

**BEFORE THE PUBLIC UTILITY COMMISSION**

**OF OREGON**

CP 1271

In the Matter of	)	
	)	
NEUPATH NETWORKS, LLC	)	ORDER
	)	
Application for a Certificate of Authority to	)	
Provide Telecommunications Service in Oregon	)	
and Classification as a Competitive Provider.	)	

DISPOSITION: APPLICATION GRANTED

**Note:** By issuing this certificate, the Commission makes no endorsement or certification regarding the certificate holder's rates or service.

**The Application**

On February 10, 2005, Newpath Networks, LLC, (Applicant) filed an application for certification to provide telecommunications service in Oregon as a competitive provider.

Applicant proposes to provide intraexchange non-switched, private line service (dedicated transmission service) within all exchanges of the telecommunications utilities and cooperative corporations listed in Appendices A and B to this order.

Applicant also proposes to provide interexchange non-switched, private line service (dedicated transmission service) statewide in Oregon. Applicant indicates that it intends to construct facilities and operate as a facilities-based provider, and operate as a reseller for interexchange service. Applicant may purchase network elements and finished services for resale only from other certified carriers. Applicant did not request authority to offer switched service.

Applicant will not directly provide operator services as defined in OAR 860-032-0001 and will not be an 'operator service provider' as defined in ORS 759.690(1)(d).

The Commission served notice of the application on February 23, 2005. No protests or requests to be made parties of the proceeding were filed.

Based on the record in this matter, the Commission makes the following:

## **FINDINGS AND CONCLUSIONS**

### **Applicable Law**

Two statutory provisions apply to this application. First, ORS 759.020 governs Applicant's request to provide telecommunications as a competitive provider. Under ORS 759.020(5), the Commission shall classify Applicant as a competitive provider if Applicant demonstrates that its services are subject to competition, or that its customers or those proposed to become customers have reasonably available alternatives. In making this determination, the Commission must consider the extent to which services are available from alternative providers that are functionally equivalent or substitutable at comparable rates, terms and conditions, existing economic or regulatory barriers to entry, and any other factors deemed relevant.

Second, ORS 759.050 governs Applicant's request to provide local exchange telecommunications service. Under ORS 759.050(2)(a), the Commission may authorize Applicant to provide local exchange service within the local exchange of a telecommunications utility if the Commission determines such authorization would be in the public interest. In making this determination, the Commission must consider the extent to which services are available from alternative providers, the effect on rates for local exchange service customers, the effect on competition and availability of innovative telecommunications service in the requested service area, and any other facts the Commission considers relevant. *See* Order No. 96-021.

### **Designation as a Competitive Provider**

Applicant has met the requirements for classification as a competitive telecommunications service provider. Applicant's customers or those proposed to become customers have reasonably available alternatives. The incumbent telecommunications utilities and cooperative corporations listed in the appendices provide the same or similar local exchange services in the local service area requested by Applicant. AT&T, MCI, Sprint Communications, Qwest Corporation, Verizon Northwest Inc., and others provide interexchange telecommunications service in the service area requested by Applicant. Subscribers to Applicant's services can buy comparable services at comparable rates from other vendors. Economic and regulatory barriers to entry are relatively low.

### **Public Interest**

With regard to the general factual conclusions relevant to this proceeding, the Commission adopts the Commission's findings in Order No. 93-1850 and Order No. 96-021. Based on a review of those findings, as well as information contained in the application, the Commission concludes that it is in the public interest to grant the application of Newpath Networks, LLC, to provide local exchange telecommunications

service as a competitive telecommunications provider in exchanges of the telecommunications utilities and cooperative corporations listed in the appendices, as described in the application. Further, it is in the public interest to grant statewide interexchange authority as described in the application. This finding will have no bearing on any determination the Commission may be called upon to make under sections 251 or 252 of the Telecommunications Act of 1996 (47 USC § 251, 252) with regard to the telecommunications utilities and cooperative corporations in this docket.

### **Conditions of the Certificate**

In Order No. 96-021, the Commission interpreted ORS 759.050 and established conditions applicable to competitive local exchange carriers. Also, other conditions are listed in administrative rules, including among others OAR 860-032-0007. Applicant, as a competitive provider, shall comply with the conditions adopted in Order No. 96-021, as well as all applicable laws, Commission rules, and orders related to provision of telecommunications service in Oregon.

Per ORS 759.050(2)(c) and Order No. 96-021, Applicant shall comply with the following conditions.

1. Applicant shall pay an annual fee to the Commission pursuant to ORS 756.310 and 756.320 and OAR 860-032-0095. The minimum annual fee is \$100. Applicant is required to pay the fee for the preceding calendar year by April 1.
2. Pursuant to Oregon Laws 1987, chapter 290, sections 2-8, and to OAR chapter 860, division 033, Applicant shall ensure that the Residential Service Protection Fund surcharge is remitted to the Commission. This surcharge is assessed against each retail subscriber at a rate that is set annually by the Commission.

### **Competitive Zones**

All exchanges of the telecommunications utilities and cooperative corporations listed in the appendices to this order are designated competitive zones pursuant to ORS 759.050(2)(b).

### **Pricing Flexibility – Dedicated Transmission Service**

The telecommunications utilities listed in Appendix A are granted pricing flexibility for dedicated transmission service in their respective exchanges by this order. *See* Order No. 93-1850, docket UM 381.

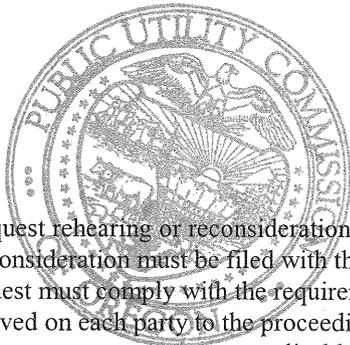
**ORDER**

IT IS ORDERED that:

1. The application of Newpath Networks, LLC, is granted with conditions described in this order.
2. Applicant is designated as a competitive telecommunications provider for intraexchange service in the local exchanges of the telecommunications utilities and cooperative corporations listed in Appendices A and B. In addition, Applicant is designated as a competitive telecommunications provider for interexchange service statewide in Oregon.
3. The local exchanges of the telecommunications utilities and cooperative corporations listed in Appendices A and B are designated as competitive zones.
4. Any obligation regarding interconnection between Applicant and the telecommunications utilities and cooperative corporations listed in Appendices A and B shall be governed by the provisions of the Telecommunications Act of 1996 (the Act).
5. No finding contained in this order shall have any bearing on any determination the Commission may be called upon to make under sections 251 or 252 of the Act with regard to the telecommunications utilities and cooperative corporations listed in the appendices to this order.
6. The telecommunications utilities listed in Appendix A shall receive pricing flexibility on an exchange-by-exchange basis as set forth in this order.

MAR 22 2005

Made, entered, and effective \_\_\_\_\_.



A handwritten signature in black ink, appearing to read "Lee Sparling".

**Lee Sparling**  
Director  
Utility Program

A party may request rehearing or reconsideration of this order pursuant to ORS 756.561. A request for rehearing or reconsideration must be filed with the commission within 60 days of the date of service of this order. The request must comply with the requirements in OAR 860-014-0095. A copy of any such request must also be served on each party to the proceeding as provided by OAR 860-013-0070(2). A party may appeal this order to a court pursuant to applicable law.

APPENDIX A

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EXCHANGES ENCOMPASSED BY THE APPLICATION:

ALL EXCHANGES OF THE TELECOMMUNICATIONS  
UTILITIES LISTED BELOW

**Telecommunications Utilities Not Exempt Pursuant to ORS 759.040**

CenturyTel of Eastern Oregon, Inc.  
CenturyTel of Oregon, Inc.  
Qwest Corporation  
United Telephone Company of the Northwest, dba Sprint  
Verizon Northwest Inc.

**Telecommunications Utilities Exempt Pursuant to ORS 759.040**

Asotin Telephone Company  
Cascade Utilities, Inc.  
Citizens Telecommunications Company of Oregon  
Eagle Telephone System, Inc.  
Helix Telephone Company  
Home Telephone Company  
Malheur Home Telephone Company  
Midvale Telephone Exchange  
Monroe Telephone Company  
Mt. Angel Telephone Company  
Nehalem Telecommunications, Inc.  
North-State Telephone Company  
Oregon Telephone Corporation  
Oregon-Idaho Utilities, Inc.  
People's Telephone Company  
Pine Telephone System, Inc.  
Roome Telecommunications, Inc.  
Trans-Cascades Telephone Company

APPENDIX B

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EXCHANGES ENCOMPASSED BY THE APPLICATION:

ALL EXCHANGES OF THE COOPERATIVE  
CORPORATIONS LISTED BELOW

Beaver Creek Cooperative Telephone Company  
Canby Telephone Association  
Clear Creek Mutual Telephone  
Colton Telephone Company  
Gervais Telephone Company  
Molalla Telephone Company  
Monitor Cooperative Telephone Co.  
Pioneer Telephone Cooperative  
Scio Mutual Telephone Association  
St. Paul Cooperative Telephone Association  
Stayton Cooperative Telephone Co.