and is responsible for overall management of the company. Before assuming his current position, Mr. Busch was the International Sales Manager for Premiere Communications, Inc., where he was responsible for research, development, and marketing of new products in Asia and Europe. He has worked as a computer consultant at the University of Washington and as Mechanical Engineering Sales/Manager for Porter Seal. In addition, Applicant represents that

³ In Applicant's supplement to its application, provided at the request of the assigned administrative law judge, Applicant indicated that the cash shown in Exhibit E is on deposit in the Atlanta branch of First Union National Bank.

none of its officers, directors, or employees was previously associated with a carrier that filed for bankruptcy or went out of business. Applicant believes its managerial fitness is demonstrated by its successful operation for the past two years in Florida and South Carolina and by its current operation in Georgia, Minnesota, Oregon, Texas, Washington, and Wisconsin. Applicant represents that it has always maintained a high level of customer service. Customer service representatives are available to assist with customers' inquiries 24 hours per day, 365 days per year. We conclude that Applicant has made an adequate showing of financial, managerial and technical resources to support the requested CPCN to resell telecommunications services in California. Furthermore, as a reseller, Applicant does not propose construction or extension of telecommunications facilities, and it can be seen with certainty that granting this CPCN would not have a significant adverse impact on the environment. Since Applicant will not construct or extend facilities or seek any right of way, it should not be required to serve its application on cities and counties, which it would otherwise be required to serve pursuant to Rule 18(b) of the Commission's Rules of Practice and Procedure. Applicant has served its application (without the exhibits, as the Commission allowed in D.93-07-003) on its likely competitors, and no one has protested the application. Applicant requests exemption from PU Code §§ 816-830, and from PU Code § 851 with respect to transfers or encumbrances made for the purpose of securing debt. Applicant also requests exemption from certain provisions of General Order 96-A: paragraph II.C(1)(b), which requires consecutive sheet numbering and prohibits the reuse of sheet numbers; and paragraph II.C.4, which requires the use, for each rule, of a separate sheet or

This additional information concerning Applicant's operations comes from its supplement to the application. See note 3 above.

series of sheets. The Commission has previously granted such exemptions in appropriate circumstances and should do so here. In conclusion, we will grant the CPCN as requested by Applicant.

Findings of Fact

1. Applicant served a copy of the application upon 323 telephone corporations with which it is likely to compete.

2. A notice of the filing of the application appeared in the Daily Calendar on July 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. 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 of cash reasonably liquid and readily available to meet its start-up expenses.

7. Applicant has presented information indicating that Applicant will not be required to pay any additional deposits to underlying carriers.

8. Applicant's corporate officers and key employees have substantial experience in telecommunications and other service industries.

9. Applicant has submitted a complete draft of its initial tariffs. The draft complies with requirements established by the Commission.

November 21, 1996

10. Applicant has represented that no one associated with or employed by Applicant was previously associated with an NDIEC 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 NDIECs, such as Applicant, an exemption from Rule 18(b) where no construction is involved, to the extent that the rule would require Applicant to serve a copy of its application on cities and counties in the proposed service area.

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 NDIECs has been exempted from the requirements of PU Code § 851 when 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 services.

2. Applicant has made a reasonable showing of expertise in telecommunications and other service industries.

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 11 § 2881; Resolution T-15801, October 5, 1995);

The user fee 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 Fund (PU Code § 739.30; Resolution T-15826, December 20, 1995).

5. As described in Finding of Fact 12, Applicant should be exempted from certain requirements otherwise governing service of its application.

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.

d. Applicant is a nonmonument interexchange carrier (NIDIC). The effectiveness of its future tariffs is subject to the schedules set forth in Ordering Paragraph 2

of D.90-08-032, as modified by D.91-12-013 and D.92-06-031.

All NIDICs are hereby placed on notice that their California tariff filings will be processed in accordance with the following effectiveness schedule:

ORDER
IT IS ORDERED that:

1. A certificate of public convenience and necessity (CPCN) is granted to Rapid Link, USA, 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, of intraLocal Access and Transport Area (intraLATA) telecommunication services offered by communication common carriers in California.

2. Applicant shall file a written acceptance of the CPCN granted in this proceeding. Applicant shall also serve a copy of its written acceptance on the Director of the Telecommunications Division. The CPCN, 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.

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 one 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, as modified by D.91-12-013 and D.92-06-034:

"5. All NDIECs are hereby placed on notice that their California tariff filings will be processed in accordance with the following effectiveness schedule:

3. 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 five (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 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 of 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's Telecommunications Division. Tariff filings

shall reflect all fees and surcharges to which Applicant is subject, as set forth in Conclusion of Law 4.

5. After the effective date of this order and consistent with Ordering Paragraph 3, Applicant shall file a service area map as part of its initial tariff.

6. Prior to initiating service, Applicant shall provide the Consumer Services Division with Applicant's designated contact person(s) for purposes of resolving consumer complaints and the corresponding telephone number(s). This information shall be updated at least annually and whenever there is change of name or telephone number.

7. Applicant shall notify the Director of the Telecommunications Division in writing of the date interLATA service is first rendered to the public within five days after service begins and again within five 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 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 to this order. Applicant shall ensure that its employees comply with the provisions of Public Utilities (PU) Code § 2889.5 regarding solicitation of customers.

12. The corporate identification number assigned to Applicant is U-5692-C. Applicant shall include this number in the caption of all original 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 Director of the Telecommunications Division 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 in which it proposes to operate.

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, the Telecommunications Division shall prepare for Commission consideration a resolution that revokes Applicant's CPCN, unless Applicant has received the written permission of the Telecommunications Division to file or remit late.

18. The application is granted as set forth above.

19. Application 96-07-017 is closed.

This order is effective today.

Dated October 9, 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)