

ALJ/TRP / avs

Decision 02-02-023 February 7, 2002

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of Broadwing Communications, Services, Inc. (U-5525-C) for a Certificate of Public Convenience and Necessity to Operate as a Reseller & Facilities-Based Provider of InterLATA and IntraLATA Telecommunications Service in the State of California.

Application 00-11-026
(Filed November 13, 2000)

O P I N I O N

I. Introduction

On November 13, 2000 Broadwing Communications Services, Inc. (U-5525-C) (Broadwing or Applicant) filed an application pursuant to Pub. Util. Code § 1001 seeking to confirm its existing authority as well as modify and extend its certificate of public convenience and necessity (CPCN) from the California Public Utilities Commission (Commission) to offer facilities-based and resold inter-local access and transport area (LATA) and intraLATA interexchange service as a non-dominant interexchange carrier (NDIEC) on a statewide basis. We hereby grant the application subject to the terms, conditions, and restrictions included herein.

II. Description of the Applicant

Broadwing is a wholly owned subsidiary of Broadwing Communications Inc., which, in turn, is a wholly owned subsidiary of Broadwing Inc. Broadwing Inc., a publicly traded company, owns 100 percent of Broadwing

Communications of Delaware, Inc. Broadwing has provided a copy of its certified Articles of Incorporation and a copy of its Certificate of Good Standing from the State of California evidencing Broadwing's foreign corporation qualification status.

Broadwing is authorized by the Federal Communications Commission to provide interstate and international telecommunications services. Broadwing currently offers interstate, international, and in some states, intrastate telecommunications services, including, without limitation, private line services, advanced high-speed packet switched data services and point-to-point broadcast quality video transmission services. Broadwing operates extensive fiber optic networks in the United States including California, where Broadwing maintains points of presence (POPs) in Hayward, San Francisco, Fresno, Bakersfield, Palmdale and Los Angeles.

III. Summary of the Authority Requested by Applicant

By Decision (D.) 95-10-007, issued on October 5, 1995, Broadwing's predecessor-in-interest IXC Long Distance, Inc. (IXC), received authority from the Commission to provide interexchange telecommunications services within California as a switchless or non-facilities-based reseller. Pursuant to IXC's November 12, 1997 advice letter, Broadwing's obtained its existing authority to operate as a facilities-based reseller of interexchange telecommunications services in California was granted. Commission staff acknowledged by written correspondence receipt and effectiveness of the advice letter.

Commission staff, however, did not specifically address the scope of authority of Broadwing's predecessor, IXC, as a facilities-based reseller, to construct facilities beyond those known to exist at the time the advice letter became effective. Broadwing claims that it understood that IXC's facilities-based

authority, to which it was the successor-in-interest, authorized it to construct additional facilities without further Commission authorization, as long as Broadwing complied with any and all applicable rules and regulations, including the requirements of the California Environmental Quality Act (CEQA).

Since November of 1997, Broadwing, has, through a combination of asset acquisition, leases, right-of use agreements, and construction of its own facilities, developed a significant network within California. By letter dated June 28, 2000, the Commission staff notified Broadwing that it must cease further construction on its California fiber optic project. In doing so, the Commission staff specifically advised Broadwing that it would be allowed to complete the following project-related construction: 1) the completion of the trenching and laying of approximately 2,000 feet of conduit along Scott Boulevard, West Trimble Road, North 1st Street and Component Drive in Santa Clara; 2) the completion of work inside a data center at 1700 Richard Avenue in Santa Clara, and 3) the completion of a single manhole in Oakland.

In recognition of the concerns expressed on the part of Commission staff regarding the scope of Broadwing's authority to construct additional facilities, Broadwing submitted the present application to, among other things, harmonize its extant facilities and business activities with the appropriate Commission authorization to be a facilities-based provider of telecommunications services authority in California.

Broadwing seeks confirmation of its statewide authority to provide both facilities-based and resold interLATA and intraLATA interexchange services between points in California, using previously acquired or constructed facilities as described in Attachment D of its application, and modification of its existing

CPCN to authorize further planned construction of facilities within the state, as more specifically described in Attachment E of its application.

Broadwing also requests confirmation of its authority to use its existing telecommunications facilities for the provision of the full range of interLATA and intraLATA telecommunications services within California. Broadwing states that it wishes to ensure that it has all requisite Commission authorization prior to constructing additional telecommunications facilities within the state.

Broadwing previously filed tariffs with the Commission and currently provides inter-exchange switched voice and private line services to wholesale and retail customers. Included within this set of services are 1 + voice service, directory assistance, toll free services (*e.g.*, 800, 888, or 877), alternate billed services such as collect calling, third number calling, calling cards, and operator services.

Broadwing purchases operator services and directory assistance from other telecommunications carriers for resale to its customers. Broadwing primarily act as a “carrier’s carrier.” However, Broadwing maintains an open network and will therefore not be able to block all 10-XXXXX or similar access code calls from end users not pre-subscribed. Broadwing will continue to provide retail service pursuant to the authority sought herein.

Broadwing will provide service as a reseller, except to the extent it has its own facilities in place. For that reason, its provision of the above described intrastate switched services is not contingent upon completion of its facilities in California. However, Broadwing asserts that completion of those facilities will enable it to provide even better service at lower prices, directly benefiting California customers and businesses, and enhancing the capability and reliability of its telecommunications infrastructure.

IV. CEQA Issues

In accordance with CEQA provisions, the Commission must assess the potential environmental impact of a CLC's proposed operation in order to determine that adverse effects are avoided, alternatives are investigated and, where applicable, environmental quality is restored or enhanced as necessary. To achieve this objective, Rule 17.1 of the Rules of Practice and Procedure requires the proponent of any project subject to Commission approval to submit with its application for approval of such project a Proponent's Environmental Assessment (PEA). The PEA is used by the Commission to focus on any impacts of the project which may be of concern, and to prepare the Commission's Initial Study to determine whether the project needs a Negative Declaration or an Environmental Impact Report (EIR).

In accordance with Rule 17.1 of the Commission's Rules of Practice and Procedure, Broadwing included as part of its application a PEA identifying the environmental impacts associated with Broadwing's request for authority to construct facilities in northern California and between Los Angeles and Ontario and between Ontario and San Diego.

In reviewing Broadwing's submittal, Commission staff, along with its environmental consultant, identified certain deficiencies in the PEA and requested both clarification and additional information from Broadwing. In response, Broadwing submitted a revised PEA that was filed as an amendment to the application on September 12, 2001.

The Commission then undertook and completed a Draft Initial Study/Mitigated Negative Declaration (IS/MND) for Broadwing California Fiber Optic Cable Projects. A Notice of Availability was mailed to property owners whose properties crossed or were adjacent to project rights-of-way and

published in general circulation newspapers. Copies of the complete document were submitted to the State Clearinghouse, main county and other libraries and county planning departments in project counties, and other appropriate state, county and city agencies. The 30-day review period began on October 9, 2001 and closed on November 9, 2001 at 5:00 p.m.

As lead CEQA agency, the Commission prepared responses to written comments received during the public review period on the Draft IS/MND. These Comments and Responses to Comments, were incorporated with the Draft IS/MND to complete the Final Study/Mitigated Negative Declaration submitted by the Director of the Commission's Energy Division on December 10, 2001.

The proposed expansion project is analyzed at two levels in the IS/MND. The general characteristics of the proposed project and potential impacts common to the project routes are examined at a project-wide level. The route-specific environmental settings and potential impacts are examined at a route-specific level. Mitigation measures to reduce identified impacts to less-than-significant levels are identified at both levels of analysis. Broadwing proposes to install small-diameter, high-density conduits carrying fiber optic cables primarily within existing, disturbed rights-of-way (*e.g.*, roads, railroads, or utility corridors) over several linear routes across California. Approximately 99 percent of the work will be conducted inside existing disturbed rights-of-way and buried through the use of plowing or trenching techniques. In addition, two regenerator/optical amplification stations will be installed along one of the routes to boost transmission signals.

The proposed project routes are:

- Northern California Interconnections Projects;

- Los Angeles to Ontario Longhaul Route; and
- Ontario to San Diego Longhaul Route.

The IS/MND concludes that, given the construction approach, design elements, and mitigation built into the proposed project and the additional mitigation measures included in the IS/MND, no significant impacts on the environment will occur. In addition, no substantial evidence exists in light of the whole record that the proposed project may have a significant effect on the environment. We hereby approve and adopt the Final IS/MND.

V. Review of the Proposed Application

Broadwing's application has been reviewed for compliance with the certification rules adopted in D.93-05-010 for NDIEC's. In this order, we will grant Applicant's request for expanded authority to provide interexchange services utilizing resale and/or utilizing its existing facilities and those covered under its Final IS/MND.

Applicant demonstrated that it possesses the requisite managerial qualifications, technical competence, and financial resources to provide facilities-based interexchange service.

Applicant attached Exhibit K, a copy of Broadwing's most recent yearly and quarterly financial filings with the Federal Securities and Exchange Commission, the financial statements of its corporate parent company, Broadwing, Inc. As demonstrated in Broadwing's financial statement, it has access to the necessary financial resources to provide the resold and facilities-based interLATA and intraLATA telecommunications services described in its application, and to finance its operations in order to maintain the provision of these services. Exhibit K demonstrates the financial capability of Applicant to provide the services described in this Application, showing

unencumbered cash of at least \$100,000 readily available to meet the expenses of the proposed operations.

Exhibit I lists Applicant's senior management and key personnel actively involved in Applicant's telecommunications business. This information demonstrates that these individuals have the requisite knowledge and capabilities to supervise Applicant's provision of proposed telecommunications services.

Based upon our review, we conclude Broadwing complies with our certification requirements for the expanded facilities-based and resale authority, and satisfies the additional conditions set forth in the ordering paragraphs below. Accordingly, we grant Broadwing authority to offer expanded facilities-based and resale service utilizing existing facilities and those to be constructed and installed as defined with the scope of the approved Final IS/MND.

VI. Comments on Draft Decision

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Pub. Util. Code § 311(g)(2), the otherwise applicable 30-day period for public review and comment is being waived.

Findings of Fact

1. Broadwing filed its application seeking an expansion of its CPCN to construct and install facilities for the provision of interLATA and intraLATA exchange services within California.
2. There are no protests to the application.
3. The Commission undertook and completed a Draft IS/MND for Broadwing California Fiber Optic Cable Projects.

4. The Commission prepared a response to written comments received during the public review period on the Draft IS/MND to complete the Final IS/MND submitted by the Director of the Commission's Energy Division on December 10, 2001.

5. Broadwing proposes to install small-diameter, high-density conduits carrying fiber optic cables primarily within existing, disturbed rights-of-way (*e.g.*, roads, railroads, or utility corridors) over several linear routes across California.

6. The IS/MND concludes that, given the construction approach, design elements, and the additional mitigation measures included in the IS/MND, no significant adverse impacts the environment will occur.

7. Broadwing has demonstrated that it has a minimum of \$100,000 in cash or cash equivalent reasonably liquid and readily available to meet its start-up expenses.

8. Applicant's technical experience is demonstrated by supporting documentation which provides summary biographies of key management personnel.

9. Exemption from the provision of Pub. Util. Code §§ 816-830 has been granted to other nondominant carriers. (*See, e.g.*, D.86-10-007 and D.88-12-076.)

10. The transfer or encumbrance of property of nondominant carriers has been exempted from the requirements of Pub. Util. Code § 851 whenever such transfer or encumbrance serves to secure debt. (*See* D.85-11-044.)

11. The provision of interexchange telecommunications service by resale or by the utilization of facilities covered under the Final IS/MND would not have a significant effect on the environment.

Conclusions of Law

1. Broadwing has the financial ability to provide the proposed services, and has made a reasonable showing of technical expertise in telecommunications.

2. Public convenience and necessity require the interexchange services to be offered by Broadwing subject to the terms, conditions, and restrictions set forth below.

3. Broadwing is subject to:

- a. The current 1.45% 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 Trust Administrative Committee Fund (Pub. Util. Code § 879; Resolution T-16594, October 10, 2001);
- b. The current 0.481% 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 (Pub. Util. Code § 2881; D.98-12-073 and Resolution T-16504, March 27, 2001);
- c. The user fee provided in Pub. Util. Code §§ 431-435, which is 0.11% of gross intrastate revenue for the 2000-2001 fiscal year (Resolution M-4800);
- 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 (Pub. Util. Code § 739.3; D.96-10-066, pp. 3-4, App. B, Rule 1.C; set by Resolution T-16521 at 0.200%, June 14, 2001; set by Resolution T-16589 at 0.300% effective January 1, 2002, October 10, 2001);
- e. The current 1.47% 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., Resolution T-16585, October 10, 2001); and

- f. The current 0.300% 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, Resolution T-16584, October 10, 2001).
4. Applicant should be exempted from Rule 18(b).
5. Applicant should be exempted from Pub. Util. Code §§ 816-830.
6. Applicant should be exempted from Pub. Util. Code § 851 when the transfer or encumbrance serves to secure debt.
7. Applicant should be granted an expanded CPCN for interexchange resale service and facilities-based service utilizing existing facilities and those covered under the Final IS/MND approved in this order subject to the terms, conditions, and restrictions set forth below.
8. As long as construction authority is limited to the facilities covered under the Final IS/MND approved in this order, it can be seen with certainty that there is no possibility that granting this CPCN will have an adverse effect upon the environment.

O R D E R

IT IS ORDERED that:

1. An amended certificate of convenience and necessity (CPCN) shall be granted to Broadwing Communications Services, Inc. (U-5525-C) (Broadwing or Applicant) for authority to construct and install fiber optic facilities as defined in the Final Initial Study / Mitigated Negative Declaration (IS/MND) approved herein. Broadwing is authorized to offer interexchange services using these facilities, contingent on compliance with the terms identified in this order.

2. The Final IS/MND for Broadwing's proposed construction is hereby accepted and approved.

3. Applicant shall file a written acceptance of the amended certificate granted in this proceeding prior to commencing service utilizing the new facilities covered under this order.

4. Prior to initiating service, Applicant shall provide the Commission's Consumer Services Division with Applicant's designated contact persons for purposes of resolving consumer complaints and the corresponding telephone numbers. This information shall be updated if the names or telephone numbers change or at least annually.

5. Applicant shall keep its books and records in accordance with generally accepted accounting principles.

6. Applicant shall each file an annual report, in compliance with General Order (GO) 104-A, on a calendar-year basis using the information-request form developed by the Commission Staff and contained in Appendix A.

7. Applicant shall ensure that its employees comply with the provisions of Pub. Util. Code § 2889.5 regarding solicitation of customers.

8. The certificate granted and the authority to render service under the rates, charges, and rules authorized will expire if the authority is not exercised within 12 months after the effective date of this order.

9. The previously assigned corporate identification number of Broadwing, (U-5525-C) shall be included in the caption of all original filings with this Commission, and in the titles of other pleadings filed in existing cases.

10. Within 60 days of the effective date of this order, Applicant shall comply with Pub. Util. Code § 708, Employee Identification Cards, reflecting its

authority, and notify the Director of the Telecommunications Division (TD) in writing of its compliance.

11. Applicant is exempted from the provisions of Pub. Util. Code §§ 816-830.

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

13. 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 TD shall prepare for Commission consideration a resolution that revokes that petitioner's CPCN, unless it has received written permission from the TD to file or remit late.

14. It can be seen with certainty that no material adverse environmental impacts will result from the limited CPCN authority granted in this order.

15. Applicant shall comply with all applicable rules and regulations adopted for NDIECs set forth in Decision (D.) 93-05-010 and D.90-08-032 as well as all other applicable Commission rules, decisions, GO's, and statutes that pertain to California public utilities, subject to the exemptions granted in this decision.

16. Application 00-11-026 is closed.

This order is effective today.

Dated February 7, 2002, at San Francisco, California.

LORETTA M. LYNCH

President

HENRY M. DUQUE

RICHARD A. BILAS

CARL W. WOOD

GEOFFREY F. BROWN

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 special 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.

APPENDIX 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.).
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. Balanced sheet as of December 31 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)