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Decision 97-03-033 March 18, 1997

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application)
of US WATS, INC. (U-5287-C), a)
New York Corporation, for a)
Certificate of Public Convenience)
Necessity to Provide IntraLATA)
Telecommunications Services Within)
the State of California.)

ORIGINAL

Application 96-11-002
(Filed November 1, 1996)

O P I N I O N

On November 1, 1996, US WATS, INC. (applicant), a New York corporation qualified to transact business in California, filed Application (A.) 96-11-002 for a certificate of public convenience and necessity (CPCN) under Public Utilities (PU) Code § 1001 to provide intraLATA telecommunications services¹ in California.² An amended application was subsequently filed on January 23, 1997, in response to a ruling issued by assigned Administrative Law Judge (ALJ) Kenney. In its application and amended application, applicant states that it will offer intraLATA telephone service through its own switch and through resale arrangements with other California certified carriers. Applicant also states that it has no plans to construct or extend any telecommunications facilities.

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.

² Applicant was previously granted a CPCN to provide interLATA telecommunications services by Decision (D.) 92-09-023.

Included with A.96-11-002 was a request by applicant for a waiver of Rule 18(b) of the Commission's Rules of Practice and Procedure (Rule) to the extent the Rule requires service of A.96-11-002 on 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, applicant's request for a partial waiver of Rule 18(b) was granted in a ruling by ALJ Kenney issued on December 26, 1996.

By 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 carriers. First, an applicant seeking to provide facilities-based services must demonstrate that it has a minimum of \$100,000 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 provided a copy of its Form 10-Q filed with the Securities and Exchange Commission for the quarter ended March 31, 1996. The financial statements provided therein demonstrate that as of March 31, 1996, applicant possessed in excess of \$100,000 in

cash that was reasonably liquid and readily available to meet the firm's start-up expenses. Applicant also represented that no deposits are required by an underlying carrier in order for applicant to provide the requested services. Applicant has thus satisfied our criterion 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:

Kevin M. O'Hare, Chief Executive Officer and President: O'Hare has over 12 years of experience in the telecommunications industry. Prior to joining applicant, O'Hare served as Executive Vice President of C-TEC Corporation, a publicly held company traded on the NASDAQ Stock Exchange. O'Hare also served as President of Commonwealth Long Distance (CLD), a subsidiary of C-TEC. At the time, CLD was a \$45 million long-distance carrier employing over 150 employees. O'Hare graduated from Ithaca College with B.S. degrees in both economics and management.

Stephen J. Parker, Chairman and Secretary: Parker joined applicant as a part-time employee in 1989. He later became a full-time employee in 1990. Parker holds a Ph.D from Ohio University.

David B. Hurwitz, Executive Vice President: Hurwitz has 11 years of telecommunications industry experience. Prior to joining applicant, Hurwitz was employed by various telecommunications firms, including CLD as Vice President of Sales and Marketing; and by Rochester Telephone where he worked for seven years in various capacities.

Ward G. Schultz, Chief Financial Officer: Schultz is a CPA and has served as Chief Financial Officer of applicant since 1994.

In addition to the qualifications of its key employees, applicant states that no one associated with or employed by applicant was previously associated with an NDIEC that filed for bankruptcy or went out of business.³ We find that applicant has satisfied our criterion that it possess sufficient technical expertise to provide the requested telecommunications services.

As an additional check of the applicant's fitness to serve, the ALLPUC file in the STATES library of the Lexis database was searched for the name of the applicant, as was the ALLNEWS file in the COMPNY library of the Lexis database. The search of the Lexis database found that applicant has received authority to operate in the States of Florida, Illinois, and Indiana. No information was uncovered that might indicate the applicant is unfit to be granted an expansion of its authority to provide public utility service in California.

We will authorize the 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.
2. A notice of the filing of the application appeared in the Commission's Daily Calendar on November 7, 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.

³ In D.93-05-010 (49 CPUC2d 197 at 206) the Commission stated that an applicant for NDIEC authority should disclose whether it is associated with anyone who was previously associated with a telecommunications carrier that either filed for bankruptcy or went out of business.

6. D.94-09-065 authorized competitive intraLATA services effective January 1, 1995, for carriers meeting specified criteria.

7. Applicant was granted a CPCN to provide interLATA telecommunications services by the Commission in D.92-09-023.

8. Applicant demonstrated that it has a minimum of \$100,000 of cash that is reasonably liquid and readily available to meet its start-up expenses.

9. Applicant represented that it is not required to provide deposits to underlying telecommunications carriers in order for applicant to provide the services it seeks to offer.

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

11. Applicant submitted a draft of its initial tariff which complies with the criteria established by the Commission.

12. 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.

13. 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.

14. Applicant requested a waiver of Rule 18(b) of the Rule to the extent the Rule requires applicant to serve its application on cities and counties in areas where the applicant does not propose to construct any facilities.

15. 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.

16. Applicant's request for a waiver of Rule 18(b) was granted in a ruling issued by the assigned ALJ on December 26, 1996.

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 should be exempted from PU Code §§ 816-830.
 6. Applicant should be exempted from PU Code § 851 when the transfer or encumbrance serves to secure debt.
 7. Applicant should be exempted from Rule 18(b) of the Rule to the extent it requires applicant to serve its application on cities and counties.
 8. The application should be granted to the extent set forth below.
 9. 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 US WATS, INC. (applicant), to provide facilities-based and resold intraLocal Access and Transport Area (intraLATA) telecommunication services in California to the extent authorized by Decision (D.) 94-09-065.
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 intraLATA service. Applicant may not offer 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 (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. 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.

7. Applicant shall notify this Commission in writing of the date intraLATA service is first rendered to the public within 5 days after 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 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.

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 contained in Attachment A.

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

12. 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.

13. The corporate identification number assigned to applicant is U-5287-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.

14. 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.

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

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

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

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

19. Application 96-11-002 is closed.

This order is effective today.

Dated March 18, 1997, at San Francisco, California.

P. GREGORY CONLÓN
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)