

Decision 97-10-018 October 9, 1997

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of Alternate Communications Technology, Inc., for a Certificate of Public Convenience and Necessity to Operate as a Reseller of Long Distance Telephone Service and to Provide Intrastate Operator-Assisted Telecommunication Services.

ORIGINAL

Application 97-04-063
(Filed April 25, 1997)

O P I N I O N

Alternate Communications Technology, Inc. (ACT or applicant), an Indiana corporation, seeks a certificate of public convenience and necessity (CPCN) under Public Utilities (PU) Code § 1001 to permit it to resell interLATA telephone services in California and intraLATA telephone service, including operator-assisted services.¹

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.

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.

The Commission has established two major criteria for determining whether a CPCN should be granted. An applicant who is a switchless reseller² must demonstrate that it has a minimum of \$25,000 of 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).)

As part of its application, applicant provided an unaudited balance sheet and income statement. These financial records do not demonstrate that applicant has the requisite \$25,000 in cash or cash equivalent. To the contrary, applicant's balance sheet shows only \$1,443 in operating cash. Almost all remaining assets totaling about \$188,000 are identified either as accounts receivable or commission advances. ACT has long term debt approaching \$1 million with attendant debt service exceeding \$100,000 annually in addition to other normal costs of doing business.

On May 12, 1997 and July 7, 1997, the assigned administrative law judge (ALJ) contacted ACT officers by telephone to inform applicant of the Commission's financial requirements and provide ACT with an opportunity to supplement the application. After receiving no written response from ACT, the assigned ALJ issued a ruling on August 13, 1997 seeking additional evidence from ACT that it has the requisite financial resources to operate as a reseller of telecommunications services, consistent with Commission rules. On September 4, 1997 ACT mailed a letter to the assigned ALJ with

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.

an updated balance sheet and an explanation of ACT's position. The balance sheet shows that, as of May 1997, ACT's liquid cash had fallen to \$270 and that its accounts receivable had increased to about \$120,000. Its commission advances remained steady at about \$85,000 and ACT had increased its receivables rather than its cash on hand by extending additional loans ("notes receivable") in an amount exceeding \$62,000.

ACT's letter argues that the \$25,000 required by Commission rules as a prerequisite to acquiring a reseller CPCN applies only to new companies and not those which have been offering service in the industry in other states, as ACT has. ACT observes in its letter that it will not incur a variety of costs which would be incurred by a new company such as costs associated with rent, accounting fees or salaries.

Discussion

ACT argues that D.93-05-010, which reduced the financial requirements for resellers from \$75,000 to \$25,000, applies only to new or "start-up" companies and not those, like ACT, that are operating in other states. D.93-05-010 refers to D.91-10-041 when it states "we will continue to allow applicants who have profitable interstate businesses to demonstrate sufficient cash flow by submitting an audited balance sheet and income statement." (49 CPUC2d 205.) D.91-10-041 set forth guidelines for financial fitness of telecommunications resellers, among other things. It reduced the cash requirement for resellers from \$420,000 to \$75,000 and in so doing suggested that we may grant a CPCN to a profitable reseller with operations in other states if an affiliate guarantees the financial resources required for the California affiliate. Specifically, we stated our intent to "accept an audited Balance Sheet and Income Statement of a company which does a profitable business as a going concern reseller outside of California and which proposes expansion of its operations to provide intrastate services in California under its own corporate name. If the going concern has sufficient cash flow, its subsidiary or affiliate may apply for a CPCN, with the out-of-state reseller acting as a guarantor with the proviso that its will pledge \$420,000 of that cash flow to its new operations in California." (41 CPUC2d 513.) The reference to \$420,000 in the dicta suggests this provision applies only to switched resellers whose financial resource requirements were retained at the level of \$420,000 by the order. Even if the order

intended to apply equally to resellers, however, ACT has not demonstrated compliance with the requirements upon which it would have us rely in granting its application here.

First, ACT has not submitted an audited balance sheet and income statement. The information it provides is unaudited. In this case, where the applicant's financial resources appear so uncertain, we would not accept an unaudited statement as a demonstration of compliance with Commission rules.

More important, ACT has not "pledged" any cash flow to its new operations in California. Indeed, ACT has almost no cash or cash equivalent to pledge. ACT describes the \$270 in cash it holds as "more than ample cash flow" for its purposes, believing that it will incur essentially no start-up costs in California. Our rules require \$25,000 in liquid assets or a demonstration that the applicant can cover its start-up costs with less. (49 CPUC2d 205.) Act has not demonstrated that it can cover its start-up costs with \$270.

Finally, ACT does not appear to be "profitable." In that context, it has failed to reconcile profitability with the fact that it has been operating with negative equity exceeding three times its total assets. D.97-06-107 requires such a justification where a company's equity is negative. (See D.97-06-107, Appendix, Question 9, Instruction 7.)

We herein deny ACT's application for authority to operate as a reseller of telecommunications services in California on the basis that ACT has failed to present evidence that it has the financial resources to support its California operations.

Findings of Fact

1. Applicant has requested authority to operate as a reseller of telecommunications services in California. ACT states it has similar operations in forty other states.
2. No protests have been filed.
3. Applicant has not demonstrated that it has a minimum of \$25,000 of cash or cash equivalent, reasonably liquid and readily available to meet its start-up expenses, consistent with D.91-10-041 and D.93-05-010.

4. Applicant did not present an audited balance sheet and income statement in its application.

5. Applicant's out-of-state affiliates have not pledged any cash to applicant's California operations and appear to have no cash or cash equivalent to pledge.

6. Applicant has not provided any evidence to support its assertion that \$270 is adequate to cover its start-up costs for its California operations.

Conclusions of Law

The Commission should deny the application because the applicant has not demonstrated that it has adequate financial resources as required by the Commission.

O R D E R

IT IS ORDERED that:

1. The application of Alternate Communications Technology, Inc. for authority to operate as a reseller of intrastate telecommunications services is denied.

2. Application 97-04-063 is closed.

This order is effective today.

Dated October 9, 1997, at San Francisco, California.

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