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Decision 97-06-081 June 25, 1997

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application )  
of Buehner-Fry, Inc. for a )  
certificate of public convenience )  
and necessity to operate as a )  
reseller of intraLATA )  
telecommunications services within )  
California. )

Application 97-01-040  
(Filed January 29, 1997;  
Amended April 11, 1997)

**ORIGINAL**

O P I N I O N

Buehner-Fry, Inc. (applicant), a certificated switchless reseller of interLocal Access and Transport Area (LATA) telecommunications services in California, seeks a certificate of public convenience and necessity (CPCN) under Public Utilities (PU) Code § 1001 to permit it to resell interLATA and intraLATA telephone services in California as a nondominant facilities-based carrier using its Harris 2020 switch, located in Portland, Oregon.<sup>1</sup>

By Decision (D.) 84-01-037 (14 CPUC2d 317 (1984)) and later decisions, we authorized interLATA entry generally. However, we limited the authority conferred to interLATA service; and we subjected the applicants 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.

<sup>1</sup> California is divided into ten 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.

The Commission has established two major criteria for determining whether a CPCN should be granted. The applicant must demonstrate that it has a minimum of \$100,000 of cash or cash equivalent (as described in D.91-10-041, Appendix A, Paragraph 5.1 (41 CPUC2d 505 at 520)), reasonably liquid and readily available to meet the firm's start-up expenses. Such applicants shall also document any deposits required by local exchange carriers or interexchange carriers and demonstrate that they have additional resources to cover all such deposits. (D.93-05-010, 49 CPUC2d 197 at 208 (1993).) Any applicant who can demonstrate that \$100,000 of cash is not needed for its first year of operation, may be granted a CPCN with a lesser amount, based on the sufficiency requirements set forth in Ordering Paragraph 1.a of D.91-10-04. In addition, an applicant is required to make a reasonable showing of technical expertise in telecommunications or a related business. (D.90-08-032, 37 CPUC2d 130, at 147-48, 156, 158.)

Applicant filed a motion for a limited protective order for its detailed financial information citing that it contains confidential information which would do harm to applicant if revealed. Upon receiving no opposition to the motion, this motion was granted pursuant to a March 3, 1997, Administrative Law Judge ruling. Subsequently, applicant requested similar treatment for its supplemental financial information submitted under seal as part of its amended application. Again, no opposition to the motion was filed. Hence, applicant's request should be granted.

Applicant's financial statements demonstrate that applicant has more than the \$100,000 minimal cash requirement readily available for its proposed operations. This satisfies our financial criteria for being reasonably liquid and readily available to meet the applicant's needs.

Applicant has provided information on its five key officers indicating their technical experience in the telecommunications field, as detailed in Exhibit 4 to the

application. These key officers are President Milton T. Buehner, Vice President and Treasurer Steven C. Johnson, Secretary Jan Morgan, Director of Engineering Thomas Opfer, and Director of Information Systems Steven Fine. In addition, applicant has attached a draft of its initial California intraLATA long distance tariff schedules to its application, to further substantiate its technical experience.

Applicant possesses the necessary financial and technical expertise to operate as a switchless nondominant telecommunications carrier. We will authorize the interLATA and intraLATA telecommunications services that applicant seeks to provide.

Findings of Fact

1. Applicant served a copy of the application upon 262 telephone corporations with which it is likely to compete.
2. Applicant amended its application on April 11, 1997.
3. A notice of the filing of the application and amended application appeared in the Daily Calendar on January 31, 1997, and May 5, 1997, respectively.
4. Applicant seeks authority to resell interLATA and intraLATA telephone services in California as a nondominant facilities-based carrier using its Harris 2020 switch, located in Portland, Oregon.
5. Applicant was granted a limited protective order for its detailed financial information submitted as part of its application.
6. Applicant seeks a limited protective order for its supplemental financial information submitted as part of its amended application.
7. No protests have been filed.
8. A hearing is not required.
9. Applicant was previously granted authority to provide interexchange and operator services in California pursuant to D.94-02-035.

10. 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.

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

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

13. Applicant's technical experience consists of its five key officers with over 12 years' experience in the telecommunications field.

14. Applicant has submitted with its application a complete draft of its initial intraLATA long distance tariff.

15. 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.

16. The Commission has routinely granted nondominant interexchange carriers, such as applicant, an exemption from Rule 18(b), where no construction is involved, to the extent that the rule requires applicant to serve a copy of its application on cities and counties in the proposed service area and to the extent that it requires applicant to provide a conformed copy of all exhibits attached to applicant's filed application to potential competitors.

17. Exemption from the provisions of PU Code §§ 816-830 has been granted to other resellers. (See, e.g., D.86-10-007 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 the telecommunications business.
3. Applicant's supplemental financial information submitted under seal as part of its amended application should be afforded the same confidentiality treatment provided its financial information submitted as part of the application.
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 1997-1998 fiscal year (Resolution M-4786);
  - 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 Rule 18(b)'s requirement of service of the application on cities and counties in the proposed service area and service of all exhibits attached to this application on potential competitors.

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 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 Buehner-Fry, Inc. (applicant) to operate as a reseller and facilities-based interLocal Access and Transport Area (interLATA) and, to the extent authorized by Decision (D.) 94-09-065, intraLocal Access and Transport Area (intraLATA) telecommunications services offered by communications 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 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 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. 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. Applicant shall be subject to the fees and surcharges set forth in Conclusion of Law 5.

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 intraLATA service is first rendered to the public within five days after 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. 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 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 will expire if not exercised within 12 months after the effective date of this order.

13. The new corporate identification assigned to applicant is U-5357-C, which was previously issued to applicant and 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 5, 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. Applicant's financial statements placed under seal pursuant to a March 3, 1997 Administrative Law Judge Ruling and this order shall remain under seal for one year from today unless applicant makes a timely request for an extension of confidential treatment with good cause.

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

20. Application 97-01-040 is closed.

This order is effective today.

Dated June 25, 1997, at San Francisco, California.

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

A.97-01-040 ALJ/MFG/sng

**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)