

Decision 97-02-046 February 19, 1997

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In re Petition of LONG DISTANCE)
SERVICES, INC., for a Certificate)
of Public Convenience and)
and Necessity to Operate as a)
Reseller of Telecommunications)
Services Within the State of)
California.)

Application 96-08-026
(Filed August 12, 1996)

ORIGINAL

O P I N I O N

Long Distance Services, 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 resell interLATA and intraLATA telephone services in California.¹ Applicant states that it will not 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 service of its application upon cities and counties.

In circumstances where no construction is proposed, the Commission has routinely granted nondominant interexchange carriers (NDIECs) an exemption from Rule 18(b) to the extent that the rule requires an applicant to serve its application on cities and counties in the proposed service area. Consistent with this practice, the applicant's request for a waiver of Rule 18(b) shall be granted.

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 the same LATA.

By Decision (D.)84-01-037 (14 CPUC2d 317 (1984)) and later decisions, the Commission authorized interLATA entry generally. However, the authority conferred was limited to interLATA service, and the applicants were subjected to the condition that they not hold themselves out to the public to provide intraLATA service. Subsequently, by D.94-09-065, the Commission 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 to telecommunications resellers. First, an applicant who is a switchless reseller² 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 must also demonstrate that they have additional financial resources to cover any deposits required by local exchange companies or interexchange carriers. (D.93-05-010, 49 CPUC2d 197 at 208 (1993))

To demonstrate its compliance with the first criterion, applicant submitted an income statement and balance sheet with its

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 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.

application.³ Applicant also submitted more recent financial statements pursuant to the instructions of assigned Administrative Law Judge (ALJ) Kenney.⁴ Applicant's financial statements show that as of June 30, 1996, applicant possessed in excess of \$25,000 in cash that was reasonably liquid and readily available to meet the firm's start-up expenses. Applicant also demonstrated that it has additional financial resources to cover the deposits required by an underlying carrier. Applicant has thus satisfied our criterion that it 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 the following summary of the work experience of its key employees:

Allan Barash, President: Barash has overseen most of applicant's operations over the last six years.

Jeffrey B. Moden, Director of Information Systems: Moden has been with the applicant for one year, and has 16 years of experience with information systems.

To further assess applicant's technical expertise, applicant's draft tariffs were reviewed for compliance with the

³ Applicant filed a motion for a protective order for the customer projections, balance sheet, and income statement included with its application. No opposition to the motion was filed. In a ruling dated September 12, 1996, the Law and Motion Judge ruled that the applicant's customer projections and financial statements shall remain under seal for a period of one year.

⁴ Applicant requests that the more recent income statement and balance sheet also be placed under seal. Applicant's request shall be granted for the same reasons the financial statements filed with the application were placed under seal.

Commission's rules. This review found that applicant's draft tariffs did not comply with the Commission's policy on customer deposits. In response to an inquiry from the assigned ALJ, applicant stated that it "will not be requiring deposits of its customers." Applicant shall accordingly file tariffs which state that applicant does not require deposits from its customers. Should the applicant later require deposits, applicant shall file revised tariffs which comply with the Commission's policy on customer deposits.⁵

As additional evidence of its technical expertise, applicant represented that it is authorized to provide service in all of the United States except for the states of California, Idaho, Maine, North Dakota, South Dakota, and Wyoming. Applicant has satisfied our criterion that it possess sufficient technical expertise to provide the requested telecommunications services.

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

Findings of Fact

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

⁵ In D.93-05-010, 49 CPUC2d at 206, the Commission required applicants to submit draft tariffs that contain the following provisions concerning customer deposits: (a) Deposits held more than one month must bear the Commission-required rate of interest currently set at 7% simple interest; (b) deposits held more than one month must be returned after one full year's history of prompt and timely payment of all NDIEC bills by the customer or upon discontinuance of service prior thereto (after unpaid charges are netted out) or upon cancellation prior to establishment of service; and (c) deposits can equal up to two months' average estimated usage, except for specific individual cases of significant financial hardship. In addition to or in lieu of a deposit, applicants may require an advance payment equal to one month's estimated average usage which is then returned without interest at the end of the first month of service. (See also D.90-02-019, mimeo, pp. 16-17; D.90-08-032, 37 CPUC2d at 145-146; and D.91-12-013, 42 CPUC2d at 226 and 229)

2. A notice of the filing of the application appeared in the Commission's Daily Calendar on August 14, 1996.

3. No protests have been filed.

4. A hearing is not required.

5. Prior Commission decisions 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. Decision 94-09-065 authorized competitive intraLATA services effective January 1, 1995, for carriers meeting specified criteria.

7. Applicant 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 represented that it has sufficient additional financial resources to cover the deposits required by underlying telecommunications carriers in order for applicant to provide the services it seeks to offer.

9. Applicant demonstrated that its management possesses the requisite technical expertise to provide resold telecommunications services to the public.

10. Applicant submitted a draft of its initial tariff which complies with the criteria established by the Commission except for the Commission's prohibitions on unreasonable deposit requirements.

11. Applicant 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.

12. A ruling by the Law and Motion Judge dated September 12, 1996, granted applicant's motion to file under seal the customer projections, balance sheet, and income statement included with its application.

13. Applicant requests that the recent balance sheet and income statement submitted in response to instructions by the assigned ALJ also be placed under seal.

14. The customer deposit provisions in applicant's draft tariffs did not comply with the Commission's policy on customer deposits. In response to an inquiry from the assigned ALJ, applicant stated that it will not require deposits from its customers.

15. Since applicant does not propose to construct any facilities, it can be seen with certainty that the proposed operation will not have a significant effect upon the environment.

16. The Commission has routinely granted NDIECs an exemption from Rule 18(b) to the extent that the rule requires an applicant to serve a copy of its application on cities and counties in the proposed service area.

17. Exemption from the provisions of PU Code §§ 816-830 has been granted to other resellers. (See, for example, D.86-10-00 and D.88-12-076.)

18. 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. 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;
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. Applicant's request to place under seal the additional balance sheet and income statement submitted in response to the instructions of the assigned ALJ should be granted.
 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. Applicant should submit tariffs which comply with the Commission's prohibitions on unreasonable customer deposit requirements, or, alternatively, submit tariffs which state that applicant will not require customer deposits.

9. Applicant should be exempted from Rule 18(b) of the Commission's Rules of Practice and Procedure to the extent it requires applicant to serve its application on cities and counties.

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

11. 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 is granted to Long Distance Services, 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 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. 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 reflected in Conclusion of Law 4.

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. Applicant shall submit tariffs which comply with the Commission's prohibitions on unreasonable customer deposit requirements, or, alternatively, submit tariffs which state that applicant will not require customer deposits.

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 keep its books and records in accordance with the Uniform System of Accounts specified in Title 47, Code of Federal Regulations, Part 32.

10. 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.

11. 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 contained in Attachment A.

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

13. 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.

14. The corporate identification number assigned to applicant is U-5730-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.

15. 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.

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

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

18. 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.

19. Applicant's income statement and balance sheet submitted in response to instructions by the assigned ALJ shall be placed under seal for a period of one year from the date of this order. These documents shall not be made accessible or disclosed to anyone other than Commission staff except upon the further order of the Commission or the ALJ then designated as Law and Motion Judge. To extend the confidential treatment of these documents, applicant must make a timely request with good cause shown.

20. 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.

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

22. Application 96-08-026 is closed.

This order is effective today.

Dated February 19, 1997, Francisco, California.

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

A.96-08-026 ALJ/TIM/tcg

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)