

Decision 96-11-003 November 6, 1996  
BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA  
In the Matter of the Application )  
of Compath Communications, Inc. ) (D.91-10-041 Appendix A, 190-01-10.0)  
for a Certificate of Convenience ) Application 96-08-018  
and Necessity to Operate as a ) (Filed August 9, 1996)  
Reseller of Telecommunications )  
Services Within the State of )  
California. )

ORIGINAL

OPINION

Summary

Applicant also intends to market prepaid and prepaid calling card services. Applicant has filed recent financial statements showing its cash position as of May 31, 1996. Compath Communications, Inc. (applicant or Compath), an Arizona corporation, seeks a Certificate of Public Convenience and Necessity (CPCN) under Public Utilities (PU) Code § 1001 to permit it to resell interLATA and intraLATA telephone services in California. <sup>1</sup> Granted.

Nature of Application

By Decision (D.) 84-01-037 (14 CPUC2d 317 (1984)) and later decisions, we authorized interLATA entry generally. By D.94-09-065 (56 CPUC2d 1117 (1994)), we authorized competitive intraLATA services effective January 1, 1995. The Commission has established two major criteria for determining whether a CPCN

D.93-05-010 defines a switchless reseller as a nonexchange interexchange carrier (NIC) 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; it provides service in its own name, and its customers view it as their telephone

<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 telecommunications service originating in one LATA and terminating in another. IntraLATA describes telecommunications originating and terminating within a single LATA.

should be granted. An applicant that is a switchless reseller<sup>2</sup> must demonstrate that it has a minimum of \$25,000 in cash or cash equivalent available to meet the firm's start-up expenses (D.91-10-041, Appendix A, Paragraph 5.1), and that it has additional resources to cover deposits required by other telephone carriers (D.93-05-010). In addition, an applicant is required to make a reasonable showing of technical expertise.

Applicant was incorporated on February 23, 1995.

Applicant states that it will offer interLATA and intralATA services and intrastate MTS type, long distance services, relying on the switches of underlying facilities-based carriers.

Applicant also intends to market postpaid and prepaid calling card services. Applicant has filed recent financial statements showing its cash position as \$27,954 as of May 21, 1996. It alleges that it will not be required by its underlying carrier to pay any deposits as a condition to entry into the California market.

Applicant provided information on its key executives as follows:

follows:

**Peter A. Nelson, President**

Peter Nelson has over 17 years of experience in the electronics and telecommunications industries: From 1981 to 1984, Mr. Nelson

<sup>2</sup> 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; it provides service in its own name, and its customers view it as their telephone company for interLATA and interstate calls; 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.

served as Vice President for Antenna Technology Corporation in the development of satellite communications systems for governments, commercial television stations, and cable companies. Mr. Nelson's experience also includes five years (1979-1984) with Video Electronics, Inc. specializing in electronic security and satellite communications systems. Immediately prior to founding Compath, Mr. Nelson operated an independent sales agency for UniDial Incorporated, a nationwide telecommunications reseller. Among his achievements, Mr. Nelson was named UniDial's Top Sales Agent for two consecutive years. In his previous positions, Mr. Nelson gained considerable management experience coordinating and managing over 100 sales agents. Mr. Nelson earned a bachelor's degree from the University of Arizona previously and was employed as an assistant in New York City as a Neal Saferstein, Vice President - Sales and Marketing.

Neal Saferstein currently serves as Compath's Vice President of Sales and Marketing. Mr. Saferstein brings considerable experience to Compath, including computer and management information expertise as well as experience in business development and contract negotiation. Mr. Saferstein's five years of telecommunications experience includes the ownership of International Business Systems Inc. (IBS), a telecommunications agent of direct dial and operator assisted services as well as serving as an aggregator for MCI. IBS also provides programming services to pay telephone companies. Mr. Saferstein is currently working towards his bachelor's degree at New York University and has attended Temple University and Wharton School of Business, University of Pennsylvania.

Christopher Heidkamp (American Telephone Network, Inc.)

We will authorize the interLATA and intrLATA services Christopher Heidkamp currently serves as Compath's Account Manager. In this capacity,

Mr. Heidkamp is responsible for the training of new sales agents, contract negotiations, development of marketing materials, the preparation of sales proposals, and placement of advertisements. Prior to joining Compath in 1994, Mr. Heidkamp was an independent contractor for Dial One Communication where he was successful in developing and implementing the company's sales and marketing efforts. Mr. Heidkamp has over five years of telecommunications experience and earned a bachelor's degree in economics from the University of Minnesota.

**Barbara DiDomenico**

Barbara DiDomenico serves as General Counsel to Compath. Ms. DiDomenico received her J.D. degree from Brooklyn Law School in 1994. Previously she was employed at the Law Firm of Teitler and Teitler in New York City as an associate, handling various corporate and real estate matters. Ms. DiDomenico earned her Bachelors Degree from Columbia College, Columbia University. She is responsible for Compath's regulatory filings and other legal matters.

Proposed tariffs of applicant, comparable to those of

competing carriers, are attached to the application as Exhibit 6.

Applicant states that no person associated with the company has been involved in any other telecommunications company that has gone out of business or has filed for bankruptcy.

Applicant requests a partial waiver of Rule 18(b) in order that it need not serve a copy of the application on city and county planning agencies, since applicant will not be constructing any plant or network facilities in the state.

Requests of this nature have been granted routinely in the past.

(American Telephone Network, Inc. (1992) 43 CPUO2d 380)

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

Tariffs will be required for NDIECs providing service through 1996; however, effective January 1, 1997, pursuant to PU Code § 495.7, this Commission is authorized to dispense with the tariffing requirements of §§ 454, 489, and 495 of the PU Code in certain circumstances. Effective January 1, 1997, NDIECs which are neither local exchange carriers (LECs) nor competitive local exchange carriers (CLCs) (nor affiliates of LECs or CLCs) are no longer required to file or maintain tariffs with this Commission. NDIECs which are either LECs, CLCs, or affiliates of LECs and/or CLCs can only acquire such exemption by separate application.

(PU Code § 495.7; D.96-09-098)

Applicant has represented that it is neither an LEC nor a CLC, nor an affiliate of either an LEC or a CLC; therefore, applicant will be exempt from filing tariffs after January 1, 1997. A tariff must be filed for services rendered prior to that date.

**Findings of Fact**

1. Applicant served a copy of its application on 107 telecommunications corporations with which it may compete.

2. A notice of the filing of the application appeared in the Daily Calendar on August 12, 1996.

3. No protests have been filed.  
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.

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

6. Applicant has demonstrated that it has a minimum of \$25,000 in cash available to meet its startup expenses.

7. Applicant has demonstrated that its management possesses the requisite technical experience to operate its service.

8. Applicant is not an LEC, CLC, nor affiliate of an LEC or CLC.

9. Applicant has submitted with its application a draft of its initial tariff, and this tariff complies with Commission requirements, including prohibitions on unreasonable deposit requirements.

10. 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.

11. The Commission has routinely granted NDIECs, such as applicant, an exemption from the Rule 18(b) requirement that the application be served on cities and counties in the proposed service area.

12. 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)

13. No officer of applicant has been involved in any other telecommunications company that has gone out of business or has filed for bankruptcy.

14. 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. No hearing is required.
2. Applicant has the financial ability to provide the proposed service.
3. Applicant has made a reasonable showing of technical expertise in telecommunications.

4. Public convenience and necessity require the interLATA and intralATA services to be offered by the applicant.

5. 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 0.11% of gross intrastate revenue for the 1996-1997 fiscal year (Resolution M-4782); and

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).

6. Applicant should be exempted from Rule 18(b) requirement of service of the application on cities and counties.

7. Applicant should be exempted from PU Code §§ 816-830.

8. Applicant should be exempted from PU Code § 851 when the transfer or encumbrance serves to secure debt.

9. Section 495.7 of the PU Code authorizes this Commission to dispense with the tariffing requirements of §§ 454, 489, 491, and 495 of the PU Code in certain circumstances.

10. By D.96-09-098, NDIECs who are neither LECs, CLCs, affiliates of LECs, nor affiliates of CLCs are exempt from the

filing of tariffs beginning January 1, 1997, however, they will be required for services provided between now and that date.

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

12. Because of the public interest in competitive interLATA and intraLATA services, the following order should be effective immediately.

**ORDER**

IT IS ORDERED that:

1. A Certificate of Public Convenience and Necessity (CPCN) is granted to Compath Communications, Inc. (applicant) to operate as a reseller of interLocal Access and Transport Area (interLATA) services and intraLocal Access and Transport Area (intraLATA) services offered by communication common carriers in California.

2. Applicant shall file a written acceptance of the certificate granted in this proceeding with the Director of the Telecommunications Division.

3. Effective January 1, 1997, applicant is exempt from the requirement to file and maintain tariffs pursuant to §§ 454, 489, 491, and 495 of the PU Code.

4. a. To provide service between now and January 1, 1997, 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 one day after filing. Applicant shall comply with the provisions in its tariffs.



b. Applicant is an 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 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.

5. 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 5.

6. 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.

7. Prior to initiating service, applicant shall provide the Consumer Services Division 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.

8. Applicant shall notify this Commission in writing of the date interLATA and intraLATA services are first rendered to the public within five days after service begins.

9. Applicant shall keep its books and records in accordance with the Uniform System of Accounts specified in Title 47, Code of Federal Regulations, Part 329.

10. In the event the books and records of the applicant are required for inspection by the Commission or its staff, the 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 offices.

11. 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.

12. Applicant shall ensure that its employees comply with the provisions of Public Utilities (PU) Code § 2889.5 regarding solicitation of customers.

13. 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.

14. The corporate identification number assigned to applicant is U-5700-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.

15. 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.

16. Applicant is exempted from the provisions of PU Code §§ 816-830.

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

18. 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.

19. If applicant is 90 days or more late in filing an annual report or in remitting the fees listed in Conclusion of Law 5, the Telecommunications Division shall prepare for Commission consideration a resolution that revokes the applicant's certificate of public convenience and necessity, unless the applicant has received the written permission of the Telecommunications Division to file or remit late.

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

21. This proceeding is closed.

This order is effective today.

Dated November 6, 1996, at San Francisco, California.

P. GREGORY CONLON  
President  
DANIEL W. FESSLER  
JESSIE J. KNIGHT, JR.  
HENRY M. DUQUE  
JOSIAH L. NEEPER  
Commissioners

Applicant shall comply with PU Code § 708, Employee Identification Cards, and notify the Director of the Telecommunications Division in writing of its compliance.

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

Applicant is exempted from PU Code § 821 for the transfer or encumbrance of property, whenever such transfer or encumbrance serves to secure debt.

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 31<sup>st</sup> 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)