

Decision 97-02-011 February 5, 1997

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
Bell Atlantic Communications, Inc.)
for a Certificate of Convenience and)
Necessity to Operate as a Reseller)
of Telecommunications Services)
Within the State of California.)

Application 96-09-054
(Filed September 30, 1996)

ORIGINAL

O P I N I O N

Bell Atlantic Communications, Inc. (BACI), a Delaware corporation that has qualified to do business in California, seeks a certificate of public convenience and necessity (CPCN) under Public Utilities (PU) Code § 1001 to permit it, within California, to resell interLATA and intraLATA telephone services.¹ The CPCN should be granted as set forth below.

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 applicants to the condition that they not hold themselves out to the public as providing intraLATA service. Subsequently, by D.94-09-065, we authorized competitive intraLATA services effective January 1, 1995, for carriers meeting specified criteria.

We established two major criteria for determining whether a CPCN should be granted. First, an applicant that is a switchless

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.

reseller² 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. As part of this financial criterion, the applicant must also document any deposits required by local exchange carriers (LECs) or interexchange carriers (IECs), and demonstrate that it has additional resources to cover all such deposits. See D.93-05-010. Second, the applicant is required to make a reasonable showing of technical expertise in telecommunications or a related business.

As part of its application, BACI provides a balance sheet and other financial information. BACI indicates that it is a new enterprise and is funded by its parent company, Bell Atlantic Corporation. The most recent annual report and financial disclosure statements of Bell Atlantic Corporation are attached to the application. BACI notes that it has not been required to post a deposit with underlying carriers. BACI asserts that it has sufficient financial resources to cover a deposit requirement if one is imposed at a later date. Given the financial strength of BACI's parent company, this showing satisfies our financial criterion.

Regarding technical expertise, BACI has provided information on five individuals who constitute its principal officers and key management staff. This information reasonably documents BACI's assertion that it has business management and

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 notes that (1) an entity may control, operate, or manage telephone lines without owning them, and (2) resellers that do not own or directly operate telephone wires may still own, control, operate, or manage "plant" in order to facilitate communication by telephone.

systems support capabilities adequate for the proposed telecommunications services. BACI also indicates that none of its employees has been employed by an NDIEC that went out of business or filed bankruptcy during the course of such employment.

BACI has submitted a draft of its proposed initial tariff. The tariff appears generally appropriate; in particular, we note that the provision regarding customer deposits does not require excessive deposits. However, this provision fails to credit deposits with interest against outstanding charges after a reasonable period. We will require BACI to revise its draft tariff Rule 7 in conformity with our decisions. See D.90-02-019, D.90-08-032; and D.91-12-013. Specifically, deposits held more than one month must bear interest at our approved rate (we currently require 7% simple interest) and must be returned after one full year's history of timely payment by the customer of all BACI bills.

BACI asks for an exemption from Rule 18(b) of our Rules of Practice and Procedure to the extent that it requires service of the application on cities and counties in which BACI proposes to operate. The basis of this request is that BACI does not intend to construct or extend facilities in California, but instead would provide resold telecommunications services using transmission facilities of other IECs. We have granted this exemption routinely in similar situations and should do so now. Also, absent such construction or extension, we can see with certainty that BACI's proposed operation will not have a significant effect upon the environment.

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

Findings of Fact

1. BACI served a copy of the application upon 328 telephone corporations with which it is likely to compete.
2. A notice of the filing of the application appeared in the Daily Calendar on October 9, 1996.

3. No protests have been filed.

4. A hearing is not required.

5. By prior 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. BACI has demonstrated that it has a minimum of \$25,000, reasonably liquid and readily available to meet its start-up expenses.

7. BACI has made a satisfactory showing of technical expertise sufficient to support the proposed services.

8. BACI has submitted with its application a complete draft of its initial tariff. The draft generally complies with applicable requirements, including our prohibition on reasonable customer deposits. However, the draft fails to provide for interest on customer deposits.

9. BACI has represented that no one associated with or employed by BACI was previously associated with an NDIEC that filed for bankruptcy or went out of business.

10. 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.

11. We have routinely granted NDIECs, such as BACI, an exemption from Rule 18(b) where no construction is involved to the extent that the rule requires applicants to serve their application on cities and counties in the proposed service area.

12. 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.

13. 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. BACI has the financial ability to provide the proposed service.
2. BACI 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 BACI.
4. BACI 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 § 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 1996-1997 fiscal year (Resolution M-4782);
 - d. The current 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-A (PU Code § 739.30; D.96-10-066, pp. 3-4, App. B, Rule 1.C.); set by Resolution T-15987 at 0.0% for 1997, effective February 1, 1997;
 - e. The current 2.87% 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-B (D.96-10-066, p. 191, App. B, Rule 6.F.); and

f. The current 0.41% 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 Teleconnect Fund (D.96-10-066, p. 88, App. B, Rule 8.G.).

5. BACI should be exempted from the requirement to serve its application on cities and counties in the proposed service area.

6. BACI should be exempted from PU Code §§ 816-830.

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

8. BACI should be required to revise its proposed initial tariff to provide for interest on customer deposits consistent with our decisions.

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

IT IS ORDERED that:

1. A certificate of public convenience and necessity (CPCN) is granted to Bell Atlantic Communications, Inc. (BACI) 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. BACI shall file a written acceptance of the CPCN granted in this proceeding and 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 authorized

rates, charges, and rules, will expire if not exercised within 12 months after the effective date of this order.

3. a. BACI is authorized to file with this Commission tariff schedules for the provision of interLATA and intraLATA service. BACI may not offer interLATA and/or intraLATA service until tariffs are on file. BACI's initial filing shall be made in accordance with General Order (GO) 96-A, excluding Sections IV, V, and VI, shall provide for interest on customer deposits as described in Conclusion of Law 7, and shall be effective not less than one day after filing. BACI shall comply with the provisions in its tariffs.

b. BACI is a nondominant interexchange carrier (NDIEC). The effectiveness of its future tariffs is subject to the effectiveness schedule set forth in Ordering Paragraph 5 of D.90-08-032, as modified by D.91-12-013 and D.92-06-034:

- "a. Inclusion of FCC-approved rates for interstate services in California public utilities tariff schedules shall become effective on one day's notice.
- "b. Uniform rate reductions for existing services shall become effective on five days' notice.
- "c. Uniform rate increases, except for minor rate increases for existing services, shall become effective on 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 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 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 days' notice."

4. BACI may deviate from the following provisions of GO 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 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 Telecommunications Division. Tariff filings shall reflect all fees and surcharges to which BACI is subject, as reflected in Conclusion of Law 4.

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

6. Prior to initiating service, BACI shall provide the Director of the Consumer Services Division with the names and telephone numbers of BACI's designated contact personnel for purposes of resolving consumer complaints. This information shall be updated at least annually and whenever there is a change of name or telephone number.

7. BACI 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 such service begins and again within five days of the date intraLATA service begins.

8. BACI 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 BACI's books and records are required for inspection by the Commission or its staff, BACI 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 BACI's office.

10. BACI 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. BACI 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 BACI is U-5732-C. BACI 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, BACI shall comply with PU Code § 708, Employee Identification Cards, and shall notify the Director of the Telecommunications Division in writing of its compliance.

14. BACI is exempted from the provisions of PU Code §§ 816-830.

15. BACI is exempt from PU Code § 851 for the transfer or encumbrance of property, whenever such transfer or encumbrance serves to secure debt.

16. BACI is exempted from Rule 18(b) of the Commission's Rules of Practice and Procedure to the extent that the rule requires BACI to serve its application on the cities and counties where it proposes to operate.

17. If BACI 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 BACI's CPCN, unless BACI has received the written permission of the Telecommunications Division to file or remit late.

18. 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.

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

20. Application 96-09-054 is closed.

This order is effective today.

Dated February 5, 1997, at San Francisco, California.

P. GREGORY CONLON
President
JESSIE J. KNIGHT, JR.
HENRY M. DUQUE
JOSIAH L. NEEPER
RICHARD A. BILAS
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)