

Decision 97-04-021 April 9, 1997

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application)
of DanCris Telecom, L.L.C. for a)
Certificate of Public Convenience)
and Necessity to Operate as a)
Reseller of Telecommunications)
Services Within the State of)
California.)

Application 96-11-027
(Filed November 18, 1996)

ORIGINAL

O P I N I O N

DanCris Telecom, L.L.C. (applicant), a limited liability company organized under the state laws of Arizona and 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 In particular, applicant seeks authority to offer outbound switched and dedicated toll service on a presubscribed basis to both residential and business customers. Applicant also seeks to offer inbound toll-free (800/888), travel card, and prepaid calling card services. Although all services will be provided through one or more underlying carriers, the applicant's name and toll-free number will appear on customers' bills. Applicant states that it will not construct any facilities in order to provide the requested services.

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.

Application (A.) 96-11-027 did not include draft tariffs pursuant to D.96-09-098 which dispensed with tariffing requirements effective January 1, 1997, for many nondominant interexchange carriers (NDIECs). Subsequently, in D.96-12-033, the Commission postponed the elimination of tariffs for these NDIECs until July 1, 1997. As a result, applicant filed draft tariffs on February 3, 1997, along with a motion requesting an exemption from Rule 18(b) of the Commission's Rules of Practice and Procedure (Rule) to the extent the Rule requires applicant to serve a copy of its draft tariffs on all of its competitors. In a ruling dated February 20, 1993, assigned Administrative Law Judge Kenney directed applicant to serve its draft tariffs upon all of its competitors who had requested a copy of A.96-11-027 after having been served with a Notice of Availability of the application.²

Applicant also requested a waiver of Rule 18(b) to the extent the Rule requires applicant to serve its application upon cities and counties. In circumstances where no construction is proposed, we have routinely granted waivers from the Rule 18(b) requirement that NDIECs serve their applications on cities and counties in the proposed service areas. Consistent with this practice, we shall grant applicant's request for leave to forgo the service of its application upon cities and counties.

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

² Applicant originally served a Notice of Availability of its application upon those competitors shown on an outdated Commission service list. Applicant subsequently submitted a certificate of service dated February 11, 1997, demonstrating that applicant had served a Notice of Availability of its application upon all of its competitors as shown on the Commission's current service list.

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 resellers of interexchange telecommunications services. First, an applicant who is a switchless reseller³ 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 application. Applicant's balance sheet shows that as of August 31, 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.⁴ Applicant also represented that it has not been

³ 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; and 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.

⁴ Applicant's income statement and balance sheet show that applicant has been operating at financial loss. However, applicant's current assets are well in excess of its current

(Footnote continues on next page)

required to post a deposit with any 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:

Mickey Rao, Chief Executive Officer: Rao is an entrepreneur who created the business plan, raised the capital, and assembled the personnel to form DanCris Telecom L.L.C.

John Stefanelli, National Sales Manager: Stefanelli has been with the applicant since its inception in 1995. Stefanelli previously served as Regional Sales Manager for Cherry Communications where he was responsible for developing sales strategy and recruiting, hiring, and training sales agents and sales support staff. Stefanelli's earlier experience includes sales and marketing positions with various firms, including MCI.

Stan Myers, Operations Manager: Myers is the principal manager responsible for applicant's ongoing operations. Myers was previously the owner/manager of a local network sales and installation company.

(Footnote continued from previous page)
liabilities, and applicant's total assets exceed its total liabilities. Accordingly, applicant has sufficient assets on hand to provide the telecommunications services for which it seeks Commission authority to offer.

As additional evidence of its technical expertise and fitness to serve, applicant represented that none of its employees was previously employed by an NDIEC that went out of business or filed for bankruptcy during the course of such previous employment.

At the behest of the assigned ALJ, applicant elaborated on the prior experience of its sales manager with Cherry Communications, a firm that has been investigated for "slamming"⁵ by both this Commission and the Federal Communications Commission.⁶ Applicant states that Mr. Stefanelli, while at Cherry Communications, was not aware of, nor a party to, any inappropriate activities such as slamming. Applicant also states that it is fully aware of state and federal rules and regulations regarding slamming, and is committed to operating in conformance with these rules and regulations.

As an additional check on the applicant's technical qualifications, the names of the applicant and each of the three key employees were searched in various files of the Lexis database.⁷ No information was uncovered that would indicate that the applicant or any of its key employees are unfit to provide public utility service.

We find that applicant has satisfied our criterion that it possess sufficient technical expertise in telecommunications or a related business. We will authorize the interLATA and intraLATA services that applicant seeks to provide.

⁵ Slamming refers to the switching of a customer's primary interexchange carrier without the customer's authorization.

⁶ See D.96-09-041 and 9 FCC Rcd 2086.

⁷ The following files of the Lexis database were searched: (1) the ALLNWS file in the NEWS library; (2) the FCC file in the FEDCOM library; and (3) the ALLPUC file in the STATES library.

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 21, 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 no deposits are 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, including the Commission's prohibition on unreasonable deposit requirements.
11. Applicant represented that no one associated with or employed by applicant was previously employed by an NDIEC that filed for bankruptcy or went out of business during the course of such previous employment.
12. Although one of the applicant's key employees was previously associated with an NDIEC that had been investigated by this Commission and the FCC for slamming, this should not prohibit

the granting of a CPCN because applicant represents that this key employee was not aware of, nor a party to, any inappropriate activities such as slamming; and because applicant states that it will operate in full conformance with all state and federal rules and regulations pertaining to slamming.

13. A search of the following files within the Lexis database did not reveal anything to indicate the applicant is unfit to provide public utility service: (a) the ALLNWS file in the NEWS library; (b) the FCC file in the FEDCOM library; and (c) the ALLPUC file in the STATES library.

14. 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.

15. Applicant requests a waiver of 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. The Commission has routinely granted NDIECs that do not propose to construct any facilities 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.)

19. If an NDIEC requires customer deposits, then the NDIEC must submit tariffs that contain the following provisions: (a) Customer deposits held for more than one month must bear the Commission-required rate of interest currently set at 7% simple interest; (b) deposits held for 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, NDIECs 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 D.93-05-010, 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.)

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 Rule 18(b) to the extent the Rule requires applicant to serve its application on cities and counties.

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 comply with 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 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, applicant 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.

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 is granted to DanCris Telecom, L.L.C. (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. 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.

4. 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."

5. 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.

6. Applicant shall file as part of its initial tariff, after the effective date of this order and consistent with Ordering Paragraphs 3 and 4, a service area map.

7. Applicant shall file tariffs that comply with 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 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, applicant 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.

8. 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.

9. 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.

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 104-A, on a calendar-year basis using the information request form developed by the Commission Staff contained in Attachment A to this Order.

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

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-5757-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 the cities and counties in which it proposes to operate.

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 96-11-027 is closed.

This order is effective today.

Dated April 9, 1997, at San Francisco, California.

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

ATTACHMENT A

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)