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ORIGINAL

Decision 97-05-006 May 6, 1997

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

FTS Communications, Inc. d/b/a West)
Communications, for a Certificate)
of Public Convenience and Necessity)
to offer interexchange)
telecommunications services to the)
public in the State of California.)

Application 97-01-033
(Filed January 17, 1997)

O P I N I O N

1. Summary

FTS Communications, Inc., doing business as West Communications (applicant), a California corporation, seeks a certificate of public convenience and necessity under Public Utilities Code (PU Code) § 1001 to permit it to resell intraLATA and interLATA telephone services in California.¹ Granted.

2. Nature of Application

By Decision (D.) 84-01-037, 14 CPUC2d 317 (1984), and later decisions, we authorized interLATA entry generally. By D.94-09-065, 56 CPUC2d 117 (1994), we authorized competitive intraLATA services effective January 1, 1995. The Commission has established two major criteria for determining whether certification should be granted. An applicant that is a switchless

¹ California is divided into Local Access and Transport Areas (LATAs) of various sizes, each containing numerous local telephone exchanges. "InterLATA" describes telecommunications service originating in one LATA and terminating in another. "IntraLATA" describes telecommunications service originating and terminating within a single LATA.

reseller² must demonstrate that it has a minimum of \$25,000 in cash or cash equivalent available to meet the firm's start-up expenses (D.91-10-041, 41 CPUC2d 505 (1991), Appendix A, Paragraph 5.1), and that it has additional resources to cover deposits required by other telephone carriers (D.93-05-010, 49 CPUC2d 197 (1993)). In addition, an applicant is required to make a reasonable showing of technical expertise.

Applicant was incorporated in California in 1991. Applicant states that it will offer interLATA and intraLATA services to California customers, leasing transmission facilities from other long distance carriers. Applicant has filed recent financial statements as Exhibit B to the application, and these show assets as of September 30, 1996, of approximately \$226,000, with revenues for the most recent 12 months of \$375,000.

Applicant's principals are Mark Morin, president, and John R. Foster, treasurer. Each has more than six years' experience in the telecommunications industry, owning and operating FTS Communications, which provides interexchange services and sells telecommunications equipment.

Applicant is seeking a certificate as a nondominant interexchange carrier, and it is not an affiliate of a local exchange carrier. Apparently relying on the Commission's decision in Re Simplified Registration Process, D.96-09-098 (September 20, 1996), applicant did not attach a draft tariff to the application. While this was appropriate at the time the application was prepared, a subsequent decision of the Commission (D.96-12-033) reestablished the requirement that a draft tariff be filed with an application. Rather than delay the application, our order today

² In simplified terms, a switchless reseller purchases wholesale telephone capacity from facilities-based carriers and resells these services at retail to its customers. (See Re Tariff Filing Rules for Telecommunications Utilities (1993) 49 CPUC2d 197.)

requires applicant to file its tariff as Advice Letter No. 1 within 30 days of approval of the application.

Applicant requests a partial waiver of Rule 18(b) in order that it need not serve a copy of the application on city and county planning agencies, since applicant will not be constructing any plant or network facilities in the state. Requests of this nature have been granted routinely in the past. (American Telephone Network, Inc. (1992) 43 CPUC2d 380.)

3. Discussion

Applicant has demonstrated that it has the financial and business skills necessary to operate reseller services in California. No protests to the application have been filed. We will authorize the interLATA and intraLATA services that applicant seeks to provide, as set forth in our order below.

Findings of Fact

1. Applicant served a copy of its application on 266 telecommunications corporations with which it may compete.
2. A notice of the filing of the application appeared in the Daily Calendar on January 29, 1997.
3. No protests have been filed.
4. By prior Commission 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.
5. By D.94-09-065, 56 CPUC2d 117 (1994), we authorized competitive intraLATA services effective January 1, 1995, for carriers meeting specified criteria.
6. Applicant has demonstrated that it has a minimum of \$25,000 in cash available to meet its start-up expenses and any deposits required by other telephone carriers.
7. Applicant has demonstrated that its management possesses the requisite technical experience to operate its service.

8. Applicant has not submitted with its application a draft of its initial tariff, but this can be corrected by requiring a tariff filing within 30 days of approval of this application.

9. 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.

10. The Commission has routinely granted nondominant interexchange carriers such as applicant an exemption from the Rule 18(b) requirement that the application be served on cities and counties in the proposed service area.

11. Exemption from the provisions of PU Code §§ 816-830 has been granted to other resellers. (See, e.g., D.86-10-007, 22 CPUC2d 42 (1986) and D.88-12-076, 30 CPUC2d 145 (1988).)

12. No officer of applicant has been involved in any other telecommunications company that has gone out of business or has filed for bankruptcy.

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, 19 CPUC2d 206 (1985).)

Conclusions of Law

1. No hearing is required.
2. Applicant has the financial ability to provide the proposed service.
3. Applicant has made a reasonable showing of technical expertise in telecommunications.
4. Public convenience and necessity require the interLATA and intraLATA services to be offered by applicant.
5. 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-16017, April 9, 1997);
 - 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.).
6. Applicant should be exempted from the Rule 18(b) requirement of service of the application on cities and counties.
7. Applicant should be exempted from PU Code §§ 816-830.
8. Applicant should be exempted from PU Code § 851 when the transfer or encumbrance serves to secure debt.
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 FTS Communications, Inc., d/b/a West Communications (applicant) to operate as a reseller of interLocal Access and Transport Area (interLATA) services and intraLocal Access and Transport Area (intraLATA) services offered by communications common carriers in California.

2. Applicant shall file a written acceptance of the certificate granted in this proceeding with the Telecommunications Division for placement in the formal file of 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 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 one day after filing. Applicant shall comply with the provisions of 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 Decision (D.) 90-08-032 (37 CPUC2d 130, 158), as modified by D.91-12-013 (42 CPUC2d 220, 231) and D.92-06-034 (44 CPUC2d 617, 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 notifications 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 5.

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 interLATA and intraLATA services are first rendered to the public within five 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 and 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-5763-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. 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.

18. If applicant is 90 days or more late in filing an annual report or in remitting the fees listed in Conclusion of Law 5, 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 the division to file or remit late.

19. Within 30 days of the date of this order, applicant shall file its tariff as Advice Letter No. 1.

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

21. Application 97-01-033 is closed.

This order is effective today.

Dated May 6, 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)