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Decision 97-07-035 July 16, 1997

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of International Gateway Communications, Inc. for a certificate of Public convenience and Necessity to Provide Telecommunications Services Within the State of California.

Application 97-04-023
(Filed April 2, 1997)

ORIGINAL

O P I N I O N

International Gateway Communications, Inc. (applicant), an Illinois corporation qualified to transact business in California, seeks a certificate of public convenience and necessity (CPCN) under Public Utilities (PU) Code Section 1001 for authority to provide resold interLATA and intraLATA¹ interexchange telecommunications services in California. Applicant states that it will not construct or extend any facilities in California in order to provide the requested services.

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 as providing intraLATA service. Subsequently, by D.94-09-065, we authorized competitive intraLATA interexchange 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.

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 a single LATA.

First, an applicant who is a switchless reseller² must demonstrate that it has a minimum of \$25,000 of cash or cash equivalent that is reasonably liquid and readily available to meet the firm's start-up expenses. Such applicants must also demonstrate that they have sufficient additional resources to cover any deposits required by local exchange carriers (LECs) and/or interexchange carriers (IECs).³

To demonstrate its compliance with the first criterion, applicant provided audited financial statements for the year ending June 30, 1996. These financial statements show that as of June 30, 1996, applicant possessed \$198,168 in cash that was reasonably liquid and readily available to meet the firm's start-up expenses. Applicant also represented that it has not been required to post a deposit with any underlying carrier in order to provide the requested services. 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.⁴

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

² Applicant states that it will not use its switch to furnish any of the services for which it seeks authority to provide. Accordingly, applicant meets the following definition of a switchless reseller set forth in D.93-05-010: 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.

³ The \$25,000 requirement for switchless NDIECs was established by D.93-05-010, 49 CPUC2d 197 at 203-205 (1993); and the means of meeting the \$25,000 requirement are described in D.91-10-041, 41 CPUC2d 505 at 520 (1991). The requirement for NDIECs to demonstrate that they have additional financial resources to meet any deposits required by underlying LECs and/or IECs is found in D.93-05-010, 49 CPUC2d 197 at 208 (1993).

⁴ Applicant's financial statements show that as of June 30, 1996, its current liabilities were substantially in excess of its current assets; and that applicant had a net loss for the year ending June 30, 1996. However, CPAs, when rendering an audit opinion on financial statements, have a duty to disclose if they have a material concern about the audited entity's ability to continue to operate as a "going concern." Since the CPA's audit opinion expressed no such concern, we find that the applicant has adequate financial resources to continue to operate as a "going concern."

telecommunications or a related business. To satisfy this criterion, applicant provided the following summary of the work experience of its key employees:

Joseph J. Amendala, Chief Executive Officer, has 24 years of experience in the telecommunications industry. This experience includes 13 years with Illinois Bell Telephone and the founding in 1987 of Sheffield Systems, Inc., a company specializing in small business interconnect for whom Amendala still serves as President. In addition, Amendala served as President and Member of the Board of the Illinois Public Telecommunications Association from the years 1990-1994.

Thomas W. Jacobs, President, has 10 years of experience in the telecommunications industry consisting of two years as a Major Account Manager at RCI Long Distance, a subsidiary of Rochester Telephone Company; six years as a National Account Manager at MCI Telecommunications; and two years as President of applicant.

Sean Trepeta, Executive Vice President, has six years of experience in the telecommunications industry consisting of two years in NYNEX's MIS Department and four years in MCI's sales division.

As additional evidence of its technical expertise and fitness to serve, applicant represented that no one on its management team was previously employed by an NDIEC that went out of business or filed for bankruptcy during the course of such previous employment.

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 the ALLPUC file of the STATES library and in the FCC file of the FEDCOM library of the Lexis database. No information was uncovered that would indicate that the applicant is unfit to provide public utility service.⁵

⁵ Also searched in Lexis were the names "Sheffield Systems" (for whom the applicant's CEO also serves as president) and "Televox" (the name previously used by applicant). This search uncovered no information that would indicate applicant is 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 interexchange services that applicant seeks to provide.

Findings of Fact

1. Application (A.) 97-04-023 was filed on April 2, 1997.
2. Notice of the filing of the application appeared in the Commission's Daily Calendar on April 14, 1997.
3. Applicant served a Notice of Availability of its application on all telephone corporations with which it is likely to compete.
4. No protests have been filed.
5. A hearing is not required.
6. By D.97-06-107, applicants for nondominant interexchange authority are exempt from Rule 18(b) of the Commission's Rules of Practice and Procedure (Rule).
7. Prior Commission decisions authorized competition in providing interLATA telecommunications services, but generally barred those offering such services from holding out to the public the provision of intraLATA service.
8. In D.94-09-065 the Commission authorized competitive intraLATA services effective January 1, 1995, for carriers meeting specified criteria.
9. Applicant has demonstrated that it has a minimum of \$25,000 of cash or cash equivalent that is reasonably liquid and readily available to meet its start-up expenses.
10. Applicant represented that no deposits are required by LECs or IECs in order for applicant to provide the proposed services.
11. Applicant demonstrated that its management possesses the requisite technical expertise to provide resold interexchange services to the public.
12. Applicant represented that no one on its management team was previously employed an IEC that filed for bankruptcy or went out of business.
13. Applicant submitted a draft of its initial tariff which complied with the Commission's prohibitions on unreasonable deposit requirements.

14. A search of the ALLPUC file of the STATES library and the FCC file of the FEDCOM library of the Lexis database did not reveal anything to indicate the applicant is unfit to provide public utility service.

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 adverse effect upon the environment.

16. Exemptions from the provisions of PU Code Sections 816-830 have been granted to other NDIECs (e.g., D.86-10-007 and D.88-12-076, and D.96-05-060).

17. The transfer or encumbrance of the property of nondominant carriers has been exempted from the requirements of PU Code Section 851 whenever such transfer or encumbrance serves to secure debt. (See D.85-11-044 and D.96-05-060, Ordering Paragraph 15.)

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 that interexchange services to be offered by applicant, subject to the terms and conditions set forth herein.
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 Section 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 Section 2881; Resolution T-16017, April 9, 1997);
 - c. The user fee provided in PU Code Sections 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 Section 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 is exempt from Rule 18(b) of the Commission's Rules of Practice and Procedure.

6. Applicant should be exempted from PU Code Sections 816-830.

7. Applicant should be exempted from PU Code Section 851 when the transfer or encumbrance serves to secure debt.

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

9. Because of the public interest in competitive interLATA and intraLATA interexchange 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 International Gateway Communications, Inc. (applicant) to operate as a switchless reseller of interLATA and, to the extent authorized by D.94-09-065 intraLATA telecommunications 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 interexchange services. Applicant may not offer such services 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. The tariff shall be effective not less than one 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 NDIEC tariffs is subject to the schedules set forth in Ordering Paragraph 5 of Decision (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. Applicant is also exempt from GO 96-A,

paragraph III.G.(1) and (2), which requires service of advice letters on competing and adjacent utilities, unless such utilities have specifically requested such service.

6. 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.

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 that interexchange service is first rendered to the public within five days after interLATA service begins and again within five 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 Commission staff contained in Attachment A to this decision.

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

13. The certificate granted and the authority to render service under the rates, charges, and rules authorized herein 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-5811-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 Section 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 Sections 816-830.

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

18. 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 Commission's 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 Commission's Telecommunications Division to file or remit late.

19. Applicant shall comply with the Commission's rules and regulation for NDIECs set forth in D.93-05-010, D.90-08-032, and other Commission decisions, including the requirement contained in D.90-08-032 (37 CPUC2d at 145-146) that customer deposits related to interexchange service that are held for more than one month must bear the Commission-required rate of interest currently set at 7% simple interest. This rate of interest shall continue to apply unless and until it is reset by subsequent Commission action or superseded by the rate of interest set forth in D.96-09-098, Appendix A, Rule 4.B.

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

A.97-04-023 ALJ/TIM/gab *

21. Application 97-04-023 is closed.

This order is effective today.

Dated July 16, 1997, at San Francisco, California.

P. GREGORY CONLON

President

JESSIE J. KNIGHT, JR.

HENRY M. DUQUE

JOSIAH L. NEEPER

RICHARD A. BILAS

Commissioners

A.97-04-023 ALJ/TIM/gab

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)

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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 that interexchange services to be offered by applicant, subject to the terms and conditions set forth herein.
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- "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. Applicant is also exempt from GO 96-A,

paragraph III.G.(1) and (2), which requires service of advice letters on competing and adjacent utilities, unless such utilities have specifically requested such service.

6. 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.

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 that interexchange service is first rendered to the public within five days after interLATA service begins and again within five 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 Commission staff contained in Attachment A to this decision.

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

13. The certificate granted and the authority to render service under the rates, charges, and rules authorized herein 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-5811-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 Section 70S, 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 Sections 816-830.

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

18. 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 Commission's 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 Commission's Telecommunications Division to file or remit late.

19. Applicant shall comply with the Commission's rules and regulation for NDIECs set forth in D.93-05-010, D.90-08-032, and other Commission decisions, including the requirement contained in D.90-08-032 (37 CPUC2d at 145-146) that customer deposits related to interexchange service that are held for more than one month must bear the Commission-required rate of interest currently set at 7% simple interest. This rate of interest shall continue to apply unless and until it is reset by subsequent Commission action or superseded by the rate of interest set forth in D.96-09-098, Appendix A, Rule 4.B.

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

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21. Application 97-04-023 is closed.

This order is effective today.

Dated July 16, 1997, at San Francisco, California.

P. GREGORY CONLON

President

JESSIE J. KNIGHT, JR.

HENRY M. DUQUE

JOSIAH L. NEEPER

RICHARD A. BILAS

Commissioners

A.97-04-023 ALJ/TIM/gab

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)