

Decision \_\_\_\_\_

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

In the Matter of the Application of LCB Communications LLC for a Certificate of Public Convenience and Necessity to Provide Limited Facilities-Based and Resold Local Exchange, IntraLATA and InterLATA Interexchange Telephone Services in all AT&T California, Verizon California, Citizens Telephone, and SureWest Telephone Local Exchange Areas.

Application 12-04-008  
(Filed April 13, 2012)

**DECISION GRANTING LCB COMMUNICATIONS LLC A  
CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY**

**1. Summary**

LCB Communications LLC is granted a Certificate of Public Convenience and Necessity to provide limited facilities-based and resold local exchange, IntraLATA and InterLATA interexchange telephone services in all AT&T California, Verizon California, Citizens Telephone, and SureWest Telephone Local exchange areas, subject to the terms and conditions set forth below.

This application is unopposed.

This proceeding is closed.

## **2. Background**

In prior decisions, we have authorized the provision of competitive local exchange service,<sup>1</sup> by carriers meeting specified criteria, within the service territories of Pacific Bell Telephone Company dba AT&T California (AT&T), Verizon California Inc. (Verizon), Citizens Telecommunications Company of California, Inc. dba Frontier Communications of California (Frontier), and SureWest Telephone (SureWest). For the reasons that follow, LCB Communications LLC (LCB or Applicant) meets the specified criteria and will be granted a Certificate of Public Convenience and Necessity (CPCN).

LCB, a California limited liability company, filed an application for a CPCN to provide limited facilities-based telecommunications services in the service territories of AT&T, Verizon, SureWest, and Frontier's service territories. Applicant's principal place of business is located at 95 East San Martin Avenue, San Martin, California, 95046. Applicant's telephone number is (800) 899-4125.

There was some confusion regarding the applicant that has since been resolved. When staff called the 800 number, the call was answered by someone working for South Valley Internet (SVI), an Internet Service Provider (ISP). After further investigation regarding the relationship, if any, between LCB and SVI, LCB and SVI's counsel, Kristopher Twomey, represented that LCB will act as the Competitive Local Exchange Carrier (CLEC) arm of SVI. Mr. Twomey explained that AT&T and Verizon are planning to cease providing Digital Subscriber Line (DSL) on a wholesale basis. In order to continue providing DSL to SVI customers, LCB plans to collocate DSL equipment in Incumbent Local Exchange

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<sup>1</sup> CLEC is a common carrier that is issued a CPCN to provide local exchange telecommunications service for a geographic area specified by such carrier.

Carrier (ILEC) Central Offices. SVI will purchase access to those network facilities from LCB pursuant to contract and the companies will maintain separate financial records. SVI and LCB will be run, managed, and owned by the same individuals identified in LCB's Application.

### **3. California Environmental Quality Act (CEQA)**

The CEQA requires the Commission act as the designated lead agency to assess the potential environmental impact of a project in order that adverse effects are avoided, alternatives are investigated, and environmental quality is restored or enhanced to the fullest extent possible. Applicant will not construct its own facilities outside of preexisting structures maintained by ILECs and in carrier hotels and collocation facilities for its initial deployment. In the event subsequent construction is planned, LCB will seek Commission authority pursuant to Rules 2.4 and 3.1 of the Commission's Rules of Practice and Procedure. Therefore, it can be seen with certainty that there is no possibility that granting this application will have an adverse impact upon the environment. Applicant must file for additional authority, and submit to any necessary CEQA review, before it can construct facilities.

### **4. Financial Qualifications**

To be granted a CPCN, an applicant for authority to provide limited facilities-based and resold local exchange and interexchange services must demonstrate that it has a minimum of \$100,000 cash or cash equivalent to meet the firm's start-up expenses.<sup>2</sup> An applicant must also demonstrate that it has

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<sup>2</sup> The financial requirement for CLECs is contained in Decision (D.) 95-12-056, Appendix C.

sufficient additional resources to cover all deposits required by LECs and/or interexchange carriers (IECs) in order to provide the proposed service.<sup>3</sup>

Applicant provided a guarantee letter from SVI for the benefit of LCB, guaranteeing to make available up to \$100,000, which is irrevocable for 12 months from the date the authority is granted. Applicant also provided a copy of the SVI Savings Summary showing a closing balance in excess of \$100,000. Applicant also has the resources to satisfy deposits that may be necessary.

## **5. Technical Qualifications**

To be granted a CPCN for authority to provide local exchange and interexchange service, an applicant must make a reasonable showing of managerial and technical expertise in telecommunications or a related business.<sup>4</sup> Applicant supplied biographical information on its management that demonstrated that it has sufficient expertise and training to operate as a telecommunications provider.

Applicant represents that no one associated with or employed by LCB as an affiliate, officer, director, partner, or owner of more than 10% of LCB was previously associated with a telecommunications carrier that filed for bankruptcy, was sanctioned by the Federal Communications Commission or any state regulatory agency for failure to comply with any regulatory statute, rule, or order, or has been found either civilly or criminally liable by a court of appropriate jurisdiction for a violation of § 17000, et seq. of the California

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<sup>3</sup> The requirement for CLEC applicants to demonstrate that they have additional financial resources to meet any deposits required by underlying LECs and/or IECs is set forth in D.95-12-056, Appendix C.

<sup>4</sup> D.95-12-056 at Appendix C, Rule 4.A.

Business and Professions Code, or for any actions which involved misrepresentations to consumers, nor is currently under investigation for similar violations.

## **6. Tariffs**

Commission staff reviewed Applicant's draft tariffs for compliance with Commission rules and regulations. Deficiencies are noted in Attachment A to this decision. In its compliance tariff filing, Applicant must correct these deficiencies as a condition of our approval of its Application.

## **7. Map of Service Territory**

To be granted a CPCN for authority to provide local exchange service, an applicant must provide a map of the service territories it proposes to serve.<sup>5</sup> Applicant complied with this requirement.

## **8. Expected Customer Base**

Applicant provided its estimated customer base for the first through six years of operation. Therefore, Applicant has complied with this requirement.

## **9. Conclusion**

We conclude that the application conforms to our rules for certification as a CLEC and IEC. Accordingly, we approve the application subject to the terms and conditions set forth herein.

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<sup>5</sup> D.95-12-056 at Appendix C, Rule 4.E.

**10. Waiver of Comment Period**

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Section 311(g)(2) of the Public Utilities Code and Rule 14.6(c)(2) of the Commission's Rules of Practice and Procedure, the otherwise applicable 30-day period for public review and comment is waived.

**11. Categorization and Need for Hearings**

In Resolution ALJ 176-3292, dated April 19, 2012, the Commission preliminarily categorized this application as ratesetting, and preliminarily determined that hearings were not necessary. No protests have been received. There is no apparent reason why the application should not be granted. Given these developments, a public hearing is not necessary, and it is not necessary to disturb the preliminary determinations.

**12. Assignment of Proceeding**

Catherine J.K. Sandoval is the assigned Commissioner and Robert M. Mason III is the assigned Administrative Law Judge in this proceeding.

**Findings of Fact**

1. Notice of the application appeared on the Daily Calendar on April 19, 2012. A hearing is not required.
2. In prior decisions, the Commission authorized competition by carriers meeting specified criteria in providing local exchange telecommunications services within the service territories of AT&T, Verizon, SureWest, and Frontier.
3. Applicant has a minimum \$100,000 of cash or cash equivalent that is reasonably liquid and readily available to meet its start-up expenses.
4. Applicant has sufficient additional cash or cash equivalent to cover deposits that may be required by other telecommunications carriers in order to provide the proposed service.

5. Applicant possesses sufficient experience, knowledge, and technical expertise to provide telecommunications services.

6. The initial tariff filing of Applicant should correct the deficiencies noted in its draft tariffs as indicated in Attachment A to this decision.

7. Applicant will not be constructing any of its own facilities outside of pre-existing structures maintained by incumbent LECs and in carrier hotels and collocation facilities for its initial deployment.

### **Conclusions of Law**

1. Applicant has the financial ability to provide the proposed service.

2. Applicant has sufficient technical expertise to operate as a telecommunications carrier.

3. Public convenience and necessity require that Applicant's limited facilities based and resold local exchange, IntraLATA and InterLATA interexchange telephone service be subject to the terms and conditions set forth herein.

4. Since Applicant will not be constructing any facilities as part of its initial deployment, it can be seen with certainty that there will be no significant effect on the environment.

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

6. Applicant, once granted a CPCN, should be subject to the applicable Commission rules, decisions, General Orders, and statutes that pertain to California's public utilities.

7. Because of the public interest in competitive local exchange services, the following order should be effective immediately.

**O R D E R****IT IS ORDERED** that:

1. A certificate of public convenience and necessity is granted to LCB Communications LLC to provide limited facilities based and resold local exchange, IntraLATA, and InterLATA interexchange telephone service in AT&T California, Verizon California, Citizens Telephone, and SureWest Telephone local exchange areas subject to the terms and conditions set forth below.
2. LCB Communications LLC is authorized to provide local exchange, IntraLATA, and InterLata interexchange telephone services in all AT&T California, Verizon California, Citizens Telephone, and SureWest Telephone local exchange areas.
3. The corporate identification number assigned to LCB Communications LLC, U-7243-C, must be included in the caption of all original filings with this Commission, and in the titles of other pleadings to be filed.
4. 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.
5. LCB Communications LLC is authorized to file tariff schedules for the provision of competitive local exchange services with the deficiencies noted in Attachment A corrected. LCB Communications LLC may not offer services until tariffs are on file. LCB Communications LLC's initial filing must be made in accordance with General Order 96-B, the Telecommunication's Industry Rules. LCB Communications LLC must comply with its tariffs.

6. In addition to all the requirements applicable to competitive local exchange carriers and interexchange carriers included in Attachments B, C, and D to this decision, LCB Communications LLC is subject to the Consumer Protection Rules contained in General Order 168, and all applicable Commission rules, decisions, General Orders, and statutes that pertain to California public utilities.

7. LCB Communications LLC must file, in this docket, a written acceptance of the certificate granted in this proceeding within 30 days of the effective date of this order.

8. LCB Communications LLC must report surcharges and user fees regularly even if the amount due is \$0. Instructions on the remittance and payment of surcharges and user fees are provided in Attachment B. Under Public Utilities Code Section 405, carriers that are in default of reporting and submitting user fees for a period of 30 days or more will be subject to penalties including suspension or revocation of their authority to operate in California. Therefore, carriers should report user fees even if the amount due is \$0.

9. Prior to initiating service, LCB Communications LLC must provide the Commission's Consumer Affairs Branch with the name(s) and address(es) of its designated contact person(s) for purposes of resolving consumer complaints. This information must be updated if the name or telephone number changes, or at least annually.

10. LCB Communications LLC must notify the Director of the Communications Division in writing of the date that local exchange service is first rendered to the public, no later than five days after service first begins.

11. LCB Communications LLC must file an affiliate transaction report with the Director of the Communications Division, in compliance with Decision 93-02-019, on a calendar year basis using the form contained in Attachment D.

12. LCB Communications LLC must file an annual report with the Director of the Communications Division, in compliance with General Order 104-A, on a calendar-year basis with the information contained in Attachment C to this decision.

13. LCB Communications LLC is not authorized to construct facilities other than those to be installed in existing buildings and structures.

14. Application 12-04-008 is closed.

This order is effective today.

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

## **Attachment A**

### **Page 1**

List of deficiencies in tariff filed by LCB Communications LLC (U-7243-C) in Application 12-04-008 to be corrected in its tariff compliance filing.

1. Sheet 79, Rule 26.1, Solicitation of Customer Authorization for Service Termination and Transfer: Add "A penalty or fine of \$500 will apply for each violation of this Rule." See Decision (D.) 95-07-54, Appendix B, Rule 11A.
2. Sheet 79, Rule 26.2, Unauthorized Service Termination and Transfer: Add "As prescribed under PU Code Section 2108, each day of a continuing violation shall constitute a separate and distinct offense." See D.95-07-54, Appendix B, Rule 11B.
3. Sheet 102, Rule 38.1.1.B, Surcharge To Fund CPUC Reimbursement Fee: Current rate is .0018 percent. Check for latest User Fee rate at <http://www.cpuc.ca.gov/PUC/Telco/Information+for+providing+service/userfee.htm>.

**(END OF ATTACHMENT A)**

**ATTACHMENT B****REQUIREMENTS APPLICABLE TO COMPETITIVE LOCAL EXCHANGE CARRIERS AND INTEREXCHANGE CARRIERS**

1. Applicant shall file, in this docket with reference to this decision number,<sup>1</sup> a written acceptance of the certificate granted in this proceeding within 30 days of the effective date of this order.

2. All carriers authorized by this Commission to operate in California are required to assess surcharges and user fees on their end-user intrastate service revenue, and must comply with the reporting and payment filing requirements in accordance with the directions of the Commission.

LCB Communications LLC is subject to the following fees and telephone surcharges that must be filed and remitted on a regular basis, even if the amount due is zero.

- a. The current 1.15% surcharge applicable to all intrastate services except for those excluded by Decision (D.) 94-09-065, as modified by D.95-02-050, to fund the Universal Lifeline Telephone Service (Public Utilities (PU) Code § 879; Resolution T 17071, effective April 1, 2007);
- b. The current 0.20% 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-17127 effective January 1, 2008);
- c. The user fee provided in PU Code §§ 431-435, which is 0.18% of gross intrastate revenue for the 2007-2008 fiscal year (Resolution M 4819); the minimum annual user fee for registration license holders is \$100;

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<sup>1</sup> Written acceptance filed in this docket does not reopen the proceeding.

- d. The current 0.40% 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-A (PU Code § 739.30; D.96-10-066, pp. 3 4, App. B, Rule 1.C; set by Resolution T 17357, effective July 1, 2012);
- e. The current 0.30% 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 B (D.96-10-066, p. 191, App. B, Rule 6.F.; D.07-12-054; Resolution T-17311 effective May 1, 2011);
- f. The current 0.14% 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 Advances Services Fund (D.07-12-054; Resolution T-17343 effective November 1, 2011); and
- g. The current 0.079% 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 Teleconnect Fund (set by Resolution T-17142, effective June 1, 2008)

Note: These fees change periodically. In compliance with Resolution T-16901, December 2, 2004, you should check the joint tariff for surcharges and fees filed by Pacific Bell (dba AT&T California) and apply the current surcharge and fee amounts in that joint tariff on your end user bills until further revised.

You must report and remit CPUC telephone program surcharges online using the CPUC Telecommunications and User Fees Filing System (TUFFS). Information and instructions for online reporting and payment of surcharges are available at:

<http://www.cpuc.ca.gov/PUC/Telco/Information+for+providing+service/Surcharge+Remittance.htm>

To request a user ID and password for TUFFS online filing and for questions, please email [telco\\_surcharge@cpuc.ca.gov](mailto:telco_surcharge@cpuc.ca.gov).

You must file and pay the PUC User Fee (see above item 2c) upon receiving the User Fee statement sent by the Commission. User Fees cannot be reported or paid online. Instructions for reporting and filing are available at:

<http://www.cpuc.ca.gov/PUC/Telco/Information+for+providing+service/userfee.htm>.

You can call (415) 703-2470 for inquiries relative to User Fee reporting and payment.

3. Applicant is a competitive local exchange carrier. The effectiveness of its future tariffs is subject to the requirements of General Order 96-B and the Telecommunications Industry Rules (D.07-09-019).

4. Applicant is a non-dominant interexchange carrier (NDIEC). The effectiveness of its future NDIEC tariffs is subject to the requirement of General Order 96-B and the Telecommunications Industry Rules (D.07-09-019).

5. Tariff filings shall reflect all fees and surcharges to which Applicant is subject, as reflected in #2 above.

6. Applicant shall file a service area map as part of its initial tariff.

7. Prior to initiating service, Applicant shall provide the Commission's Consumer Affairs Branch with the name and address of its designated contact person(s) for purposes of resolving consumer complaints. This information shall be updated if the name or telephone number changes, or at least annually.

8. Applicant shall notify the Director of the Communications Division in writing of the date that local exchange service is first rendered to the public, no later than five days after service first begins.

9. Applicant shall notify the Director of the Communications Division in writing of the date local service is first rendered to the public within five days after service begins.

10. Applicant shall keep its books and records in accordance with the Generally Accepted Accounting Principles.

11. In the event Applicant's books and records are required for inspection by the Commission or its staff, it 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 its office.

12. Applicant shall file an annual report with the Director of the Communications Division, in compliance with GO 104-A, on a calendar-year basis with the information contained in Attachment C to this decision.

13. Applicant shall file an affiliate transaction report with the Director of the Communications Division, in compliance with D.93-02-019, on a calendar-year basis using the form contained in Attachment D.

14. Applicant shall ensure that its employees comply with the provisions of Pub. Util. Code § 2889.5 regarding solicitation of customers.

15. Within 60 days of the effective date of this order, Applicant shall comply with Pub. Util. Code § 708, Employee Identification Cards, and notify the Director of the Communications Division in writing of its compliance.

16. If Applicant is 90 days or more late in filing an annual report, or in remitting the surcharges and fee listed in 2 above, and has not received written permission from the Communications Division to file or remit late, the Communications Division shall prepare for Commission consideration a resolution that revokes Applicant's CPCN.

17. Applicant is exempt from Rule 3.1(b) of the Commission Rules of Practice and Procedure.

18. Applicant is exempt from Pub. Util. Code §§ 816-830.

19. Applicant is exempt from the requirements of Pub. Util. Code § 851 for the transfer or encumbrance of property whenever such transfer or encumbrance serves to secure debt.

20. If Applicant decides to discontinue service or file for bankruptcy, it shall immediately notify the Communications Division's Bankruptcy Coordinator.

21. Applicant shall send a copy of this decision to concerned local permitting agencies no later than 30 days from the date of this order.

**(END OF ATTACHMENT B)**

**ATTACHMENT C****ANNUAL REPORT**

An original and a machine readable, copy using Microsoft Word or compatible format must be filed with the California Public Utilities Commission, State Office Building, 505 Van Ness Avenue, Room 3107, San Francisco, CA 94102-3298, no later than May 1st of the year following the calendar year for which the annual report is submitted.

Failure to file this information on time may result in a penalty as provided for in Pub. Util. Code §§ 2107 and 2108.

**Required information:**

1. Exact legal name and U # of the 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. Number and date of the Commission decision granting the Certificate of Public Convenience and Necessity.
7. Date operations were begun.
8. Description of other business activities in which the utility is engaged.
9. 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.
12. Cash Flow statement as of December 31st of the calendar year for which information is submitted, for California operations only.

For answers to any questions concerning this report, call (415) 703-2883.

**(END OF ATTACHMENT C)**

**ATTACHMENT D****CALENDAR YEAR AFFILIATE TRANSACTION REPORT**

An original and a machine readable, copy using Microsoft Word and Excel, or compatible format must be filed with the California Public Utilities Commission, State Office Building, 505 Van Ness Avenue, Room 3107, San Francisco, CA 94102-3298, no later than May 1st of the year following the calendar year for which the annual report is submitted.

1. Each utility must list and provide the following information for each affiliated entity and regulated subsidiary that the utility had during the period covered by the Annual Affiliate Transaction Report.

- Form of organization (*e.g.*, corporation, partnership, joint venture, strategic alliance, etc.);
- Brief description of business activities engaged in;
- Relationship to the utility (*e.g.*, controlling corporation, subsidiary, regulated subsidiary, affiliate);
- Ownership of the utility (including type and percent ownership);
- Voting rights held by the utility and percent; and
- Corporate officers.

2. The utility must prepare and submit a corporate organization chart showing any and all corporate relationships between the utility and its affiliated entities and regulated subsidiaries in #1 above. The chart must have the controlling corporation (if any) at the top of the chart, the utility and any subsidiaries and/or affiliates of the controlling corporation in the middle levels of the chart, and all secondary subsidiaries and affiliates (*e.g.*, a subsidiary that in turn is owned by another subsidiary and/or affiliate) in the lower levels. Any regulated subsidiary must be clearly noted.

3. For a utility that has individuals who are classified as “controlling corporations” of the competitive utility, the utility must only report under the requirements of #1 and #2 above any affiliated entity that either (a) is a public utility or (b) transacts any business with the utility filing the annual report excluding the provision of tariff services.

4. Each annual report must be signed by a corporate officer of the utility stating under penalty of perjury under the laws of the State of California (CCP 2015.5) that the annual report is complete and accurate with no material omissions.

5. Any required material that a utility is unable to provide must be reasonably described and the reasons the data cannot be obtained, as well as the efforts expended to obtain the information, must be set forth in the utility’s Annual Affiliate Transaction Report and verified in accordance with Section I-F of Decision 93-02-019.

6. Utilities that do not have affiliated entities must file, in lieu of the annual transaction report, an annual statement to the Commission stating that the utility had no affiliated entities during the report period. This statement must be signed by a corporate officer of the utility, stating under penalty of perjury under the laws of the State of California (CCP 2015.5) that the annual report is complete and accurate with no material omissions.

**(END OF ATTACHMENT D)**