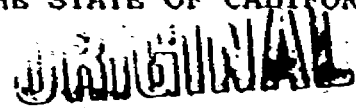


AUG 04 1997

Decision 97-08-006 August 1, 1997

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
 ConQuest Operator Services Corp.)
 for a Certificate of Public)
 Convenience and Necessity to)
 Operate as an IntraLATA reseller)
 of Telecommunications Services)
 within the State of California)
 (U-5294-C).)



Application 97-05-030
 (Filed May 6, 1997)

O P I N I O N

By application filed May 6, 1997, ConQuest Operator Services Corp. (COSC or applicant), an Ohio corporation authorized to do business in California, a wholly owned subsidiary of ConQuest Telecommunication Services Corp. (CTSC), seeks authority to act as a switchless, nondominant intraLATA toll carrier providing resold telecommunications and operator assisted services within California.¹ By Decision (D.) 92-10-037, dated October 21, 1992, (Application 92-05-039) applicant was issued a Certificate of Public Convenience and Necessity (CPCN) authorizing it to provide intrastate interLATA services within California, and now seeks to amend that CPCN to provide intraLATA services within California. Applicant also seeks a waiver of those provisions of Rule 18 of the

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 services originating and terminating within a single LATA.

Commission's Rules of Practice and Procedure related to service of notice of the application on cities and counties.

By 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.

The Commission has established two major criteria for determining whether a CPCN should be granted. An applicant that is a switchless reseller,² must demonstrate that it has a minimum of \$25,000 cash or cash equivalent (as described in D.91-10-041, 41 CPUC2d 505 at 520 (1991)), reasonably liquid and readily available to meet the firm's start-up expenses. Such applicants shall also document any deposits required by LECs 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).) In addition, an applicant is required to make a reasonable showing of technical expertise in telecommunications or a related business.

² D.93-05-010 defines a switchless reseller as a nondominant interexchange carrier (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 a local exchange carrier (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. The decision also notes 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. COSC is a switchless reseller.

Financial Information

As part of its application, applicant provided Consolidated Balance Sheets of its parent corporation, CTSC, stating its financial condition as of December 31, 1995, and December 31, 1996. Financial notes accompanying the Consolidated Balance Sheets indicate that as of December 31, 1996, CTSC had cash in excess of \$300,000 on deposit with United American Bank. This satisfies the Commission's financial requirements for the authority sought by applicant.

Technical Expertise

Applicant will rely upon the expertise of its underlying carrier(s) for technical assistance in its day-to-day operations. In addition, applicant has provided information on its key managers and/or employees indicating their experiences. It may be summarized as follows:

James E. Sobwick, President & CEO

17 years telecommunications experience
Co-Founder LiTel Telecommunications
Co-Founder National Telecom Transmission
Previous Position: Vice President, Strategic Planning,
LiTel
Areas of Expertise: Acquisitions, Strategic Planning,
Finance
B.B. Ad. Operations Research, Computer Systems
M.B.A. Quantitation Management Techniques

Peter "B" Buonaiuto, Vice President Sales and Marketing

13 years telecommunications experience
Previous Positions: Vice President, Marketing, ITI
Director, Product Marketing, LiTel
Areas of Expertise: Sales, Marketing,
Product Development,
Product Management
B.S. Business Administration Finance and Economics

Marianne A. Townsend, Co-Founder, Vice President,
Administration, Regulatory and Operator Services,
Corporate Secretary

17 years telecommunications regulatory experience
Previous Position: Manager, Special Services
Engineering, LiTel
Areas of Expertise: Tariff & Regulatory Public
Utilities, Commission of Ohio
Manager, Special Services
Engineering
Member, Association of
Telecommunication Professionals and
Board of Directors, Prepaid
Communications Association,
Dublin Women in Business
and Professionals
Past Chair, International
Telecard Association
Board of Directors Member and
Chairperson of Legal Tax and
Legislators Committee.

Eric G. DuVall, Vice President MIS & Technologies

8 years Voice/Data Networking Experience
Previous Position: Manager, Systems Software Development
Infoline Tech
Manager, Software Development - NASA
Center of Utilization of Local
Planatory Resources
Areas of Expertise: Real Time Software Engineering
Voice Response, Client/Server Data
Processing, Telephony Engineering
B.S. Computer Science/Electrical Engineering

Rita M. Atlagovich, Facilities Planning Manager

8 years telecommunications experience
Previous Positions: International Marketing Manager,
ConQuest
Manager, Facility Cost Audits, LiTel
Areas of Expertise: Network Planning, Facility Cost
Control, Systems Development
B.S.B.A. Accounting & Computer Science
M.A. Slavic & East European Studies
Board Member, Greater Columbus Community Shares

Donna Prokopchak, General Manager, Operator Services

33 years experience in Operator Services
Previous Position: Manager, Operator Services,
Bell of Pa
Areas of Expertise: Operator Services, International
Operator Services
Directory Assistance, Training &
Seminars

Applicant's Operation

Applicant presently operates in California as a switchless reseller of long distance services. It currently offers outbound direct dialed ("1+") message telecommunications service, inbound 800/888 service, and operator assisted services on a presubscribed basis. Applicant offers its services 24 hours per day, seven days per week. Calls originate over LEC facilities and are routed to the underlying carrier. The company's underlying carrier performs all interexchange switching, routing, and call termination functions. Applicant now proposes to offer IntraLATA service within the state of California.

Tariff

A proposed tariff was not filed with the application as the applicant plans to offer interLATA and intraLATA services at the same rates, and a tariff for interLATA service is on file with the Commission.

Findings of Fact

1. A notice of filing of the application appeared in the Daily Calendar on May 16, 1997.
2. No protests to the application have been filed.
3. A hearing on the application is not required.
4. By prior Commission decisions, we authorized competition in providing interLATA and intraLATA services for carriers meeting certain criteria.

5. Applicant has demonstrated it has \$25,000 cash, reasonably liquid and readily available to meet its start-up expenses.

6. Applicant has indicated that its underlying carriers do not require deposits.

7. Applicant's technical expertise, in addition to employees of the underlying carriers, consists of six employees with a combined experience of over 96 years in telecommunications related businesses.

8. No tariff has been submitted by applicant for the intraLATA authority sought as it intends to charge the same rates as for the interLATA services it currently provides.

9. Applicant has represented that no one associated with or employed by applicant was previously associated with a NDIEC that filed for bankruptcy or went out of business.

10. Since no facilities are to be constructed, the proposed operation will not have a significant effect upon the environment.

11. Applicant is exempt from Rule 18(b). (See D.97-06-107.)

12. Exemption from the provisions of Public Utilities (PU) Code §§ 816-830 has been granted to other resellers. (See, e.g., D.86-10-007 and D.88-12-076.)

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.)

Conclusions of Law

1. Applicant has the financial ability to provide the service proposed.

2. Applicant has made a reasonable showing of technical expertise in telecommunications or a related business.

3. Public convenience and necessity require the 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-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.).

5. Applicant is exempt from Rule 18(b).
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. 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 ConQuest Operator Services Corp. (applicant) to operate 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. 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 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.

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 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. 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.

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

11. 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.

12. The corporate identification number assigned to applicant is U-5294-C, which was previously assigned to applicant, shall be included in the caption of all original filings with this Commission, and in the titles of other pleadings filed in existing cases.

13. 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.

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

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

16. If applicant is 90 days or more late in filing an annual report or in remitting the fees listed in Conclusion of Law 4, 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.

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

18. Application 97-05-030 is closed.

This order is effective today.

Dated August 1, 1997, at San Francisco, California.

P. GREGORY CONLON
President

JESSIE J. KNIGHT, JR.

HENRY M. DUQUE

JOSIAH L. NEEPER

RICHARD A. BILAS

Commissioners

A.97-05-030 ALJ/RLR/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:
 - 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)