

Decision 97-08-044 August 1, 1997

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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application And Request for Ex Parte Authority by
FirstMile Communications, Inc. for a Certificate of
Public Convenience and Necessity to Provide Resold
High Speed Digital Private Line Service Within the
State of California

ORIGINAL

Application 97-06-024
(Filed June 16, 1997)

O P I N I O N

FirstMile Communications, Inc. (FirstMile or applicant), a Delaware corporation qualified to do business in California, seeks a certificate of public convenience and necessity (CPCN) under Public Utilities (PU) Code § 1001 to permit it to resell interLATA and intraLATA¹ digital private line services using digital subscriber line and other technologies.

By Decision (D.) 88-09-059, we authorized competitive entry in the provision of interLATA and intraLATA high speed digital private line services. However, we limited the authority conferred to provision of high-speed digital private line services at 1.544 Mbps and higher. By D.94-09-065, we authorized competitive interLATA and intraLATA digital private line services at any speed, 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 a an applicant such as FirstMile, which proposes to lease digital private line facilities from other carriers. First, the applicant must demonstrate that it has a minimum of \$25,000 in cash or cash equivalents (as described in

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.

D.91-10-041, 41 CPUC2d 505 at 520 (1991)), reasonably liquid and readily available to meet the firm's start-up expenses. The applicant must also document any deposits required by local exchange carriers (LECs) or interexchange carriers (IECs) and demonstrate that it has additional resources to cover all such deposits. (D.93-05-010, 49 CPUC2d 197 at 208 (1993).) Second, the applicant is required to make a reasonable showing of technical expertise in telecommunications or a related business.

As part of its application, FirstMile has filed financial statements which demonstrate that it has more than \$25,000 in cash or cash equivalents. This showing satisfies our criteria that an applicant such as FirstMile has financial resources that are reasonably liquid and readily available to meet its needs. The financial statements have been filed under seal, and are accompanied by a motion under General Order (GO) 66-C requesting that they be kept confidential. The motion is unopposed, and we have regularly granted such motions when made by other applicants such as FirstMile. Accordingly, we will grant the motion to file the financial statements (and applicant's customer projections) under seal.

Applicant has also provided information on its key officers and managers indicating their education, technical training, and experience. FirstMile's President and Chief Executive Officer is Michael Malaga. Mr. Malaga has over ten years of experience in the computer technology and telecommunications fields. Prior to joining applicant, he served as the Director of Strategic Development for MFS Communications, Inc. (MFS). Applicant's Chief Financial Officer (CFO) is Tim Monahan, who served as Director of Corporate Development for MFS before joining FirstMile. Applicant's Vice President for Network Engineering is Robert Flood, who was responsible for traffic engineering, switch translations, capacity planning, and network infrastructure development at MFS before joining FirstMile.

A proposed tariff for applicant's digital private line services is attached as an exhibit to the application. The pricing components for the DS-0, DS-1, and DS-3 services includes nonrecurring installation charges and recurring charges for channel terminations and mileage charges (where applicable). Special construction charges may also apply, depending on the customer's needs. Accordingly, applicant will be pricing

some of its services on an individual case basis. Applicant is willing to file individual advice letters to show the charges for services contracted by customers as they subscribe for service. Applicant should file such advice letter updates to its tariff showing the charges for service to each individual customer.

We will authorize the interLATA and intraLATA digital private line services that applicant seeks to provide.

Findings of Fact

1. A notice of the filing of the application appeared in the Daily Calendar on June 19, 1997.
2. No protests have been filed.
3. A hearing is not required.
4. By prior Commission decisions, we authorized competition in providing interLATA and intraLATA high speed digital private line services, but generally barred those offering such services from holding out to the public the provision of interLATA or intraLATA digital private line services at speeds lower than 1.544 Mbps.
5. By D.94-09-065, we authorized competitive low speed digital private line services effective January 1, 1995, for carriers meeting specified criteria.
6. Applicant has demonstrated that it has a minimum of \$25,000 in cash or cash equivalents, reasonably liquid and readily available to meet its start-up expenses.
7. Applicant has also demonstrated that it has the financial ability to provide any deposits that may be required by any LEC or IEC with which applicant does business.
8. Applicant's President, Vice President for Network Engineering, and CFO all have significant experience in various aspects of telecommunications.
9. Applicant has submitted with its application a complete draft of applicant's initial tariff, which complies with the requirements established by the Commission, including prohibitions on unreasonable deposit requirements.
10. Applicant has represented that no one associated with or employed by applicant was previously associated with a nondominant interexchange carrier that filed for bankruptcy or went out of business.

11. 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.

12. By D.97-06-107, applicants for non-dominant interexchange authority are exempt from Rule 18(b).

13. Exemption from the provisions of PU Code §§ 816-830 has been granted to other carriers such as applicant. (See, e.g., D.86-10-007 and D.88-12-076.)

14. 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 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-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. Applicant should not switch intraLATA or interLATA voice traffic.
9. Applicant's motion under GO 66-C for a limited protective order keeping its financial statements and customer projections confidential should be granted.
10. The application should be granted to the extent set forth below.
11. 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 (CPCN) is hereby granted to FirstMile Communications, Inc. (applicant) to operate as a reseller of interLocal Access and Transport Area (interLATA) and intraLocal Access and Transport Area (intraLATA) digital private line telecommunications 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 interLATA and intraLATA digital private line 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 one day after filing.

Applicant shall comply with the provisions in its tariffs. For individual case basis services, applicant shall file advice letter updates to its tariff, showing the charges for service to each individual customer.

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 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 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 those persons' telephone numbers. This information shall be updated at least annually, or whenever the name or telephone number of the contact person(s) changes.

7. Within five days after interLATA service is first rendered to the public by applicant, applicant shall notify this Commission of that fact in writing. Written notice shall also be provided to this Commission within five days after applicant first renders intraLATA service to the public.

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 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 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-5829-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. 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 CPCN, unless applicant has received the written permission from the Telecommunications Division to file or remit late.

18. Applicant's motion for a limited protective order keeping its financial statements and customer projections confidential is granted. Such documents will remain under seal for one year from the effective date of this decision, unless applicant makes a timely request for extension of confidential treatment with good cause shown.

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

20. Application 97-06-024 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

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)