

DEC. 16 1992

Decision 92-12-051 December 16, 1992

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the matter of Application )  
of UStel, Inc. for a certificate )  
of public convenience and )  
necessity to resell intrastate )  
telecommunications services )  
in the State of California. )

**ORIGINAL**

Application 92-08-013  
(Filed August 10, 1992;  
amended October 30, 1992)

O P I N I O N

Request

UStel, Inc. (applicant), a California corporation, requests a certificate of public convenience and necessity (CPCN) under Public Utilities (PU) Code § 1001 to provide intrastate interLATA telephone services within California and intrastate, intraLATA high speed digital private line telecommunications services at speeds of 1.544 megabits per second (mbps) or higher within each California LATA.<sup>1</sup>

Applicant also seeks an exemption from Rule 18(b) of the Commission's Rules of Practice and Procedure to the extent that the rule requires applicant to serve a copy of its application on cities and counties in the proposed service area. Such an exemption has been granted to other similarly situated non-dominant interLATA carriers, such as in Decision (D.) 91-06-035 and D.87-08-022.

<sup>1</sup> 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.

Background

In D.90-08-032 (37 CPUC 2d 130), as modified by D.91-10-041, the Commission established two major criteria for determining whether a CPCN should be granted. An applicant who does not own or directly operate telephone lines (switchless reseller) must demonstrate that it has a minimum of \$75,000 in uncommitted cash or equivalent financial resources<sup>2</sup>. For applications filed after 1991, such as this application, this minimum cash requirement increased 5% per year, and the current minimum cash requirement is \$78,750. In addition, an applicant is required to make a reasonable showing of technical expertise in the telecommunications or related business.

Financial Resources

With respect to the requirement that applicant demonstrate that it has a minimum of \$78,750 in uncommitted cash or equivalent financial resources, applicant substantiated that it possesses a sufficient amount of unencumbered cash or cash equivalent to meet the financial requirement. As shown in Exhibit C to the amended application, applicant's parent corporation, Homestead Group Associates by and through its president, Mr. Haskel Iny, irrevocably commits and guarantees for the use of applicant the sum of \$100,000 per year for each of the first two years of applicant's operations. This \$200,000, uncommitted and unencumbered sum of money has been deposited with the Bank of Leumi in Encino and exists solely for the use of applicant's operations.

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<sup>2</sup> D.92-06-069 notes 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.

Technical Expertise

Applicant is a subsidiary of Homestead Group Associates, a California company with extensive experience in management, investments, marketing, corporate development, and sales. The management, organizational, marketing and sales resources of Homestead Group Associates will assist applicant substantially in its start-up and initial growth phases.

In addition, applicant has arranged with Corporate Communications, Inc. (CCI), a consultant with extensive telecommunications management experience, for technical service assistance in connection with the establishment of applicant's service, tariffs, and customer service functions. The organizational and management service of Mr. Barry Epling (Epling), a principal of CCI, will be available to applicant. Epling has 15 years experience in telecommunications management, consulting, and auditing. His consulting experience began with AT&T WATS resellers when banded WATS was the only complete network available. Epling later became a team leader for AT&T's "Alliance Card" communications network, personally designing the network protocols for data communications, and implemented the computer network and associated data base management system.

In Decision 84-06-113 we invited providers of private line services offering high-speed data transmission services to file applications to offer such services intraLATA, subject to the limitations set forth in the decision. Applicant has substantiated its ability and willingness to provide high-speed data transmission services. In the interest of enhancing competition in the intraLATA high-speed data transmission services, this order should be effective today.

Applicant possesses the necessary technical expertise to operate as a non-dominant telecommunications carrier. We will authorize the interLATA services and intraLATA high-speed digital private line service that applicant seeks to provide.

Findings of Fact

1. Applicant served a copy of its application upon the 154 telephone entities with which applicant stated it is likely to compete.

2. A notice of the filing of the application appeared in the Daily Calendar of February 20, 1992.

3. An amended application was filed on May 21, 1992.

4. No protests to the amended application have been received.

5. A hearing is not required.

6. On June 29, 1983, the Commission issued Order Instituting Investigation (OII) 83-06-01 to determine whether competition should be allowed in the provision of telecommunication transmission service within the state. Many applications to provide competitive service were consolidated with OII 83-06-01.

7. By interim D.84-01-037, and later decisions, we granted those applications, authorizing 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, pending our final decision in OII 83-06-01.

8. By D.84-06-111 we invited providers of private line services offering high-speed data transmission services to file applications to offer such services intraLATA.

9. By D.84-06-113 we denied the applications to the extent that they sought authority to provide competitive intraLATA telecommunications service. We also directed those persons or corporations not authorized to provide intraLATA telecommunication service to refrain from holding out the availability of service; and we required them to advise their subscribers that intraLATA calls should be placed over the facilities of the local exchange company.

10. There is no basis for treating this application differently than those filed earlier.

11. Applicant has a minimum \$78,750 in uncommitted cash or equivalent financial resources, as required by D.90-08-031, as modified by D.91-10-041.

12. Applicant has made a reasonable showing of technical expertise in telecommunications, as required by D.90-08-032, 37 CPUC 2d 130 at 147-148, 156, 158.

13. Applicant is technically and financially able to provide the proposed services.

14. 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.

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

16. The Commission has routinely granted non-dominant interLATA carriers, such as applicant, an exemption from Rule 18(b) to the extent that the rule requires applicant to serve a copy of its application on cities and counties in the proposed service area.

17. Public convenience and necessity require the service to be offered by applicant.

Conclusions of Law

1. Applicant should be treated no differently than other non-dominant interLATA carriers which have requested and received a CPCN to provide interLATA telecommunications service and intraLATA high-speed digital private line services in California.

2. Applicant is subject to:

- a. The current 4.0% surcharge applicable to service rates of intraLATA toll and intrastate interLATA toll (PU Code § 879; Resolution T-14960) to fund the Universal Lifeline Telephone Service (ULTS);

- b. The current 0.3% surcharge on gross intrastate interLATA revenues to fund Telecommunications Devices for the Deaf (PU Code § 2881; Resolution T-13061); and
- c. The user fee provided in PU Code §§ 431-435, which is 0.1% of gross intrastate revenue for the 1991-92 fiscal year (Resolution M-4760).

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

4. Because of the public interest in competitive interLATA service, the following order should be effective immediately.

5. Applicant's requested exemption from Rule 18(b)'s requirement of service of the application on cities and counties in the proposed service area should be granted.

The State may grant any number of operative rights and may cancel or modify the monopoly feature of those rights at any time.

#### ORDER

IT IS ORDERED that:

1. A certificate of public convenience and necessity is granted to UStel, Inc. (applicant) to provide intrastate interLATA telecommunications service in California and to provide intraLATA high-speed digital private line service at speeds of 1.544 megabits per second (mbps) or higher within each California LATA. Applicant's authority to operate as a reseller of interLATA telecommunications service is subject to the following conditions:
  - a. Applicant shall offer its services only on an interLATA basis;
  - b. Applicant shall not offer intraLATA services;

- c. Applicant shall not hold out to the public that it has authority to provide, or that it does provide intraLATA services; and
- d. Applicant shall advise its subscribers that they should place their intraLATA calls over the facilities of the local exchange company.

Applicant's authority to provide intraLATA high-speed digital private line service within each California LATA is subject to the following conditions and to the reporting requirement identified in Ordering Paragraph 2:

- a. Applicant may hold out the availability of and provide multiplexing equipment or services, including voice services, as part of such high-speed digital services;
- b. Digital private line services at 1.544 mbps or above are considered to be "high-speed digital private line" services. "IntraLATA high-speed digital private line" service is defined as the dedicated connection of two or more end user premises within a LATA for the purpose of providing intraLATA high-speed digital nonswitched services;
- c. Applicant may provide multiplexing service for voice and/or data at the end user's premises such that the transmission speed from or to the end user's premises is at 1.544 mbps or above;
- d. This authority does not permit the transport from or to the end user's premise for intraLATA service of either analog or digital transmissions at speeds less than 1.544 mbps;
- e. Applicant shall refrain from holding out to the public the provision of any intraLATA services it is not authorized to provide; and

- f. Applicant shall advise its subscribers that intraLATA communications which applicant is not authorized to provide should be placed over the facilities of an authorized carrier.

2. Applicant shall monitor its intraLATA 1.544 mbps high-speed digital private line service and shall submit semiannual reports for a two-year period beginning with the effective date of the rates and charges for this service. These reports shall be filed with the Commission's Advisory and Compliance Division (CACD) Telecommunications Branch and shall include the following recorded data for applicant's intraLATA 1.544 mbps high-speed digital service:

- a. Monthly in-service volumes;
- b. Monthly inward movement volumes;
- c. Monthly recurring billings by tariff rate item; and
- d. Monthly nonrecurring billings by tariff rate item.

The reporting requirement of this Ordering Paragraph shall commence within 45 days after December 31, 1992 and shall terminate upon submission of applicant's semiannual report ending December 31, 1994, to be submitted on or before February 14, 1995.

3. To the extent that applicant requests authority to provide intraLATA telecommunications service other than high-speed digital private line services at 1.544 mbps or higher, it is denied.

4. Within 30 days after this order is effective, applicant shall file a written acceptance of the certificate granted in this proceeding.

5a. Applicant is authorized to file with this Commission, 5 days after the effective date of this order, tariff schedules for the provision of interLATA service and intraLATA high-speed digital private line services at speeds of 1.544 mbps or higher. Applicant



may not offer 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 1 day after filing.

b. Applicant is a non-dominant 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, as modified by D.91-12-013, as follows:

\*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.

6. 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 those deviations shall be subject to the approval of the Commission Advisory and Compliance Division's (CACD) Telecommunications Branch. Tariff filings shall reflect all fees and surcharges to which applicant is subject, as reflected in Conclusion of Law 2.

7. Applicant shall file as part of its individual tariff, after the effective date of this order and consistent with Ordering Paragraph 5, a service area map.

8. Applicant shall notify this Commission in writing of the date service is first rendered to the public within 5 days after service begins.

9. Applicant shall keep its books and records in accordance with the Uniform System of Accounts specified in Part 32 of the FCC rules.

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 CACD Auditing and Compliance Branch and contained in Attachment A.

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. Applicant shall send a copy of this decision to concerned local permitting agencies not later than 30 days from today.

13. The corporate identification number assigned to applicant is U-5299-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 Chief of CACD's Telecommunications Branch in writing of its compliance.

15. Applicant is exempted from the provision of PU Code §§ 816-830.

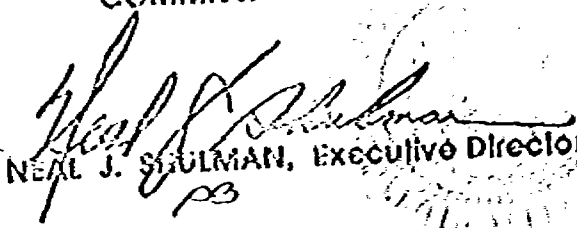
16. Applicant is exempted from Rule 18(b) of the Commission's Rules of Practice and Procedure to the extent that the rule requires applicant to serve a copy of its application on the cities and counties it proposes to operate in.

17. The application is granted, as set forth above.  
This order is effective today.

Dated December 16, 1992, at San Francisco, California.

DANIEL Wm. FESSLER  
President  
JOHN B. OHANIAN  
PATRICIA M. ECKERT  
NORMAN D. SHUMWAY  
Commissioners

I CERTIFY THAT THIS DECISION  
WAS APPROVED BY THE ABOVE  
COMMISSIONERS TODAY

  
NEAL J. SCHULMAN, Executive Director

A.92-08-013 ALJ/MFG/mds

**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 questions 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)