

Decision 97-02-041 February 19, 1997

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
Pacific Gateway Exchange, Inc. for)
Authority to Provide IntraLATA)
Services.)

Application 96-09-048
(Filed September 20, 1996)

O P I N I O N

ORIGINAL

Summary

Pacific Gateway Exchange, Inc. (PGE), a Delaware corporation that has qualified to do business in California, seeks to augment its existing authority to provide telecommunications services within California. By Decision (D.) 93-09-020, we authorized PGE to resell interLATA services; in the above-captioned proceeding, PGE has applied pursuant to California Public Utilities (PU) Code § 1001 for a certificate of public convenience and necessity (CPCN) to resell intraLATA telephone services within California.¹ In both capacities, PGE would operate as a "switchless reseller" and would be a nondominant interexchange carrier (NDIEC). PGE also asks for an exemption from some of the requirements of Rule 18(b) of our Rules of Practice and Procedure, relating to service of its application. We grant the applicant as set forth below.

Discussion

By D.84-01-037 and later decisions, we authorized interLATA entry generally. However, we limited the authority

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.

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.

We have established financial and technical criteria for determining whether a CPCN should be granted to a carrier that is a switchless reseller.² 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 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.

To make the required showings, PGE has made various representations in its application. These representations are backed by appropriate documentation.

PGE has submitted various financial statements in support of its application. These statements show substantial profits, cash flows, and cash on hand. PGE had revenues exceeding \$30

² D.93-05-010 defined 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 a local exchange carrier (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 that 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.

million for the quarter ending March 31, 1996 (the most recent period covered under the statements). In a letter submitted pursuant to an inquiry from the assigned Administrative Law Judge (ALJ), PGE's executive vice president, Gail E. Granton, represents that PGE expects continued growth and that such growth will enable PGE to fulfill any future obligations under deposit arrangements with LECs or IECs.

Regarding PGE's technical and managerial expertise, the application includes short biographies of 11 members of its management team. This information shows the management team to be well-qualified in many aspects of the telecommunications industry.

PGE indicates that it will provide service to its subscribers by using existing facilities, and that it will not construct or extend any facilities in California to implement the requested CPCN. We conclude from this information that PGE's operations would not have a significant adverse effect on the environment.

PGE has not served its application on cities and counties within the proposed (statewide) service area, but since no construction or extension of facilities is proposed, such service requirement should be waived. See D.92-03-032 and D.94-05-016. Pursuant to Rule 5(c) of our Rules of Practice and Procedure, PGE has served its application on a large number of its potential competitors. Notice of the application was also duly published on October 3, 1996, in the Commission's Daily Calendar. The protest period has expired, and no protest to the application has been filed. No hearing is necessary.

In conclusion, we will authorize the intraLATA services that PGE seeks to provide.

Findings of Fact

1. PGE served a copy of its application on a large number of the 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 3, 1996.

3. No protests have been filed.

4. A hearing is not required.

5. By prior Commission decisions, we have authorized competitive interLATA telecommunications service and, effective January 1, 1995, competitive intraLATA services from carriers meeting specified criteria.

6. PGE has demonstrated that it has adequate cash, reasonably liquid and readily available to meet start-up expenses for the addition of intraLATA services to those previously authorized.

7. PGE has represented that it can pay any deposit obligations that may arise to underlying carriers.

8. PGE has substantial managerial and technical experience in telecommunications.

9. PGE has represented that during the 12-month period ending August 15, 1996, PGE has had no formal or informal complaints against it at the Commission.

10. Since no facilities are to be extended or constructed, it can be seen with certainty that PGE's proposed expanded operations will not have a significant effect upon the environment.

11. We have routinely granted NDIECs, such as PGE, an exemption from Rule 18(b) where no construction is involved to the extent that the rule would require PGE to serve a copy of its application on cities and counties in the proposed service area.

Conclusions of Law

1. PGE has the financial ability to provide the proposed intraLATA services.

2. PGE has made a reasonable showing of technical and managerial expertise in telecommunications.

3. Public convenience and necessity require the intralATA services to be offered by PGE.

4. PGE 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. PGE should be exempted, as described in Finding of Fact 11, from the requirement of service of its application on cities and counties in the proposed service area.

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

7. Because of the public interest in competitive 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 Pacific Gateway Exchange, Inc. (PGE) to operate as a reseller, 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. PGE shall file a written acceptance of the CPCN granted in this proceeding. PGE 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. PGE is authorized to file with this Commission tariff schedules for the provision of intraLATA services. PGE may not offer intraLATA services until tariffs are on file. PGE'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. PGE shall comply with the provisions in its tariffs.

b. PGE is a nondominant interexchange carrier (NDIEC). The effectiveness of its future tariffs is subject to the timing 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:
- "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 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."

4. PGE 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 PGE is subject, as reflected in Conclusion of Law 4.

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

6. Prior to initiating service, PGE shall provide the Consumer Services Division with the names and telephone numbers of PGE's designated contact persons 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. PGE shall give written notice to the Director of the Telecommunications Division of the date intraLATA service is first rendered. Such notice is due within five days after service begins.

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

10. PGE 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. PGE shall ensure that its employees comply with the provisions of Public Utilities (PU) Code § 2889.5 regarding solicitation of customers.

12. Within 60 days of the effective date of this order, PGE shall comply with PU Code § 708, Employee Identification Cards, and shall notify the Director of the Telecommunications Division in writing of its compliance.

13. PGE is exempted from the Rule 18(b) of the Commission's Rules of Practice and Procedure to the extent that the rule would require PGE to serve a copy of its application on the cities and counties in which it proposes to operate.

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

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

16. Application 96-09-048 is closed.

This order is effective today.

Dated February 19, 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)