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PROPOSED DECISION

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Decision **PROPOSED DECISION OF ALJ MACDONALD** (Mailed 5/4/2016)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of Vertex Telecom, Inc. (U6786C) to Expand the Scope of its Certificate of Public Convenience and Necessity to Include Authority to Provide Full Facilities-based 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 Facilities-based Interexchange Services on a Statewide Basis.	Application 15-06-016 (Filed June 17, 2015)

DECISION GRANTING VERTEX TELECOM, INC. (U6786C) AUTHORITY TO EXPAND THE SCOPE OF ITS CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY IN ORDER TO PROVIDE FULL FACILITIES-BASED LOCAL EXCHANGE SERVICE

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DECISION GRANTING VERTEX TELECOM, INC. (U6786C) AUTHORITY TO EXPAND THE SCOPE OF ITS CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY IN ORDER TO PROVIDE FULL FACILITIES-BASED LOCAL EXCHANGE SERVICE

Summary

This decision grants the request of Vertex Telecommunications, Inc. (Vertex) to expand its existing Certificate of Public Convenience and Necessity to allow Vertex to provide full facilities-based local exchange and interexchange service. We grant the joint motion of Vertex Telecom, Inc. (Vertex) and the Safety and Enforcement Division (SED) for adoption of a settlement agreement in this proceeding (Settlement Agreement) and approve the Settlement Agreement without modification.

Under the terms of the Settlement Agreement, the parties have fully resolved all issues raised by SED's protest of this application, which alleges that Vertex violated Rule 1.1 of the Commission's Rules of Practice and Procedure (Rule) for failure to disclose revocations of its operating authority in other states, and failure to provide sufficient proof of financial responsibility. Under the terms of the Settlement Agreement, Vertex acknowledged that it failed to disclose the existence of all revocations and other actions involving its authority to operate or conduct business in other states; Vertex agrees to fully meet its regulatory and legal obligations in California in the future; and will pay a penalty of $17,500 to the State of California General Fund.

Based on the above, we find that this Settlement Agreement meets the criteria set forth in Rule 12.1(d) and that approval of the Settlement Agreement is reasonable in light of the record, consistent with the law and in the public interest. A copy of the Settlement Agreement is attached as Attachment E.

1. Background and Procedural History

Vertex Telecom, Inc. (Vertex), a California corporation authorized to do business in California applied for and was granted non-dominant interexchange authority by Decision (D.) 03-07-052. Vertex received authority to provide local exchange service by D.05-10-006. On June 17, 2015, Vertex applied for authority to expand its ~~exiting~~existing authority to provide full facilities-based local exchange telecommunications services in the service territories of Pacific Bell Telephone Company d/b/a AT&T California (AT&T), Verizon California Inc. (Verizon),[1] Citizens Telecommunications Company of California, Inc. d/b/a Frontier Communications of California (Citizens), and SureWest Telephone[2] (SureWest) and interexchange service in California.

Vertex's principal place of business is located at 980 Corporate Center Drive, Pomona, California 91768. Vertex proposes to provide facilities-based local exchange and interexchange voice and data services under the requested authority to complement its provision of resold local exchange services and IP-enabled voice and data services.

On July 21, 2015, Safety and Enforcement Division (SED) timely protested the instant application. SED's protest alleges that Vertex violated Rule 1.1 of the Commission's Rules of Practice and Procedure (Rule) in its application. Under Rule 1.1, any person who transacts business with the California Public Utilities Commission (Commission) agrees not to "…mislead the Commission or its staff

[1] Decision No. 15-12-005 approved Application 15-03-005, the Joint Application of Frontier Communications Corporation, Frontier Communications of America, Inc. (U-5429-C), Verizon California, Inc. (U-1002-C), Verizon Long Distance LLC (U-5732-C), and Newco West Holdings LLC for Approval of Transfer of Control Over Verizon California, Inc. and Related Approval of Transfer of Assets and Certifications. Effective April 1, 2016, Verizon California Inc., became Frontier California Inc. (U-1002-C).

[2] SureWest Telephone is now Consolidated Communications of California Company. Name change from Surewest to Consolidated Communications of California Company was filed via Advice Letter and effective 1/1/~~2016.~~2016.

by an artifice or false statement of fact or law." Vertex failed to disclose in its application that it had committed violations in other states and had actions taken against it by government agencies in other states. In its original application, Vertex states that it has not "had a telecommunications license or operating authority denied, suspended, revoked or limited in any jurisdiction" or "been found to have violated any statute, law, or rule pertaining to public utilities or other regulated industries," except in the state of Washington. In the first amendment to its application, Vertex stated that its Oregon operating authority had also been revoked, and in its second amendment to its application, Vertex identified additional revocations of operating authority in the states of Iowa, Michigan, and Montana. However, SED found revocations, suspensions or other actions taken against Vertex's operating authority by 35 agencies across 29 states.

Vertex contends that it never engaged in any operations in any state where its telecommunications operating authority was revoked or where its registration to conduct intrastate business was not in good standing. Vertex does admit, however, that its foreign corporate registration (authority to conduct intrastate business) was revoked or canceled in a number of states due to failures to file annual reports or remit fees as found by SED.

SED's protest further alleges that Vertex failed to provide sufficient proof of financial responsibility.[3] Subsequent to the filing of the protest, Vertex met and conferred with SED and provided additional documentation of financial responsibility.

2. The Settlement Agreement

The principal terms of the Settlement Agreement between SED and Vertex are as follows:

[3] *See* Decisions (D.) 95-12-056 and D.91-10-041.

2.1. Joint Statement of the Case

After settlement discussions, the parties agreed to a joint factual statement of the case as the factual basis on which to base a resolution of this case. Notably, Vertex acknowledges the seriousness of the concerns raised by SED. In addition to a statement regarding the authority sought, the joint statement specifies the following:

1. SED found revocations, suspensions or other actions taken against Vertex's operating authority by 35 agencies across 29 states. Vertex contends it never operated in states where its telecommunications operating authority was revoked or its registration to conduct business was not in good standing.
2. Vertex admits its foreign corporate registration was revoked or canceled in a number of states due to failures to file annual reports or remit fees.

2.2. Acknowledgement

Vertex acknowledges, in the Settlement Agreement, that Rule 1.1 requires applicants to provide true and accurate information in documents filed at the Commission, and the application requires Vertex to disclose whether the applicant "had a telecommunications license or operating authority denied, suspended, revoked or limited in any jurisdiction" and that Vertex did not disclose all such instances. Vertex states that it will fully meet its regulatory and legal obligations in California in the future. Subject to Vertex's ongoing compliance with the Settlement Agreement and all applicable laws, and Commission rules, regulations, decisions, and orders, Vertex and SED acknowledge that all issues raised in SED's protest will have been fully resolved.

Vertex further acknowledges that Commission decisions require telecommunication companies in California to provide sufficient proof of financial responsibility in order to obtain operating authority. Vertex

acknowledges that its provision of a one-month bank statement in its application did not satisfy this requirement. Vertex provided sufficient documentation of financial responsibility as part of the Settlement Agreement.

2.3. Payment

In order to resolve the legal issues raised by SED in its protest, Vertex will pay a $17,500 penalty to the State of California General Fund. Vertex will pay $5,500 within 30 days after the calendar date of the Commission's approval of the Settlement Agreement. Vertex will pay the remaining $12,000 penalty in 12 equal monthly installments beginning 30 days after the first payment of $5,500 is made.

2.4. General Provisions

The Settlement Agreement represents a full and final resolution of SED's Protest and matters giving rise to such protest. The parties agree to support the Settlement Agreement. If the Commission fails to adopt the Settlement Agreement in its entirety without modification, the Parties agree to convene a settlement conference within 15 days thereof to discuss whether they can resolve any issues raised by the Commission's actions.

3. Application of the Legal Standards to the Facts

In this case, we must evaluate whether the Settlement Agreement between Vertex and SED meets Commission requirements for approval. Under Rule 12.1(d), settlements must be reasonable in light of the record, consistent with the law and in the public interest.

3.1. The Proposed Settlement is Reasonable in Light of the Record

A proposed settlement is reasonable, inter alia, if it saves the Commission significant expenses and use of its resources, when compared to the risk,

expense, complexity, and likely duration of further proceedings, while still protecting the public interest.[4] The parties' evaluation of the issues leading to settlement is based in large part on facts that were addressed in the Application, Protest, Joint Statement, and through discussions between the parties and their counsel. These sources and the Settlement Agreement itself provide sufficient information to enable the Commission to approve the Settlement Agreement as reasonable and implement its provisions, terms and conditions. The fine in the settlement is in the range for fines typically imposed in cases of claimed Rule 1 violations, even those claimed to be inadvertent.[5]

The Settlement Agreement also avoids the expenditure of Commission resources that would otherwise have been necessary if the parties had chosen to litigate this matter. Thus, there is a net public benefit to adopting the Settlement Agreement that makes it reasonable in light of the whole record.

3.2. The Proposed Settlement is Consistent with Commission Precedent

Pursuant to D.98-12-075, the Commission is expected to refer to previous Commission decisions which have comparable factual circumstances in determining a penalty. Therefore, to accept a recommended settlement amount, we have looked to the following decisions and settlements as applicable precedent:

- In D.03-01-079, the Commission fined Titan Telecommunications $35,000.00 for a Rule 1.1 violation.
- In D.11-04-009, the Commission fined NobelBiz VoIP Services, Inc. $12,000.00 for failing to disclose multiple regulatory sanctions that the FCC issued.
- In D.11-07-021, the Commission fined Metropolitan Telecommunications of California, Inc. $8,000.00 for failing to

[4] In re Southern California Gas Co. (199) D.00-09-034, 2000 Cal.PUC LEXIS 694, at p.29.
[5] *See* cases cited, *infra*, at Section 3.2 of this Decision.

disclose that the FCC had fined the applicant eight times between 2002 and 2008.

- In D.15-04-010, the Commission fined Five9, Inc. $10,000.00 for providing resold interexchange services without authority between 2003 and 2014.

Given these penalty ranges, the Commission finds that the penalty in the amount of $17,500.00 is within the acceptable range of prior precedent.

3.3. Consistent with the Law

In deciding whether the Settlement Agreement is consistent with the law, the Commission must assess whether the Settlement Agreement complies with all applicable ~~statues~~statutes and Commission decisions. We find that nothing in the Settlement Agreement contravenes any statutory provisions or prior Commission decisions, and it provides sufficient information for the Commission to discharge its future regulatory obligations with respect to the parties. The Settlement Agreement does not contradict current Commission rules and it does not constitute a precedent regarding any principle or issue in this proceeding.

Vertex acknowledged the requirements of Rule 1.1. and that the Certificate of Public Convenience and Necessity (CPCN) application required Vertex to disclose whether the applicant had a "telecommunications license or operating authority denied, suspended, revoked or limited in any jurisdiction," and that Vertex did not disclose the existence of all revocations or other actions involving its authority to operate or conduct business in other states. Vertex further acknowledges that its financial showing was insufficient. Vertex agreed to full compliance with those provisions and with the Commission's rules, orders and applicable statutes.

The parties have agreed to a penalty amount that sends a strong message to Vertex while at the same time does not cripple the company's ability to

conduct business in California.

3.4. The Proposed Settlement is in the Public Interest

The public interest demands that the Commission protect and defend consumers who utilize telecommunications to ensure that users are paying for the services that they've authorized and are charged at a fair rate. Thus, a settlement that ensures ~~on-going~~ongoing compliance with Commission rules, ~~statues~~statutes, and other applicable laws should be encouraged.

The Commission finds that the Settlement Agreement satisfies the criteria of Rule 12.1 (d) and D.98-12-075 and should be adopted as it is reasonable and in the public interest. The Settlement Agreement is an all-party settlement as SED and Vertex are the only active parties in this proceeding. The settling parties have had sufficient opportunity to review and discuss the terms of the Settlement Agreement. Accordingly, we adopt the Settlement Agreement

4. Jurisdiction

Public Utilities Code Section 216(a) defines the term "Public utility" to include a "telephone corporation," which in turn is defined in Public Utilities Code Section 234(a) as "every corporation or person owning, controlling, operating, or managing any telephone line for compensation within this state."

Vertex proposes to provide facilities-based local exchange and interexchange voice and data services under the requested authority to complement its provision of resold local exchange services and IP-enabled voice and data services. Vertex is a telephone corporation and a public utility subject to our jurisdiction.

5. California Environmental Quality Act (CEQA)

Pursuant to CEQA and Rule 2.4[6] 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.

Vertex seeks authority to provide full- facilities -based local exchange service but intends to install its facilities primarily in existing buildings and infrastructure. However, Vertex anticipates that it may need to undertake outside plant construction in some locations that may include trenching for installation of underground conduit and the installation of new utility poles, equipment shelters, or other ~~above-~~above ground facilities. Vertex clarifies that such construction would generally occur in existing roadways or other previously- developed and disturbed rights-of-way. Vertex asserts that the proposed activities generally fall within the classes of projects that are exempt from CEQA. Vertex did not identify any specific locations or projects in its application. Accordingly, Vertex proposes that it be granted full facilities-based authority subject to compliance with the same expedited 21-day environmental review process that has been adopted for similarly- situated carriers.

Vertex 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 appears to be categorically exempt. By establishing this expedited review process, we are able

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

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 Vertex 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 Vertex claimed CEQA exemptions for proposed construction projects:

- Vertex 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 Vertex's submission for the proposed project to confirm that the claimed exemption(s) from CEQA are applicable.
- Within 21 days from the date of Vertex'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 Supplement and find that:

- Vertex 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 Vertex 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 Vertex 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 Vertex's proposed process for Commission review of claimed CEQA exemptions for construction projects undertaken pursuant to Vertex'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 Vertex's claimed CEQA exemption(s) and issues a letter of denial to Vertex, Vertex must either re-design 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.

Vertex 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 (R.) 95-04-043/Investigation (I.) 95-04-044. Granting this application will benefit the public interest by expanding the availability of technologically advanced telecommunications services within the state.

6. 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.[7] An applicant must also demonstrate that it has sufficient additional resources to cover all deposits required by local

[7] The financial requirement for Competitive Local Exchange Carriers (CLEC) 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.

exchange carriers and/or interexchange carriers in order to provide the proposed service.[8] Vertex provided the requisite documentation with the Settlement Agreement that $100,000 plus an amount equal to the deposit required by AT&T, Frontier, Citizens, and SureWest would be available to Vertex for one year following certification. Since Vertex has provided documentation that it possesses a minimum of $100,000 that is reasonably liquid and available, it has demonstrated that it has sufficient funds to meet its start-up expenses and has fulfilled this requirement.

Vertex proposed to initially interconnect with AT&T, Frontier, Citizens, and SureWest. As stated above, Vertex has provided documentation that it has the funds available for the deposit required by AT&T, Frontier, Citizens, and SureWest.

7. 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.[9] Vertex supplied biographical information on its management in Exhibit A to its application that demonstrated that it has sufficient expertise and training to operate as a telecommunications provider.

As discussed in detail above. Vertex submitted verifications that failed to disclose all revocations and other regulatory actions taken in other states for its failure to meet regulatory obligations. Vertex and SED resolved this issue in the Settlement Agreement which this decision adopts. As a result, Vertex has made a

[8] 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 IECs is set forth in D.95-12-056, Appendix C. For NDIECs, the requirement is found in D.93-05-010.

[9] D.95-12-056 at Appendix C, Rule 4.A.

reasonable showing that it possesses the managerial and technical expertise in telecommunications or a related business.

8. Tariffs

Commission's staff reviewed Vertex's draft tariffs for compliance with Commission rules and regulations. Vertex has no deficiencies in its draft tariffs.

9. 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.[10] In its Response, Vertex complied with this requirement as Exhibit E to its application.

10. Rule 3.1(i) Statement (Include for Full Facilities Only)

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. Vertex states that it is not aware of any reportable matters pursuant to GO 104-A, Section 2. Vertex, therefore, has nothing to report under this rule.

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

11. Expected Customer Base

Vertex estimates that it will serve 3,000 customers during the first year of operation and 20,000 customers during the fifth year of operations under its requested authority. Therefore, Vertex has complied with this requirement.

12. Request for Treatment as a Non-dominant Carrier

Vertex requests treatment as a non-dominant interexchange carrier, which would include exemption from the requirements of Pub. Util. Code §§ 816-830 concerning stocks and security and § 851 concerning the encumbrance and

[10] D.95-12-056 at Appendix C, Rule 4.E.

transfer of utility property. The Commission detailed its rules regarding exemption of non-dominant carriers in D.85-01-008, and subsequently modified in D.85-07-081 and D.85-11-044. We grant Applicant's request for non-dominant interexchange carrier status, provided that they follow all rules detailed in the above referenced decisions.[11]

13. Safety Considerations

With the adoption of the *Safety Policy Statement of the California Public Utilities Commission* on July 10, 2014, the Commission has, among other things, heightened its focus on the potential safety implications of every proceeding. We have considered the potential safety implications here. We feel satisfied that Vertex will meet the Commission's minimum safety goals and expectations of CLEC's because: (1) Vertex has taken steps to meet the financial requirements as set forth in this decision for a facilities-based CLEC, and (2) Vertex is a public utility that is required pursuant to Pub. Util. Code § 451 to "… furnish and maintain such adequate, efficient, just and reasonable service, instrumentalities, equipment, and facilities, including telephone facilities … as are necessary to promote the safety, health, comfort, and convenience of its patrons, employees, and the public."

14. Conclusion

We conclude that the application and the Settlement Agreement together conform to our rules for certification as a competitive local exchange and interexchange carrier. Accordingly, we grant Vertex a CPCN to provide full facilities-based local exchange telecommunications service in the service territory of Pacific Bell Telephone Company d/b/a AT&T California, Frontier California, Inc. (formerly Verizon California Inc.), Citizens Telecommunications Company of

[11] While the Commission has granted exemption from §§ 816 – 830 to others, exemption from §§ 851 – 854 has not been granted previously and is not granted here.

California, Inc. d/b/a/ Frontier Communications of California, and Consolidated Communications of California Company (formerly SureWest Telephone) and interexchange service in California subject to compliance with the terms and conditions set forth in the Ordering Paragraphs.

The CPCN granted by this decision provides benefits to Vertex and corresponding obligations. Vertex receives authority to operate in the prescribed service territory, it can request interconnection with other telecommunications carriers in accordance with Section 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, Vertex 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, Vertex is obligated to pay all Commission prescribed user fees and public purpose program surcharges as set forth in the 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 Section 54.1 of the Civil Code, as are necessary to promote the safety, health, comfort, and convenience of its patrons, employees, and the public."

15. Request to File Under Seal

Pursuant to Rule 11.4 of the Commission's Rules of Practice and Procedure, Vertex moved for leave to file Exhibit F to the application under seal because it contains confidential financial information. Vertex represents that the

information is sensitive, and disclosure could place Vertex at an unfair business disadvantage. We have granted similar requests in the past and do so here.

16. Categorization and Need for Hearings

In Resolution ALJ 176-3359, dated June 25, 2015, the Commission preliminarily categorized this application as ratesetting, and preliminarily determined that hearings were not necessary. On July 22, 2016, SED filed a protest to the application. Hence, on August 20, 2015, the assigned Administrative Law Judge (ALJ) held a ~~pre-hearing~~prehearing conference. Parties subsequently resolved all disputed issues. No hearings were held.

17. Comments on Proposed Decision

The proposed decision of ALJ MacDonald in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. ~~Comments were filed on _____, and reply~~No comments were ~~filed on _____ by _____~~received.

18. Assignment of Proceeding

Liane Randolph is the assigned Commissioner and Katherine Kwan MacDonald is the assigned ALJ in this proceeding.

Findings of Fact

1. Notice of the application appeared on the Daily Calendar on June 26, 2015. SED protested the application on July 22, 2015. A hearing is not required.

2. Vertex is a California corporation with its principal place of business in Pomona, California.

3. Vertex is a telephone corporation and a public utility as defined in Pub. Util. Code §§ 234(a) and 216(a).

4. Vertex applied for and was granted non-dominant interexchange authority by D.03-07-052. Vertex received authority to provide local exchange pursuant to D.05-10-006. Pursuant to these authorities Vertex offers resold services.

5. On June, 17, 2015, Vertex applied for authority to expand its existing authority to provide full facilities local and interexchange telecommunications services in California.

6. On July 22, 2015, SED protested the application, alleging that Vertex violated Rule 1.1 by failing to disclose violation in other states.

7. The Settlement Agreement provides a joint factual statement, an acknowledgement by Vertex that it failed to disclose the existence of all revocations and other actions involving its authority to operate in other states in violation of Rule 1.1, a commitment by Vertex to fully meet its regulatory and legal obligations in California in the future, and provides that Vertex shall pay a penalty of $17,500 to the State General Fund in installment payments as specified in the Settlement Agreement to resolve the legal issues raised by SED's protest.

8. The Commission is the Lead Agency for this project under CEQA.

9. Vertex's proposed construction activity may fall within one or more CEQA categorical exemptions.

10. Vertex's authority to provide local exchange services will not have a significant adverse effect upon the environment.

11. Vertex has a minimum of $100,000 of cash or cash equivalent that is reasonably liquid and readily available to meet its start-up expenses.

12. Vertex 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.

13. Vertex's management possesses sufficient experience, knowledge, and technical expertise to provide local exchange services to the public.

14. Except for the instances identified in its application, amended application, and Second Amendment to its application, no one associated with or employed by Vertex as an affiliate, officer, director, partner, or owner of more than 10% of Vertex 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; or entered into any settlement agreements or made any voluntary payments or agreed to any other type of monetary forfeitures in resolution of any action by any regulatory body, agency or attorney general.

15. Vertex's draft tariffs comply with the Commission's requirements.

16. Vertex provided a map of the location of its proposed service territory.

17. Vertex 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 General Order (GO) 104-A, Section 2.

18. Vertex provided an estimate of its customer base for the first and fifth year of operation.

19. Pursuant to Rule 11.4, Vertex filed a motion for leave to file confidential materials under seal, including Exhibit F to the application.

Conclusions of Law

1. The Settlement Agreement fully resolves and settles all disputed issues between the parties to this proceeding.

2. The amount of the penalty imposed on Vertex by the Settlement Agreement is permissible under state law.

3. The Settlement Agreement is consistent with the applicable law and prior Commission decisions.

4. The Settlement Agreement is in the public interest and should be approved.

5. Vertex should be granted a CPCN to provide full facilities-based local exchange telecommunications service in the service territories of Pacific Bell Telephone Company d/b/a AT&T California, Frontier California, Inc. (formerly Verizon California Inc.), Citizens Telecommunications Company of California, Inc. d/b/a/ Frontier Communications of California, and Consolidated Communications of California Company (formerly SureWest Telephone) and interexchange service in California, subject to the terms and conditions set forth in the Ordering Paragraphs.

6. Vertex should be allowed to use the Energy Division 21-day CEQA exemption process.

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

8. Vertex's motion to file under seal its Exhibit F to the application should be granted for three years.

9. Vertex should be granted non-dominant carrier status, subject to Commission rules and regulations as detailed in D.85-01-008 and modified in D.85-07-081 and D.85-11-044.

O R D E R

IT IS ORDERED that:

1. The joint motion of Vertex Telecom, Inc. and the California Public Utilities Commission Safety and Enforcement Division for adoption of the proposed Settlement Agreement, which is on file in this proceeding, is granted.

2. The Settlement Agreement is approved without modification.

3. Vertex Telecom, Inc. (Vertex) shall comply with all terms of the Settlement Agreement in a timely manner. Specifically, Vertex shall pay a penalty of $17,500 to the State of California General Fund pursuant to the Settlement Agreement as follows: Vertex shall pay $5,500 within 30 days after the calendar date of the Commission's approval of the Settlement Agreement; Vertex shall pay the remaining $12,000 in 12 equal monthly installments beginning 30 days after the first payment of $5,500 is made. All penalty payments shall be made payable to the California Public Utilities Commission and remitted to the Commission's Fiscal Office, 505 Van Ness Avenue, Room 3000, San Francisco, California 94102. Vertex shall write "For deposit to the General Fund per Decision _____" on the face of each check.

4. The certificate of public convenience and necessity originally granted to Vertex Telecom, Inc (Vertex). in Decisions 03-07-052 and 05-10-006 is amended to allow Vertex to provide full facilities-based local exchange telecommunications services in the territories of Pacific Bell Telephone Company d/b/a AT&T California, Frontier California, Inc. (formerly Verizon California Inc.), Citizens

Telecommunications Company of California, Inc. d/b/a/ Frontier Communications of California, and Consolidated Communications of California Company (formerly SureWest Telephone), interexchange service in California, subject to the terms and conditions set forth below.

5. The corporate identification number assigned to Vertex Telecom, Inc., U-6786-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.

6. Vertex Telecom, Inc. (Vertex) 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, Vertex 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.

7. Vertex Telecom, 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.

8. 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, Vertex Telecom, 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.

9. Vertex must pay the 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.

10. Vertex Telecom, Inc. must pay the user fee specified in Attachment B. Vertex must pay a minimum user fee of $100 or 0.23% of gross intrastate revenue, whichever is greater. 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.

11. Vertex Telecom, 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. Vertex Telecom, 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 Vertex Telecom, 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 Vertex Telecom, Inc. (Vertex) wishes to engage in full facilities-based construction activities and believes that these activities are exempt from California Environmental Quality Act, Vertex shall first apply to the

Commission's Energy Division staff for a determination of exemption from California Environmental Quality Act using the following procedure set forth in Ordering Paragraph 16.

15. Vertex Telecom, Inc. (Vertex) 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 exemption(s) claimed to apply to the proposed project; and

e. Documentation supporting the finding of exemption from California Environmental Quality Act.

f. The Energy Division will then review the submittal and notify Vertex of either its approval or its denial of Vertex's claim for exemption from California Environmental Quality Act review within 21 days from the time that Vertex's submittal is complete.

g. If the Energy Division approves Vertex's claimed California Environmental Quality Act 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 Vertex's claimed California Environmental Quality Act exemptions, the staff will issue to Vertex a letter which states the specific reasons that the claimed California Environmental Quality Act exemptions do not apply to the proposed project.

i. If the Energy Division disapproves Vertex's claimed California Environmental Quality Act exemption(s), Vertex shall either re-design the specific project and facilities and then reapply for a finding of exemption from California Environmental Quality Act, or file a formal application with the Commission seeking the requisite approval and full California Environmental Quality Act review, before commencing any full facilities-based construction activities.

16. Vertex Telecom, Inc.'s (Vertex) motion to file under seal its Exhibit F is granted for a period of three years after the date of this order. During this three -year period, this information shall not be publicly disclosed except on further Commission order or Administrative Law Judge ruling. If Vertex believes that it is necessary for this information to remain under seal for longer than three years, Vertex 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 15-06-016 is closed.

This order is effective today.

Dated _____, at San Francisco, California.

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