

Decision 14-12-050 December 18, 2014

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Ultimate Internet Access, Inc. for a certificate of public convenience and necessity to provide: (i) full facilities-based and resold competitive local exchange service throughout the service territories of Pacific Bell Telephone Company, Verizon California, Inc., SureWest Telephone, and Citizens Telecommunications Company of California, Inc.; and (ii) full facilities-based and resold interexchange service statewide.

Application 14-04-023
(Filed April 14, 2014)

**DECISION GRANTING ULTIMATE INTERNET ACCESS, INC.
A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY IN ORDER
TO PROVIDE FULL FACILITIES-BASED AND RESOLD COMPETITIVE
LOCAL EXCHANGE SERVICE AND FULL FACILITIES-BASED AND
RESOLD INTEREXCHANGE SERVICE**

Summary

Pursuant to Pub. Util. Code § 1001, we grant Ultimate Internet Access, Inc. a certificate of public convenience and necessity to provide full facilities-based and resold competitive local exchange service throughout the service territories of Pacific Bell Telephone Company, Verizon California, Inc., SureWest Telephone, and Citizens Telecommunications Company of California, Inc.; and full facilities-based and resold interexchange service statewide in California subject to the terms and conditions set forth in the Ordering Paragraphs.

1. Background

On April 4, 2014, Ultimate Internet Access, Inc. (Ultimate), a corporation authorized to do business in California, filed an application for a certificate of public convenience and necessity (CPCN) to provide full facilities-based and resold competitive local exchange service throughout the service territories of Pacific Bell Telephone Company (Pacific Bell), Verizon California, Inc. (Verizon), SureWest Telephone (SureWest), and Citizens Telecommunications Company of California, Inc. (Citizens); and full facilities-based and resold interexchange service statewide in California.

Ultimate proposes to provide high speed internet via fiber optic cable and facilities directly to the home and to business. Ultimate currently intends to focus on providing fiber optic infrastructure for use by other telecommunications providers and other large commercial customers. Ultimate asserts that such infrastructure may be used for any number of telecommunications purposes, such as broadband internet service to underserved areas, high capacity data transport between financial institutions, government offices, or other businesses, private voice/data networks for medical institutions, schools, and business, transport of public switched telephone network traffic between wire centers, transport of video transmission for broadcasters and cable TV providers, special access to long haul toll telephone networks, internet access, and other intrastate or interstate purposes.

Ultimate's principal place of business is located at 63633 Inland Empire Blvd., Suite 890, Ontario, California, 91764.

2. Jurisdiction

Pub. Util. Code § 216(a) defines the term "Public utility" to include a "telephone corporation," which in turn is defined in Pub. Util. Code § 234(a) as

“every corporation or person owning, controlling, operating, or managing any telephone line for compensation within this state.”

As summarized above, Ultimate proposes to provide fiber optic infrastructure for use in any number of telecommunications purposes. Thus, Ultimate is a telephone corporation and a public utility subject to our jurisdiction.

3. Limited versus Full-Facilities-Based CPCN

In its application, Ultimate requests authorization for a CPCN to provide full facilities-based and resold competitive local exchange service, and full facilities-based and resold interexchange service. A Proponent’s Environmental Assessment (PEA) is required for full facilities-based CPCN. Ultimate did attach a PEA as Exhibit B to its application, and we review the PEA in connection with the requirements imposed by the California Environmental Quality Act (CEQA).

4. CEQA

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. Ultimate states it may need to undertake outside plant construction activities if there are no existing conduits or there is inadequate space in the existing conduits. These activities may include trenching for the installation of underground conduit and the installation of new utility poles, equipment shelters, or other above-ground support structures.

As a result, Ultimate seeks a determination that its work projects would fall with one or more of CEQA’s categorical exemptions. Ultimate asserts that the construction ordinarily should be small in scale, consisting of the construction of short conduit extensions or stubs and installations of a limited

number of poles or other above-ground facilities. Ultimate believes that such construction generally would occur in existing roadways or other previously-developed and disturbed rights-of-way. Ultimate asserts that in a similar situation, this Commission in Decision (D.) 09-11-021 found that similar projects fell with CEQA's categorical exemptions and that the applicant, Freedom Telecommunications, Inc., was granted full facilities-based authority subject to compliance with an expedited 21-day environmental review process.

In reviewing D.09-11-021, we stated that the Commission has "granted other carriers authority to rely upon the 21-day review process to determine if a proposed project is exempt from CEQA. (*See, e.g., ClearLinx Network Corporation* (D.06-04-063); *New Path Networks, LLC* (D.06-04-030); *CA-CLEC LLC* (D.06-04-067); *Sunesys, Inc.* (D.06-06-047); *NextG Networks of California, Inc.* (D.07-04-045); *Broadband Associates International* (D.07-08-026); and *Trillion Partners, Inc.* (D.07-11-028).)"¹

Pursuant to CEQA and Rule 2.4² of the Commission's Rules of Practice and Procedure, the Commission examines projects to determine any potential environmental impacts in order that adverse effects are avoided and environmental quality is restored or enhanced to the fullest extent possible under CEQA.

In Ultimate's PEA, the proposed construction activities will generally include the installation of fiber optic cable and related equipment, primarily in existing conduits and other existing buildings and infrastructure. We have

¹ D.09-11-021, at 5.

² Unless otherwise noted, items labeled "Rule" are from the Commission's Rules of Practice and Procedure.

reviewed Ultimate's plans and, consistent with our decision in D.99-10-025, that no material adverse environmental impacts will result from such activities because no external construction will be involved.

Our CEQA review is not, however, complete as Ultimate also states that it may need to undertake outside plant construction activities in order to serve some customer locations. Such activities may include trenching for the installation of underground conduit and the installation of new utility poles, equipment shelters, or other above-ground support structures. Ultimate asserts that this construction will be very small in scale and consist of construction of short conduit extensions or stubs and installations of a limited number of poles or other above-ground facilities. In D.09-11-021, the Commission recognized previously that such projects would fall within one or more of the categorical exemptions under CEQA. These activities fall within the following classes of projects that are exempt from CEQA and for which neither an Environmental Impact Report nor a Negative Declaration is required.

- Class 1 Exemption: operation, repair, maintenance, leasing or minor alteration of existing public or private structures and facilities, with negligible or no expansion of an existing use. This includes existing facilities used to provide public utility services. 14 CCR § 15301.
- Class 3 Exemption: construction including water main, sewage, electrical, gas and *other utility extensions of reasonable length* to serve such construction. This includes the construction of limited numbers of new small facilities or utility extensions. 14 CCR § 15303.

Ultimate's proposed activities involve construction of reasonably short utility extensions (Class 3). In order to provide its service, Ultimate plans to construct short conduit extensions or stubs and installations of a limited number of poles or other above-ground facilities. In addition, Ultimate's planned

construction will generally occur in existing roadways or other previously-developed and disturbed right-of-way (Class 1). Exemption of these activities are consistent with Commission precedent. Ultimate's proposed new construction activities are similar to those undertaken by other carriers that we have decided are categorically exempt from CEQA. (See, e.g, D.13-07-032 (*Vodex Communications Corporation*); D.06-04-063 (*ClearLinx Network Corporation*); and D.06-04-067 (*CA-CLEC LLC*)).

Ultimate requests approval to utilize a procedure for expedited review of its projects once it is aware of a specific site(s) in which it plans construction. The proposed procedure tracks the expedited review procedure that we have approved for other carriers. Such a process will expedite CEQA review and is appropriate for the type of construction outlined here, which will be categorically exempt. By establishing this expedited review process, we are able to review the information on a specific project to confirm that it is categorically exempt from CEQA or to explain why further environmental review is required. At the same time, the proposed CEQA review process will enable Ultimate to undertake construction of its projects in an efficient manner without experiencing delays caused by an unnecessarily protracted CEQA review.

Similar to the procedure approved for other carriers, the following procedure will be used to obtain Commission approval of Ultimate's claimed CEQA exemptions for proposed construction projects:

- Ultimate will provide the Commission's Energy Division with:
 - A detailed description of the proposed project, including:
 - Customer(s) to be served;

- The precise location of the proposed construction project; and
- Regional and local site maps.
- A description of the environmental setting, to include at a minimum:
 - Cultural, historical, and paleontological resources;
 - Biological resources; and
 - Current land use and zoning.
- A construction workplan, to include:
 - Commission Preconstruction Survey Checklist – Archaeological Resources;
 - Commission Preconstruction Survey Checklist – Biological Resources;
 - A detailed schedule of construction activities, including site restoration activities;
 - A description of construction/installation techniques;
 - A list of other agencies contacted with respect to siting, land use planning, and environmental resource issues, including contact information; and
 - A list of permits required for the proposed project.
- A statement of the CEQA exemption(s) applicable to the proposed project; and
- Documentation and factual evidence sufficient to support a finding that the claimed exemption(s) is (are) applicable.
- The Energy Division will review Ultimate's submission for the proposed project to confirm that the claimed exemption(s) from CEQA are applicable.
- Within 21 days from the date of Ultimate's submittal, the Energy Division will issue either:

- A Notice to Proceed (NTP) and file a Notice of Exemption with the State Clearinghouse, Office of Planning and Research, or
- A letter of denial stating the specific reasons why the claimed exemption(s) are not applicable to the proposed project.

We have reviewed the application and find that:

- Ultimate's proposed facilities-based project activities are very limited;
- These activities would in almost all circumstances be very likely to qualify for an exemption from CEQA; and
- The proposed process for reviewing the applicability of CEQA exemptions to Ultimate's facilities-based projects is not only adequate for the Commission's purposes as CEQA Lead Agency, but is also in the public interest because it enables Ultimate to respond in a timely manner to requests for service without the delay or burden of a full CEQA review when such review is unnecessary.

We therefore approve Ultimate's proposed process for Commission review of claimed CEQA exemptions for construction projects undertaken pursuant to Ultimate's full facilities-based authority, based on the specific facts of this case with the following modifications related to the Commission's Energy Division review and approval or disapproval of the proposed exemptions.

- If the Energy Division disapproves Ultimate's claimed CEQA exemption(s) and issues a letter of denial to Ultimate, Ultimate must either redesign the specific project and facilities and then reapply for a finding of exemption from CEQA, or file a formal application with the Commission seeking the requisite approval and full CEQA review, before commencing any construction activities.

Ultimate shall not perform any full facilities-based construction activities without first obtaining an NTP from the Energy Division or authorization by the Commission after the requisite environmental review.

We have previously determined that the public convenience and necessity require that competition be allowed in the provision of competitive local exchange service, Rulemaking 95-04-043/Investigation 95-04-044. Granting this application will benefit the public interest by expanding the availability of technologically advanced telecommunications services within the state.

5. 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.³ An applicant must also demonstrate that it has sufficient additional resources to cover all deposits required by local exchange carriers and/or interexchange carriers in order to provide the proposed service.⁴ In Supplemental Exhibit G to the application, Ultimate provided, under seal, a signed statement (along with accompanying records) from Pacific Northwest Bank confirming that as of April 30, 2014 and as of November 17, 2014, Ultimate has access to funds in excess of \$100,000 plus additional amounts to cover any deposits required by underlying carriers. Since Ultimate has provided documentation that it possesses a minimum of \$100,000 that is

³ The financial requirement for Competitive Local Exchange Carriers is contained in D.95-12-056, Appendix C. The financial requirement for Non-Dominant Interexchange Carriers (NDIEC) is contained in D.91-10-041.

⁴ The requirement for Competitive Local Carrier applicants to demonstrate that they have additional financial resources to meet any deposits required by underlying Local Exchange Carriers and/or interexchange carriers is set forth in D.95-12-056, Appendix C. For NDIECs, the requirement is found in D.93-05-010.

reasonably liquid and available, it has demonstrated that it has sufficient funds to meet its start-up expenses and has fulfilled this requirement.

Therefore, no additional resources are required at this time to cover deposits.

6. 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.⁵ Ultimate supplied biographical information on its President and Chief Executive Officer, Wes Zuber, in Exhibit E to its application that demonstrated that it has sufficient expertise and training to operate as a telecommunications provider.

In its application, Ultimate verified that no one associated with or employed by Ultimate as an affiliate, officer, director, partner, or owner of more than 10% of Ultimate 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 Business and Professions Code, or for any actions which involved misrepresentations to consumers, nor is currently under investigation for similar violations.

For the above reasons, we find that Ultimate is in compliance with the requirements of D.95-12-056.

⁵ D.95-12-056 at Appendix C, Rule 4.A.

7. Tariffs

Ultimate states that it does not currently intend to provide any services for which a tariff is required and will, instead, offer all services on a detariffed basis. In accordance with D.07-09-018, Ultimate will make available to the public its rates, terms, and conditions for detariffed services on its website and will provide a toll-free number for consumers to call and obtain a copy of rates, terms, and conditions.

8. 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.⁶ In Exhibit C to its application, Ultimate provided a map of the location of its proposed service territory, in compliance with this requirement.

9. Rule 3.1(i) Statement

Rule 3.1(i) sets forth the requirement that a utility filing an application under Pub. Util. Code § 1001, provide a statement regarding General Order (GO) 104-A, Section 2. Ultimate states that it is not aware of any reportable matters pursuant to GO 104-A, Section 2. Ultimate, therefore, has nothing to report under this rule.

On a going forward basis, though, Ultimate must file all reports required of a public utility under Commission jurisdiction.

⁶ D.95-12-056 at Appendix C, Rule 4.E.

10. Expected Customer Base

Ultimate provided, in its application, its estimated customer base for the first and fifth years of operation. Therefore, Ultimate has complied with this requirement.

11. Conclusion

We conclude that the application conforms to our rules for certification as a competitive local exchange and interexchange carrier. Accordingly, we grant Ultimate a CPCN to provide full facilities-based and resold competitive local exchange service throughout the service territories of Pacific Bell, Verizon, Citizens, and SureWest, as well as full facilities-based and resold interexchange service statewide, subject to compliance with the terms and conditions set forth in the Ordering Paragraphs, herein.

The CPCN granted by this decision provides benefits to Ultimate and corresponding obligations. Ultimate receives authority to operate in the prescribed service territory, it can request interconnection with other telecommunications carriers in accordance with § 251 of the Federal Communications Act (47 U.S.C. 251), and it receives access to public rights of way in California as set forth in D.98-10-058 subject to the CEQA requirements set forth in this decision. In return, Ultimate is obligated to comply with all applicable Public Utilities Codes and Commission Rules, GOs, and decisions applicable to telecommunications carriers providing approved services. The applicable Codes, Rules, etc. include, but are not limited to, consumer protection rules, tariffing, and reporting requirements. Moreover, Ultimate is obligated to pay all Commission prescribed user fees and public purpose program surcharges as set forth in Appendix B of this decision, to comply with CEQA, and to adhere to Pub. Util. Code § 451, which states that every public utility “...shall furnish

and maintain such adequate, efficient, just, and reasonable service, instrumentalities, equipment, and facilities, including telephone facilities, as defined in § 54.1 of the Civil Code, as are necessary to promote the safety, health, comfort, and convenience of its patrons, employees, and the public.”

12. Request to File Under Seal

Pursuant to Rule 11.4, Ultimate has filed a motion for leave to file Supplemental Exhibit G to the application as confidential materials under seal. Ultimate represents that the information is sensitive, and disclosure could place Ultimate at an unfair business disadvantage. We have granted similar requests in the past and do so here.

13. Categorization and Need for Hearings

In Resolution ALJ 176-3335, dated May 1, 2014, 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.

14. Comments on Draft Decision

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Pub. Util. Code § 311(g)(2) of the and Rule 14.6(c)(2), the otherwise applicable 30-day period for public review and comment is waived.

15. Assignment of Proceeding

Carla Peterman is the assigned Commissioner and Robert M. Mason III is the assigned Administrative Law Judge in this proceeding.

16. Findings of Fact

1. Notice of the application appeared on the Daily Calendar on April 23, 2014. No protests have been filed. A hearing is not required.
2. Ultimate is a telephone corporation and a public utility as defined in Pub. Util. Code §§ 234(a) and 216(a).
3. The Commission is the Lead Agency for this project under CEQA.
4. Ultimate's proposed construction activity falls within one or more CEQA categorical exemptions.
5. Ultimate's authority to provide local exchange services will not have a significant adverse effect upon the environment.
6. Ultimate has a minimum of \$100,000 of cash or cash equivalent that is reasonably liquid and readily available to meet its start-up expenses.
7. Ultimate 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.
8. Ultimate's management possesses sufficient experience, knowledge, and technical expertise to provide local exchange services to the public.
9. No one associated with or employed by Ultimate as an affiliate, officer, director, partner, or owner of more than 10% of Ultimate 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 was previously associated with any telecommunication carrier that has been found either civilly or criminally liable by a court of appropriate jurisdiction for a violation of § 17000, et seq. of the California Business and Professions Code, or

for any actions which involved misrepresentations to consumers, nor is currently under investigation for similar violations.

10. Ultimate provided a map of the location of its proposed service territory.

11. Ultimate has no information to report under Rule 3.1(i), which requires that a utility filing an application under Pub. Util. Code §1001, provide a statement regarding compliance with GO 104-A, Section 2.

12. Ultimate provided an estimate of its customer base for the first and fifth year of operation.

13. Pursuant to Rule 11.4, Ultimate filed a motion for leave to file confidential materials under seal, attached as Exhibit F.

Conclusions of Law

1. Ultimate should be granted a CPCN to provide full facilities-based and resold competitive local exchange telecommunications service in the service territories of Pacific Bell, Verizon, Citizens, and SureWest, and full facilities-based and resold interexchange service statewide, subject to the terms and conditions set forth in the Ordering Paragraphs, herein.

2. Ultimate should be allowed to use the Energy Division 21-day CEQA exemption process.

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

4. Ultimate's motion to file under seal its Exhibit F to the application should be granted for two years.

O R D E R

IT IS ORDERED that:

1. A certificate of public convenience and necessity is granted to Ultimate Internet Access, Inc. to provide full facilities-based and resold competitive local exchange service throughout the service 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, and SureWest Telephone, and full facilities-based and resold interexchange service statewide, subject to the terms and conditions set forth below.

2. The corporate identification number assigned to Ultimate Internet Access, Inc., (U 7269 C), must be included in the caption of all original filings with this Commission, and in the titles of other pleadings filed in existing cases.

3. Ultimate Internet Access, Inc. (Ultimate) must obtain a performance bond of at least \$25,000 in accordance with Decision 13-05-035. The performance bond must be a continuous bond (i.e., there is no termination date on the bond) issued by a corporate surety company authorized to transact surety business in California, and the Commission must be listed as the obligee on the bond. Within five days of acceptance of its certificate of public convenience and necessity authority, Ultimate must submit a Tier-1 advice letter to the Director of Communications, containing a copy of the license holder's executed bond, and submit a Tier-1 advice letter annually, but not later than March 31, with a copy of the executed bond.

4. Ultimate Internet Access, Inc. must not allow its performance bond to lapse during any period of its operation. Pursuant to Decision 13-05-035, the Commission may revoke a certificate of public convenience and necessity if a

carrier is more than 120 days late in providing the Director of the Communications Division a copy of its executed performance bond and the carrier has not been granted an extension of time by the Communications Division.

5. 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, Ultimate Internet Access, Inc. 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.

6. Ultimate Internet Access, Inc. 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.

7. Ultimate Internet Access, Inc. must annually pay the user fee and public purpose surcharges specified in Attachment B. Per the instructions in Exhibit E to Decision 00-10-028, the Combined California Public Utilities Commission Telephone Surcharge Transmittal Form must be submitted even if the amount due is \$0. Applicant must pay a minimum user fee of \$100 or 0.18% of gross intrastate revenue, whichever is greater. Under Pub. Util. Code § 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.

8. Prior to initiating service, Ultimate Internet Access, Inc. must 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 must be updated if the name or telephone number changes, or at least annually.

9. Prior to initiating service, Ultimate Internet Access, Inc. must provide the Commission's Communications Division with the name and address of its designated regulatory/official contact person(s). This information must be provided electronically, using the "Regulatory/Official Contact Information Update Request" found at

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

This information must be updated if the name or telephone number changes, or at least annually.

10. Ultimate Internet Access, Inc. 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. Ultimate Internet Access, Inc. 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. Ultimate Internet Access, Inc. 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. The staff of the Commission's Energy Division is authorized to review, process, and act upon Ultimate Internet Access, Inc.'s requests for a determination that its full facilities-based construction activities are exempt from the requirements of the California Environmental Quality Act.

14. If Ultimate Internet Access, Inc. (Ultimate) wishes to engage in full facilities-based construction activities and believes that these activities are exempt from California Environmental Quality Act (CEQA), Ultimate shall first

apply to the Commission's Energy Division staff for a determination of exemption from CEQA using the following procedure set forth in Ordering Paragraph 14.

15. Ultimate Internet Access, Inc. (Ultimate) will provide the Commission's Energy Division with:

- a. A detailed description of the proposed project, including:
 - i. Customer(s) to be served;
 - ii. The precise location of the proposed construction project; and
 - iii. Regional and local site maps.
- b. A description of the environmental setting, including at a minimum:
 - i. Cultural, historical, and paleontological resources;
 - ii. Biological resources; and
 - iii. Current land use and zoning.
- c. A construction workplan, including:
 - i. Commission Preconstruction Survey Checklist – Archaeological Resources;
 - ii. Commission Preconstruction Survey Checklist – Biological Resources;
 - iii. A detailed schedule of construction activities, including site restoration activities;
 - iv. A description of construction/installation techniques;
 - v. A list of other agencies contacted with respect to siting, land use planning, and environmental resource issues, including contact information; and
 - vi. A list of permits required for the proposed project.
- d. A statement of the California Environmental Quality Act (CEQA) exemption(s) claimed to apply to the proposed project; and

- e. Documentation supporting the finding of exemption from CEQA.
- f. The Energy Division will then review the submittal and notify Ultimate of either its approval or its denial of Ultimate's claim for exemption from CEQA review within 21 days from the time that Ultimate's submittal is complete.
- g. If the Energy Division approves Ultimate's claimed CEQA exemption(s), the staff will prepare a Notice to Proceed and file a Notice of Exemption with the State Clearinghouse, Office of Planning and Research.
- h. If the Energy Division disapproves Ultimate's claimed CEQA exemptions, the staff will issue to Ultimate a letter which states the specific reasons that the claimed CEQA exemptions do not apply to the proposed project.
- i. If the Energy Division disapproves Ultimate's claimed CEQA exemption(s), Ultimate shall either redesign the specific project and facilities and then reapply for a finding of exemption from CEQA, or file a formal application with the Commission seeking the requisite approval and full CEQA review, before commencing any full facilities-based construction activities.

16. Ultimate Internet Access's (Ultimate) motion to file under seal its Supplemental Exhibit G is granted for a period of three years after the date of this order is granted. During this three year period, this information shall not be publicly disclosed except on further Commission order or Administrative Law Judge ruling. If Ultimate believes that it is necessary for this information to remain under seal for longer than three years, Ultimate may file a new motion showing good cause for extending this order by no later than 30 days before the expiration of this order.

17. Application 14-04-023 is closed.

This order is effective today.

Dated December 18, 2014, at San Francisco, California.

MICHAEL R. PEEVEY

President

MICHEL PETER FLORIO

CATHERINE J.K. SANDOVAL

CARLA J. PETERMAN

MICHAEL PICKER

Commissioners

ATTACHMENT A

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(END OF ATTACHMENT A)

ATTACHMENT B

REQUIREMENTS APPLICABLE TO COMPETITIVE LOCAL EXCHANGE CARRIERS AND INTEREXCHANGE CARRIERS

1. Applicant must file, **in this docket with reference to this decision number,**⁷ a written acceptance of the certificate granted in this proceeding within 30 days of the effective date of this order.

2. Applicant is subject to the following fees and surcharges that must be regularly remitted. Per the instructions in Exhibit E to Decision (D.) 00-10-028, the Combined California PUC Telephone Surcharge Transmittal Form must be submitted even if the amount due is \$0.

- a. The Universal Lifeline Telephone Service Trust Administrative Committee Fund (Pub. Util. Code § 879);
- b. The California Relay Service and Communications Devices Fund (Pub. Util. Code § 2881; D.98-12-073);
- c. The California High Cost Fund-A (Pub. Util. Code § 739.3; D.96-10-066, at 3-4, App. B, Rule 1.C);
- d. The California High Cost Fund-B (D.96-10-066, at 191, App. B, Rule 6.F.; D.07-12-054);
- e. The California Advanced Services Fund (D.07-12-054);
- f. The California Teleconnect Fund (D.96-10-066, at 88, App. B, Rule 8.G).
- g. The User Fee provided in Pub. Util. Code §§ 431-435. The minimum annual User Fee is \$100, as set forth in D.13-05-035.

Note: These fees change periodically. In compliance with Resolution T-16901, December 2, 2004, Applicant must check the joint tariff for surcharges and fees filed by Pacific Bell

⁷ **Written acceptance filed in this docket does not reopen the proceeding.**

Telephone Company (dba AT&T California) and apply the current surcharge and fee amounts in that joint tariff on end-user bills until further revised. Current and historical surcharge rates can be found at <http://www.cpuc.ca.gov/PUC/Telco/Consumer+Information/surcharges.htm>.

- Carriers 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 e-mail Telco_surcharges@cpuc.ca.gov.
- Carriers must file and pay the PUC User Fee (see above item 2g) upon receiving the User Fee statement sent by the Commission. User Fees cannot be reported or paid online. Instructions for reporting filing are available at <http://www.cpuc.ca.gov/PUC/Telco/Information+for+providing+service/userfee.htm>. Please call (415) 703-2470 for questions regarding User Fee reporting and payment.

3. Applicant must obtain a performance bond of at least \$25,000 in accordance with Decision 13-05-035. The performance bond must be a continuous bond (i.e., there is no termination date on the bond) issued by a corporate surety company authorized to transact surety business California, and the Commission must be listed as the obligee on the bond. Within five days of acceptance of Certificate of Public Convenience and Necessity authority, Applicant must submit a Tier-1 advice letter to the Director of Communications, containing a copy of the license holder's executed bond, and submit a Tier-1

advice letter annually, but not later than March 31, with a copy of the executed bond.

4. Applicant must not allow its performance bond to lapse during any period of its operation. Pursuant to Decision 13-05-035, the Commission may revoke a Certificate of Public Convenience and Necessity if a carrier is more than 120 days late in providing the Director of Communications Division a copy of its executed performance bond and the carrier has not been granted an extension of time by the Communications Division.

5. Applicant is a competitive local exchange carrier (CLC). 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).

6. 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).

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

8. Applicant must file a service area map as part of its initial tariff.

9. Prior to initiating service, Applicant must provide the Commission's Consumer Affairs Branch with the name and address of its designated contact person(s) for purposes of resolving consumer complaints. In addition, Applicant must provide the Commission's Communications Division with the name and address of its designated regulatory/official contact persons(s). This information must be provided electronically, using the "Regulatory/Official Contact Information Update Request" found at <http://www.cpuc.ca.gov/PUC/telco/Information+for+providing+service/>.

This information must be updated if the name or telephone number changes, or at least annually.

10. Applicant 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. Applicant must 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.

12. Applicant must keep its books and records in accordance with the Generally Accepted Accounting Principles.

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

14. Applicant must 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.

15. Applicant must 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.

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

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

18. 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 must prepare for Commission consideration a resolution that revokes Applicant's CPCN.

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

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

21. Applicant must 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 March 31st 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)