

**PUBLIC UTILITIES COMMISSION**505 VAN NESS AVENUE  
SAN FRANCISCO, CA 94102-3298**FILED**06-25-13  
11:53 AM

June 25, 2013

**Agenda ID #12211**  
**Ratesetting**

TO PARTIES OF RECORD IN APPLICATION 12-07-014

This is the proposed decision of Administrative Law Judge (ALJ) Hymes. It will not appear on the Commission's agenda sooner than 30 days from the date it is mailed. The Commission may act then, or it may postpone action until later.

When the Commission acts on the proposed decision, it may adopt all or part of it as written, amend or modify it, or set it aside and prepare its own decision. Only when the Commission acts does the decision become binding on the parties.

Parties to the proceeding may file comments on the proposed decision as provided in Article 14 of the Commission's Rules of Practice and Procedure (Rules), accessible on the Commission's website at [www.cpuc.ca.gov](http://www.cpuc.ca.gov). Pursuant to Rule 14.3, opening comments shall not exceed 15 pages.

Comments must be filed pursuant to Rule 1.13 either electronically or in hard copy. Comments should be served on parties to this proceeding in accordance with Rules 1.9 and 1.10. Electronic and hard copies of comments should be sent to ALJ Hymes at [khy@cpuc.ca.gov](mailto:khy@cpuc.ca.gov) and the assigned Commissioner. The current service list for this proceeding is available on the Commission's website at [www.cpuc.ca.gov](http://www.cpuc.ca.gov).

/s/ MARYAM EBKE for  
Karen V. Clopton, Chief  
Administrative Law Judge

KHY:avs

Decision PROPOSED DECISION OF ALJ HYMES (Mailed 6/25/2013)

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Application of opticAccess, LLC for a Certificate of Public Convenience and Necessity to Provide Full Facilities-Based and Resold Competitive Local Exchange Service, Access and Interexchange Service in the State of California.

Application 12-07-014  
(Filed July 17, 2012)

**DECISION ADDRESSING PETITION FOR MODIFICATION  
OF DECISION 13-01-010**

**Summary**

This decision addresses the petition for modification of Decision 13-01-010 filed by the Small Local Exchange Carriers. The requested relief is granted clarifying that opticAccess, LLC is granted a Certificate of Public Convenience and Necessity to provide resold and full facilities-based local exchange service, including access service, in the territories of the five Uniform Regulatory Framework companies, and interexchange services throughout the State of California, subject to the terms and conditions set forth in the ordering paragraphs.

This proceeding is closed.

**Background**

On January 10, 2013, the Commission approved Decision (D.) 13-01-010 granting opticAccess, LLC (opticAccess) a certificate of public convenience and necessity (CPCN) to provide resold and full facilities-based local exchange telecommunications services in the territories of the five Uniform Regulatory Framework (URF) companies: Pacific Bell Telephone Company d/b/a AT&T

California, Verizon California Inc., Citizens Telecommunications Company of California, Inc. and SureWest Communications, subject to the terms and conditions in the decision.

On April 22, 2013, the Small Local Exchange Carriers (LECs)<sup>1</sup> filed a petition for modification (Petition) of D.13-01-010, requesting that the Commission make minor corrections to the decision to ensure consistency with opticAccess' requested relief and the constraints upon competition in Small LEC territories. The Small LECs note that although they did not previously participate in this proceeding, Application (A.)12-07-014, their rights would be materially harmed if D.13-01-010 is not revised.

No party protested the Petition.

### **Procedural Issues**

In its Petition, the Small LECs claim that the ordering paragraphs and discussion in D.13-01-010 contain material errors that imply that opticAccess has been authorized to provide access service in the Small LEC territories. The Petition concludes that opticAccess did not request access services in the Small LEC territories, but only in the URF providers' territories. The Petition also concludes that the Commission cannot authorize opticAccess to provide access services in the Small LEC territories "absent a Commission determination in a separate rulemaking that Small LEC areas are open to competition."<sup>2</sup>

---

<sup>1</sup> The Small LECs include Calaveras Telephone Company, Cal-Ore Telephone Co. Ducor Telephone Company, Foresthill Telephone Co., Happy Valley Telephone Company, Hornitos Telephone Company, Kerman Telephone Co, Pinnacles Telephone Co. The Ponderosa Telephone Co, Sierra Telephone Company, Inc., The Siskiyou Telephone Company, Volcano Telephone Company, and Winterhaven Telephone Company.

<sup>2</sup> Petition at 1.

Furthermore, the Petition alleges that opticAccess requested authority to provide interexchange services throughout California, but D.13-01-010 is not clear on whether this authority is granted.<sup>3</sup>

The Small LECs request the Commission to revise D.13-01-010 so that it clarifies the limitations on offering local exchange services, including access services, in Small LEC territories and confirms that the decision grants interexchange authority to opticAccess.

There are two issues to address in this proceeding. First, whether the Small LECs are procedurally correct in filing this application. Second, whether the changes requested by the Small LECs are reasonable pursuant to law and the record of this proceeding.

## **Discussion**

### **The Small LECs Filing of the Petition**

We find that, pursuant to Commission Rules of Practice and Procedure 16.4 (e),<sup>4</sup> the Small LECs have met the requirements for filing this petition for modification. The Small LECs state that, without the requested changes, D.13-01-010 creates confusion regarding which service territories in California are open to local competition, potentially causing harm to the rights of the Small LECs. Furthermore, the Small LECs explain that they had not participated in the

---

<sup>3</sup> Petition at 4.

<sup>4</sup> Rule 16.4(e) states that “[i]f the petitioner was not a party to the proceeding in which the decision proposed to be modified was issued, the petition must state specifically how the petitioner is affected by the decision and why the petitioner did not participate in the proceeding earlier.”

initial portion of proceeding A.12-07-014 because opticAccess “did not request authority to operate within Small LEC territories.”<sup>5</sup>

### **Clarity Regarding opticAccess’s Authority**

Claiming that D.13-01-010 implies that opticAccess has been authorized to provide “access services” in Small LEC territories, the Small LECs contend that opticAccess did not request this authorization nor can the Commission grant this determination. While the Small LECs dismiss the error as a mistaken articulation of opticAccess’ authority, they express concern that without changes, D.13-01-010 could create confusion about the areas subject to local competition in California.<sup>6</sup>

The Small LECs reference opticAccess’ Application where it seeks authority to provide services in “exchange areas where the Commission has authorized local competition.”<sup>7</sup> The Petition provides several other examples where opticAccess is requesting to serve customers only where allowed by the Commission.<sup>8</sup>

Upon a second reading of the opticAccess Application, we find that opticAccess was not consistent throughout its application in its explicit request for authority. For example, on page one of its Application, opticAccess requests authority to provide full facilities-based and resold competitive local exchange carrier, access, and nondominant interexchange carrier telecommunications services within the territories of AT&T, Version, SureWest and Citizens but with

---

<sup>5</sup> Petition at 2.

<sup>6</sup> Petition at 1-2 and 4-5.

<sup>7</sup> Petition at 5 referencing the opticAccess Application at 9.

<sup>8</sup> Petition at 5 referencing the opticAccess Application at 3 and Exhibit C.

no discussion of any other services in other territories. However, as the Small LECs point out, the service maps opticAccess included in its application explicitly describes the request to provide “competitive local exchanges services” in those areas serviced by “AT&T, Verizon, Frontier and SureWest” and “inter-Local Access and Transport Area (LATA) and intraLATA authority on a statewide basis.” We, thus, confirm these as the services opticAccess requested Commission authority to provide. Furthermore, we confirm the Small LECs’ contention that D.97-09-015 prohibits local competition in Small LEC territory, as described in the Small LECs petition.<sup>9</sup> The prohibition applies to all local exchange services, including special access and switched access.

The Small LEC’s also allege that while opticAccess requested authority to provide interexchange service throughout California, the ordering paragraphs do not include this authority. In Exhibit A of the Small LEC’s Petition, the declaration states that D.13-01-010 “appeared to omit any reference to the interexchange authority in the Ordering Paragraphs.” As stated above, our reading of the opticAccess application indicates several inconsistencies in the requested authority. However, because both the application maps and the conclusion of the application include the request to provide interexchange services throughout California, we find that Ordering Paragraph 1 of D.13-01-010 contains a clerical omission of the words “and interexchange services throughout California.”

---

<sup>9</sup> Petition at 6.

**Conclusion**

For the reasons discussed above, we find the requested changes in the Small LECs petition for modification of D.13-01-010 to be reasonable. We direct that D.13-01-010 be revised as follows:

Ordering Paragraph 1: Modify language to include access services as one of the services authorized in the URF territories, add the authority to provide interexchange service throughout California and correct the name of one of the telephone carriers.

Conclusion of Law 1: Modify language to include access services as one of the services authorized in the URF territories, delete access service as one of the services provided throughout California, and correctly identify the list of applicable telephone carriers.

Summary Section at page 1: Modify language to include access services as one of the services authorized in the URF providers' territories and add the correctly identified list of URF providers.

Background Section, Paragraph 1: Modify language to include access services as one of the services authorized in the URF territories, delete access service as one of the services provided throughout California, and correctly identify the applicable telephone carriers.

Conclusion Section at page 11: Modify language to include access services as one of the services authorized in the URF territories, to delete access service as one of the services provided throughout California, and correctly identify the applicable telephone carriers.

**Comments on Proposed Decision**

The proposed decision of the Administrative Law Judge (ALJ) in this matter was mailed to the parties in accordance with Pub. Util. Code § 311 and comments were allowed under Rule 14.3. Opening comments were filed on

\_\_\_\_\_ by \_\_\_\_\_. Reply comments were filed on \_\_\_\_\_ by \_\_\_\_\_.

**Assignment of Proceeding**

Catherine J.K. Sandoval is the assigned Commissioner and Kelly A. Hymes is the assigned ALJ in this proceeding.

**Findings of Fact**

1. The Small LECs met the requirements for filing this petition for modification.
2. opticAccess was inconsistent throughout its application in its request for authority to provide telecommunications services.
3. The service maps that opticAccess provided, as Exhibit C, in its application explicitly describe the services and service areas for which opticAccess requests authority.
4. D.97-09-015 prohibits local competition in Small LEC territory.
5. The prohibition in D.97-09-015 applies to all local exchange services, including special access and switched access.
6. Both the application maps and the conclusion of the application filed by opticAccess include the request to provide interexchange services throughout California.
7. Ordering Paragraph 1 of D.13-01-010 contains a clerical omission of the words, "and interexchange services throughout California."

**Conclusions of Law**

1. The modifications in D.13-01-010 requested by the Small LECs are reasonable and should be adopted.
2. Application 12-07-014 should be closed.



**O R D E R**

**IT IS ORDERED** that:

1. Ordering Paragraph 1 of Decision 13-01-010 is modified as follows:

A certificate of public convenience and necessity is granted to opticAccess, LLC to provide resold and full facilities-based local exchange telecommunications services, including access services, in the territories of Pacific Bell Telephone Company d/b/a AT&T California, Verizon California Inc., Citizens Telecommunications Company of California, Inc. d/b/a Frontier Communications of California, Frontier Communications of the Southwest, Inc., and SureWest Telephone (formerly Roseville Telephone Company), and interexchange services throughout California, subject to the terms and conditions set below.

2. Conclusion of Law 1 of Decision 13-01-010 is modified as follows:

opticAccess should be granted a CPCN to provide resold and full facilities-based local exchange telecommunications service, including access service, in the service territories of AT&T, Verizon, Citizens, Frontier Southwest, and SureWest, and interexchange services throughout California, subject to the terms and conditions set forth in the Ordering Paragraphs.

3. The Summary Section on page 1 of Decision 13-01-010 is modified as follows:

Pursuant to Pub. Util. Code § 1001, we grant opticAccess, LLC, a certificate of public convenience and necessity to provide resold and full facilities-based local exchange telecommunications services, including access services, in the territories of Pacific Bell Telephone Company d/b/a AT&T California, Verizon California Inc., Citizens Telecommunications Company of California, Inc. d/b/a Frontier Communications of California, Frontier Communications of the Southwest, Inc., and SureWest Telephone (formerly Roseville Telephone Company), and interexchange services throughout California, subject to the

terms and conditions set forth in the Ordering Paragraphs herein.

4. The Background Section on pages 1 through 2 of Decision 13-01-010 is modified as follows:

On July 17, 2012, opticAccess, LLC (opticAccess or Applicant), a limited liability corporation in California filed an application (Application) for a certificate of public convenience and necessity (CPCN) to provide resold and full facilities-based telecommunications services, including access services, in the service territories of Pacific Bell Telephone Company d/b/a AT&T California (AT&T), Verizon California Inc. (Verizon), Citizens Telecommunications Company of California, Inc. d/b/a Frontier Communications of California (Citizens), Frontier Communications of the Southwest, Inc. (Frontier Southwest), and SureWest Telephone (SureWest) (formerly Roseville Telephone Company), and interexchange services throughout California.

5. The Conclusion Section on page 11 of Decision 13-01-010 is modified as follows:

We conclude that the Application conforms to our rules for certification as a competitive local exchange and interexchange carrier. Accordingly, we grant opticAccess a CPCN to provide full facilities-based and resold local exchange telecommunications service and access service in the service territories of AT&T, Verizon, Citizens, Frontier Southwest, and SureWest, and interexchange services throughout California, subject to compliance with the terms and conditions set forth in the Ordering Paragraphs herein.

6. Application 12-07-014 is closed.

This order is effective today.

Dated \_\_\_\_\_, at San Francisco, California.