

NOV. 26 1996

Decision 96-11-054 November 26, 1996

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of BT North America Inc. for a Certificate of Public Convenience and Necessity to Resell Inter-exchange Telecommunications Services and for Approval of its Initial Tariff. (Application 96-06-034) (Filed June 24, 1996)

OPINION

BT North America Inc. (applicant), a Delaware corporation qualified to transact business in California, 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, including out-WATS, in-WATS, private line, and ISDN services. Applicant states that it will operate as a switchless reseller and does not propose to

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.

2. Decision (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.

ALJ.D.S.VOM

acquire, own, construct, or extend any telecommunications facilities. Applicant also requests a waiver of Rule 18(b) of the Commission's Rules of Practice and Procedure (Rule) regarding the service of its application upon cities and counties. In addition, applicant asks that it not be required to serve the amendments to its application ordered by the assigned Administrative Law Judge (ALJ) on all of its competitors in California.

By 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.

The Commission has established two major criteria for determining whether a CPCN should be granted. First, 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)) that is 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 and demonstrate that they have additional resources to cover all such deposits. (D.93-05-010, 49 CPUC2d 197 at 208 (1993))

As part of its application (including amendments to the application ordered by assigned ALJ Kenney) applicant provided a notarized bank statement showing that applicant possessed more than \$25,000 in unencumbered cash. Applicant also represented that no deposits are required by an underlying carrier in order for applicant to provide the requested services. This satisfies our criterion that applicant possess sufficient financial resources that are reasonably liquid and readily available to meet the applicant's needs.

The second major criterion for determining whether a CPCN should be granted is whether the applicant has made a reasonable showing of technical expertise in telecommunications or a related business. To satisfy this criterion, applicant provided information on its key managers indicating their experience and education. It can be summarized as follows:

**James E. Graf II, President and Director:** Graf joined BT North America Inc. (BTNA) in 1991. Prior to joining BTNA, Graf held the following positions: Vice President of Governmental Relations at Contel Corporation; partner in the law firm of Weil, Gotshal & Manges, specializing in telecommunications law; Legal Assistant to Federal Communications Commission (FCC) Commissioner Fogarty; and Counsel to the Subcommittee on Communications of the United States Senate Committee on Commerce. Graf received his bachelor's degree in political science from the University of Michigan, and his J.D. from the University of Michigan Law School.

**Michael Keilty, Vice President-Sales:** Keilty has been with BTNA for over nine years. Prior to his current position, he was vice president of BTNA product sales. From 1978 to 1987, Keilty was vice president of sales of FTCC, an international carrier based in New York City. His responsibilities included sales of all FTCC messaging, telex, and international private line services in the United States and Europe. Keilty graduated from St. Johns University with a bachelor's degree in business management.

**Jan L. Vinokour, Vice President-Legal, Secretary, and Director:** Vinokour joined BTNA in 1988 as Vice President-Legal. From 1985 to 1988, Vinokour was Assistant Vice President and Corporate Counsel at Frank B. Hall & Co., Inc. From 1975 to 1984, Vinokour was an associate at two different law firms. Vinokour obtained a bachelor's degree from Barnard College and a J.D. from the University of California at Berkeley.

**Martin H. Traill, Chief Financial Officer:** Traill became CFO for BTNA in 1995. Traill has

served with various British Telecommunications entities since 1984.

As additional evidence of its technical expertise, applicant states that it is currently authorized to provide telecommunications services by the FCC. Applicant has satisfied our criterion that it possess sufficient technical expertise to provide the requested service.

Applicant requests a waiver of the Rule 18(b) requirement to serve its application on cities and counties in which applicant proposes to provide service. Since applicant does not propose to construct any facilities, and since we have routinely granted similar requests for waivers of Rule 18(b) under such circumstances, we shall grant applicant's requests to be relieved of the Rule 18(b) requirement to serve its application on cities and counties. We shall also grant applicant's request to be relieved of having to serve the amendments to its application ordered by the assigned ALJ on all of its competitors. We grant this request on the basis that no party protested the original application.

We will authorize the interLATA and intralATA services that applicant seeks to provide. Tariffs will be required for NDIECs providing service through 1996; however, effective January 1, 1997, pursuant to PU Code §, this Commission is authorized to dispense with the tariffing requirement of §§ 454, 489, and 495 of the PU Code in certain circumstances. Effective January 1, 1987, NDIECs which are not local exchange carriers (LECs), competitive local exchange carriers (CLCs), nor affiliates of LECs or CLCs, are no longer required to file or maintain tariffs with this Commission. NDIECs which are either LECs, CLCs, or affiliates of LECs and CLCs can only acquire such exemptions by separate application. (PU Code § 495.7, D.96-09-098.)

Martin H. Trail, Chief Financial Officer  
Trail became CFO for BWA in 1982.

Applicant is not a LEC or CLC nor is the applicant an affiliate of a LEC or CLC. Therefore, applicant will be exempt from filing tariffs after January 1, 1997. A tariff must be filed for services rendered prior to that date.

Findings of Fact

1. Applicant served a copy of the application upon 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 26, 1996.

3. No protests have been filed in the proposed service areas.

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 that is reasonably liquid and readily available to meet its start-up expenses.

8. Applicant has represented that no deposits are required by the underlying carriers in order for the applicant to provide the services it seeks to offer.

9. Applicant's technical experience includes four senior management employees with a combined experience of over 43 years in the telecommunications business.

10. Applicant is not a LEC or a CLC, nor is applicant an affiliate of a LEC or CLC.

11. Applicant submitted a draft of its 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 an NDIEC 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 NDIECs, 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 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 for example, D.86-10-007 and D.88-12-076.)

16. The transfer or encumbrance of property of non-dominant carriers has been exempted from the requirements of PU Code § 851a 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.

3. Public convenience and necessity requires the interLATA and intraLATA services to be offered by applicant.

4. Applicant is subject to:

- a. The current 3.12% 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 S 2881; Resolution T-15801, October 6, 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 S 739.30; Resolution T-15826, December 20, 1995)

Applicant should be exempted from Rule 18(b) requirement of service of the application on cities and counties in the proposed service area

Applicant should not be required to serve amendments to its application ordered by the assigned ALJ on all of the applicant's competitors in California

Applicant should be exempted from PU Code §§ 816-830 and 851 when the transfer or encumbrance serves to secure debt

Section 495.7 of the PU Code authorizes this Commission to dispense with the tariffing requirements of §§ 454, 489, 491, and 495 of the PU Code in certain circumstances

By D.96-09-098, NDIECs who are not LECs or CLCs, and their affiliates of LECs or CLCs, are exempt from the filing of tariffs beginning January 1, 1997; however, they will be required for services provided between now and that date

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

12. 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 BT North America 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. Effective January 1, 1997, applicant is exempt from the requirements to file and maintain tariffs pursuant to §§ 454, 489, 491, and 495 of the PU Code.

4. a. To provide service between now and January 1, 1997, applicant is authorized to file with this Commission tariffs schedules for the provision of interLATA and intraLATA service. Applicant may not offer interLATA and/or intraLATA service until the 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 10 days after filing. Applicant shall comply with the provisions in its tariffs.

Applicant is a non-dominant interexchange carrier (NDIEC). The effectiveness of its future tariffs is subject to the schedules set forth in Ordering Paragraph 58 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 and intraLATA public utilities tariff schedules.



shall become effective on one (1) day's notice.

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 or charge shall become effective on not less than five (5) days' notice."

5. Applicant may deviate from the following provisions of GO 196-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 for a 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 4;

6. 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.

7. 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.

8. 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.

9. Applicant shall notify this Commission 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.

10. 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.

11. 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.

12. Applicant shall file an annual report in compliance with GO 104A, on a calendar year basis using the information requested in the form developed by the Commission staff contained in Attachment (d).

13. Applicant shall ensure that its employees comply with the provisions of Public Utilities (PU) Code § 2889.5 regarding incorporation of solicitation of customers in the Commission's Telephone

14. 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.

15. The corporate identification number assigned to applicant is U-5701-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.

16. 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.

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

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

19. 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 cities and counties in which applicant proposes to provide service.

20. Applicant's request to be relieved of any requirement to serve amendments of its application ordered by the assigned ALJ on its competitors within California is granted.

21. 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 Telecommunications Division to file or remit late.

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

23. Application 196-06-034 is closed. The certificate of public utility service under the rates, charges and conditions of service set forth in this order is effective today, November 26, 1996, at San Francisco, California. It is dated November 26, 1996, at San Francisco, California. It is effective today.

12. The corporate identification number assigned to applicant is U-2701-0-1111. The name of the applicant is **P. GREGORY CONLON**, President. The names of all original officers, directors, and in the titles of other persons, shall be included in the caption of all pleadings filed in this proceeding. **DANIEL W. FESSLER**, **JESSIE J. KNIGHT, JR.**, and **JOSIAH L. NEPPER** are Commissioners of the Public Utilities Commission.

16. Applicant shall comply with PU Code § 708, Employee Identification Numbers, and shall file a copy of the provisions of PU Code § 708, Employee Identification Numbers, with the Commission. **Commissioner Henry M. Duque, Jr.** is necessarily absent, did not participate.

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

18. Applicant is exempt from PU Code § 821 for the transfer or encumbrance of property, whenever such transfer or encumbrance serves to secure debt.

19. Applicant is exempt from Rule 13(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 cities and counties in which applicant proposes to provide service.

20. Applicant's request to be relieved of any requirement to serve amendments of its application ordered by the assigned ALJ on its competitors within California is granted.

21. 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 Telecommunications Division to file or remit late.

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

A.96-06-034 ALJ/TIM/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. 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)