

Decision 96-06-015 June 6, 1996

Vendormatic seeks to operate as a statewide reseller of
BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of Vendormatic, Inc., for a Certificate of Public Convenience and Necessity to operate as a switch-based reseller of IntralATA and InterLATA Telecommunications services and Operator Services in the State of California.

Application 95-10-055
(Filed October 3, 1995)

ORIGINAL

OPINION

Operator Vendormatic, Inc. (Vendormatic or applicant), a Pennsylvania 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 operate as a switch-based reseller of interLATA and intralATA telephone service in California. 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.

As part of its supplemental filed information applicant

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.

Vendormatic seeks to operate as a statewide reseller of telecommunications services, and to provide operator-assisted service within California. According to the applicant its services would include 24-hour originating and terminating intralATA and interLATA calls for business customers. Vendormatic would provide service by reselling calls routed over facilities owned by other carriers and over its own switch-based facilities.

With Vendormatic's service, an end-user placing an "0" dialed call hears a "bong" tone and instructions indicating that the caller should either dial "0" for an operator or enter a calling card number. If the caller wishes to speak to a live operator, Vendormatic passes the call on to its own live operator service or another live operator service. If the caller dials a credit card number, Vendormatic collects the information on cards it is allowed to accept for billing or passes the call on to the appropriate carrier of the caller's choice.

Vendormatic has an agreement with Zero Plus Dialing, Inc., which has arrangements with Pacific Bell and other local exchange carriers regarding the billing of these services.

The Commission has established two major criteria for determining whether a CPCN should be granted. First, the applicant must demonstrate that it has a minimum of \$100,000 of cash or cash equivalent (as described in D.91-10-041, Appendix A, Paragraph 5.1 (41 CPUC2d 505 at 520)), reasonably liquid and readily available to meet the firm's start-up expenses. Second, the applicant is required to make a reasonable showing of technical expertise in telecommunications or a related business. (D.90-08-032, 37 CPUC2d (130, at 147-48, 156, 158.)

As part of its supplemental filed information applicant provided a balance sheet and an income statement demonstrating that it has considerably more than \$100,000 in cash on hand, and an income stream from its other non-utility activities to insure that these resources will continue to be available. This showing

satisfies our criteria for reasonably liquid and readily available assets to meet the applicant's needs. Applicant filed a motion for a limited protective order for its financial statement citing that it contains confidential information and would do harm to applicant if revealed. No opposition to the motion was filed and applicant's request was granted by the law and motion judge by ruling dated November 15, 1995. We adopt that ruling here and expand it to include applicant's more recently filed supplemental financial statements.

In support of its application Vendomatic has submitted the resume of one manager, Theodore Marinich, its Manager Technology and Systems Engineering. His experience since 1993 includes holding the positions of Manager, Payphone Network Administration Group, and Corporate Information Manager, with the applicant. In these capacities he has had experience in telecommunications, and specifically with the 4800 trunk Feature Group D switch with operator stations. He has also had significant experience in a variety of computer systems functions in other applications. His experience, coupled with the ongoing experience of Vendomatic, a substantial going concern in related businesses, affords sufficient basis to find that the applicant meets our technical expertise requirement.

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

Findings of Fact

1. Applicant served a copy of the application upon the telephone corporations with which it is likely to compete.
2. A notice of the filing of the application appeared in the Daily Calendar on November 3, 1995.
3. No protests have been filed in the province and territories.
4. No opposition to the motion for confidentiality of the applicant's financial documents has been filed.
5. A hearing is not required.

6. By prior Commission decisions we authorized competition in providing interLATA telecommunications service but generally barred those offering such service from holding out to the public the provision of intralATA service.

7. By D.94-09-065, we authorized competitive intralATA services effective January 1, 1995, for carriers meeting specified criteria.

8. (A) Applicant has demonstrated that it has a minimum of \$100,000 of cash, reasonably liquid and readily available to meet its start-up expenses.

9. Applicant's technical experience consists of one employee with experience of over three years in telecommunications technology switching, plus other corporate experience in marketing of telecommunications services.

10. 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.

11. 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.

12. 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.

13. The Commission has routinely granted nondominant interexchange carriers, such as applicant, an exemption from Rule 18(b) where no construction is involved to the extent that the rule requires applicant to serve a copy of its application on cities and counties in the proposed service area and to the extent that it requires applicant to provide a conformed copy of all exhibits attached to applicant's filed application to potential competitors.

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

15. The transfer or encumbrance of property of non-dominant 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 and expertise in telecommunications and in related businesses.

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-15801, October 5, 1995);

c. The user fee provided in PU Code §§ 431-435, which is 0.1% of gross intrastate revenue for the 1995-1996 fiscal year (Resolution 4778);

d. The current 0.27% 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 (PU Code § 739.30; Resolution T-15826, December 20, 1995).

5. Applicant should be exempted from Rule 18(b)'s requirement of service of the application on cities and counties in the proposed service area and service of all exhibits attached to this application on potential competitors.

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 interLATA and intraLATA services, the following order should be effective immediately.

Public convenience and necessity require the interLATA and intraLATA services to be provided by applicant.

ORDER

Applicant is subject to:

IT IS ORDERED that:

1. A certificate of public convenience and necessity is granted to Vendomatic, Inc. (applicant) to operate as a reseller of interLocal Access and Transport Area (interLATA) and, 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 interLATA and intraLATA 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 1 day after filing. Applicant shall comply with the provisions in its tariffs.

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 5 working days' notice. Customer notifications 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. Applicant shall either produce such records at the Commission's offices or advise 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 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.

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 Affairs Branch 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 interLATA service is first rendered to the public within 5 days after service begins and again within 5 days of when intraLATA 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. 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 CACD Auditing and Compliance Branch 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-5626-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 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. In response to the applicant's request for waiver, 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 and to the extent that the rule requires applicant to serve a copy of all exhibits attached to its application on potential competitors.

18. If applicant is 90 days or more late in filing an annual report or in remitting the fees listed in Conclusion of Law 4, CACD shall prepare for Commission consideration a resolution that revokes the applicant's certificate of public convenience and necessity, unless the applicants have received the written permission of CACD to file or remit late.

19. Applicant's motion for a limited protective order keeping its financial documents confidential is granted, and the provisions of November 15, 1995, Ruling of the Administrative Law Judge ratifying that motion is ratified. Such documents will remain under seal for one year from today unless applicant makes a timely request for extension of confidential treatment with good cause shown.

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

21. Application 95-10-055 is closed.

This order is effective today.

Dated June 6, 1996 at San Francisco, California.

14. Within 60 days of the effective date of this order, applicant shall comply with PU Code 2 708, Employee Identification

Card, and GREGORY CONLON, President

JESSIE J. KNIGHT, JR., President

HENRY M. DUQUE, Commissioner

JOSIAH L. NEPPER, Commissioner

Commissioners

16. Applicant is exempted from PU Code 2 881 for the reasons

Commissioner Daniel Wm. Fessler, being necessarily absent, did not

participate.

17. In response to the applicant's request for waiver,

applicant is exempted from Rule 18(d) 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 and to the extent that the rule

requires applicant to serve a copy of all exhibits attached to its

application on potential competitors.

A.95-10-055 ALJ/VDR/jac

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)