

Decision 19-02-013 February 21, 2019

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of Intermountain Infrastructure Group, LLC for 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, Frontier California, Inc., Consolidated Communications of California Company, and Citizens Telecommunications Company of California, Inc. and full facilities-based and resold interexchange services on a statewide basis.

Application 18-05-021

DECISION GRANTING INTERMOUNTAIN INFRASTRUCTURE GROUP, LLC A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY IN ORDER TO PROVIDE 1) FULL FACILITIES-BASED AND RESOLD COMPETITIVE LOCAL EXCHANGE SERVICE; AND 2) FULL FACILITIES-BASED AND RESOLD INTEREXCHANGE SERVICE

Summary

Pursuant to Public Utilities (Pub. Util.) Code Section 1001, we grant Intermountain Infrastructure Group, LLC (Intermountain or Applicant) a certificate of public convenience and necessity to provide 1) full facilities-based and resold competitive local exchange telecommunications services; and 2) full facilities-based and resold interexchange service in California subject to the terms and conditions set forth in the Ordering Paragraphs.

This proceeding is closed.

1. Background

On May 23, 2018, Intermountain Infrastructure Group, LLC, a corporation authorized to do business in California, filed an application for a certificate of public convenience and necessity (CPCN) to provide: 1) full facilities-based and resold competitive telecommunications services in the service territories of Pacific Bell Telephone Company d/b/a AT&T California (AT&T California), Frontier California Inc. (Frontier California)¹, Citizens Telecommunications Company of California, Inc. d/b/a Frontier Communications of California (Frontier Communications), and Consolidated Communications of California Company (Consolidated Communications, formerly SureWest Telephone);² and 2) full facilities-based and resold interexchange service in California.

Intermountain proposes to provide “infrastructure facilities (such as conduit and dark or lit fiber) for use in connection with the transport and transmission of communications.”³ If existing facilities are not available or economical, Intermountain may install fiber, construct new manholes and/or new poles.⁴

Intermountain’s principal place of business is located at 533 Airport Blvd., Suite 400, Burlingame, California 94010.

¹ Frontier California was formerly Verizon California, Inc. (Verizon). As of April 1, 2016, Verizon’s operations in California were acquired and are now operated by Frontier California, Inc., pursuant to Decision (D.) 15-12-005.

² SureWest Telephone was acquired by Consolidated Communications Inc. in 2012, pursuant to D.12-06-004, and SureWest Telephone changed its name to Consolidated Communications of California Company as of January 1, 2016.

³ Application at 1.

⁴ Response of Intermountain Infrastructure Group, LLC to Assigned ALJ Ruling, Jan. 4, 2019, at 2.

On October 19, 2018, the assigned Administrative Law Judge (ALJ) issued *Administrative Law Judge's Ruling Directing the Filing of Additional Information*, to which Intermountain responded on October 22, 2018. A prehearing conference was held on October 24, 2018. The November 15, 2018 scoping memo and ruling included additional questions regarding Intermountain's need for full facilities-based authority and the lack of a proposed tariff. On November 19, 2018, Intermountain responded to the scoping memo and ruling. Due to the need for details regarding Intermountain's business, the lack of a proposed tariff, and the proponent's environmental assessment, on January 3, 2019, the ALJ issued a second *Administrative Law Judge's Ruling Directing the Filing of Additional Information*. On January 4, 2019, Intermountain responded.

2. Jurisdiction

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

Intermountain proposes to provide infrastructure facilities, such as conduit and dark or lit fiber infrastructure, in connection with the transport and transmission of communications. Intermountain will use existing conduit, poles, and infrastructure if feasible and economical, but will build new facilities if required to serve customers. For example, Intermountain may "construct underground facilities of longer length to provide services to schools, government office buildings, or business customers who have needs for new or

additional telecommunications bandwidth.”⁵ Intermountain is a telephone corporation and a public utility subject to our jurisdiction.

Intermountain states even though it does not expect to operate as an interstate Common Carrier, to the extent it engages in operations as a Common Carrier as defined by § 153 of the Federal Telecommunications Act of 1996 (Act), it will be eligible to interconnect with the public switched telephone network pursuant to § 251 and § 252 of the Act,⁶ and that if granted a CPCN, it will operate as a telephone corporation under Pub. Util. Code § 234(a), and obey the Pub. Util. Code and all Commission rules, decisions, and orders applicable to telephone corporations.⁷

3. California Environmental Quality Act (CEQA)

Pursuant to CEQA and Rule 2.4⁸ 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.

⁵ Response of Intermountain Infrastructure Group, LLC to Assigned ALJ Ruling, Jan. 4, 2019, at 2.

⁶ Application, Verification and Sworn Statement on Behalf of Intermountain Infrastructure Group, LLC.

⁷ *Id.*

⁸ Unless otherwise noted, items labeled “Rule” are from the Commission’s Rules of Practice and Procedure.

In the Proponent's Environmental Assessment, Intermountain's proposed construction activities will generally include the installation of "relatively short conduit routes, installations of [] poles where existing facilities are inadequate, and installation or construction of other, small above-ground facilities."⁹ The construction "would occur in existing roadways or other previously-developed and disturbed rights-of-way." Intermountain's proposed activities include:

- Installing fiber to link customers to existing conduits;
- Constructing a new manhole and/or short conduit stub when necessary;
- Installing overlash cabling between existing utility poles;
- Constructing new poles when necessary; and
- Constructing underground facilities to lay its own conduit when necessary.¹⁰

Intermountain expects its activities to fall within one or more categorical CEQA exemptions, but at this time, it cannot identify the specific projects, sites, or routes of construction.¹¹ Intermountain requests approval to utilize a procedure for expedited CEQA review of its projects once it is aware of a specific site(s) and route(s) which it plans construction.

It is possible that Intermountain's activities will fall within one or more of the categorical exemptions under CEQA. Intermountain's proposed procedure for expedited review tracks the expedited review procedure that we have approved for other carriers. Such a process will expedite CEQA review and is

⁹ Application at Exhibit D.

¹⁰ Response of Intermountain Infrastructure Group, LLC to Assigned ALJ Ruling, Jan. 4, 2019, at 1 - 2.

¹¹ Application at 2.

appropriate for the type of construction outlined here, which may 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 Intermountain 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 Intermountain's claimed CEQA exemptions for proposed construction projects:

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

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

Intermountain 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.

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

Intermountain proposes to follow the 21-day process stated above until General Order (GO) 170 is implemented.¹² D.11-12-054 granted rehearing of

¹² Application at 7.

D.10-12-056 and vacated GO 170; however, a final decision on the rehearing has not been rendered. Thus, Intermountain must comply with the process described in this decision. In the future, if GO 170 is adopted, Intermountain may pursue the appropriate remedies at that time.

4. Financial Qualifications

To be granted a CPCN, an applicant for authority to provide full facilities-based resold competitive local exchange and interexchange services must demonstrate that it has a minimum of \$100,000 cash or cash equivalent, reasonably liquid and readily available to meet the firm's start-up expenses.¹³ 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.¹⁴ Applicant provided Exhibit F, which contains the Guarantee of Jeffrey Yount, the CEO of Intermountain. Mr. Yount guarantees that \$100,000 would be available to Intermountain for one year following certification, plus \$20,000 to cover the deposit required by AT&T California, Frontier California, Frontier Communications, and Consolidated Communications. In addition, Intermountain submitted financial information of an investment account held at Stifel Bank and Trust with a certification by Mr. Yount that the funds will be

¹³ 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.

¹⁴ The requirement for Competitive Local Carrier (CLC) applicants to demonstrate that they have additional financial resources to meet any deposits required by underlying Local Exchange Carriers (LEC) and/or IECs is set forth in D.95-12-056, Appendix C. For NDIECs, the requirement is found in D.93-05-010.

available for the first year of Intermountain's operations.¹⁵ Since Intermountain 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 deposits has fulfilled this requirement.

Intermountain has provided documentation that it has the funds available for the deposit required by AT&T California, Frontier California, Frontier Communications, and Consolidated Communications if necessary. Therefore, no additional resources are required at this time to cover deposits.

Intermountain's financial documentation will be subject to verification and review by the Commission for one year to ensure that such funds are available.

5. Technical Qualifications

To be granted a CPCN for authority to provide competitive local exchange and interexchange service, an applicant must make a reasonable showing of managerial and technical expertise in telecommunications or a related business. Intermountain discussed the technical and managerial qualifications of its chief executive officer and its chief financial officer.¹⁶ In addition, Intermountain supplied biographical information on its management in Exhibit A to its application that demonstrates Intermountain has sufficient expertise and training to operate as a telecommunications provider.

In its application, Intermountain verified that no one associated with or employed by Intermountain as an affiliate, officer, director, partner, or owner of

¹⁵ Application at Exhibit F.

¹⁶ *Id.*, at 5 -6.

more than 10 percent of Intermountain, or anyone acting in a management capacity for Intermountain:

- (a) held one of these positions with a company that filed for bankruptcy; (b) been personally found liable, or held one of these positions with a company that has been found liable, for fraud, dishonesty, failure to disclose, or misrepresentations to consumers or others; (c) been convicted of a felony; (d) been (to his/her knowledge) the subject of a criminal referral by judge or public agency; (e) had a telecommunications license or operating authority denied, suspended, revoked, or limited in any jurisdiction; (f) personally entered into a settlement, or held one of these positions with a company that has entered into settlement of criminal or civil claims involving violations of §§ 17000 et seq., §§ 17200 et seq., or §§ 17500 et seq. of the California Business & Professions Code, or of any other statute, regulation, or decisional law relating to fraud, dishonesty, failure to disclose, or misrepresentations to consumers or others; or (g) been found to have violated any statute, law, or rule pertaining to public utilities or other regulated industries; or (h) 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.¹⁷

Also, to the best of Intermountain's knowledge, neither Intermountain, or any affiliate, officer, director, partner, nor owner of more than 10 percent of Intermountain, or any person acting in such capacity whether or not formally appointed, is being, or has been investigated by the Federal Communications

¹⁷ These certifications are required by D.13-05-035, Ordering Paragraph 14.

Commission or any law enforcement or regulatory agency for failure to comply with any law, rule or order.¹⁸

For the above reasons, we find that Intermountain is in compliance with the requirements of D.13-05-035.

6. Tariffs

Intermountain asserts a tariff is not required because it “will provide services and facilities on an individually-negotiated contract basis.”¹⁹

Intermountain “will not provide switched access service or basic single-line residential service.”²⁰ In effect, Intermountain requests detariffed status.

Because Intermountain is not providing residential local service at this time, Intermountain may be exempt from the requirement to file tariffs.

In the future, if Intermountain decides to offer services that require a tariff, such as local exchange services for residential customers, Intermountain must submit proposed tariffs and/or user guides to the Communications Division via Tier 2 advice letters using the GO 96-B advice letter process before initiation of service. Furthermore, Intermountain shall comply with the consumer protection rules identified in D.98-08-031.

7. Map of Service Territory

To be granted a CPCN for authority to provide competitive local exchange service, an applicant must provide a map of the service territories it proposes to serve.²¹ As part of its October 22, 2019 response to ALJ’s October 19, 2018 ruling,

¹⁸ *Id.*

¹⁹ Application at 9.

²⁰ *Id.*

²¹ D.95-12-056 at Appendix C, Rule 4.E.

Intermountain provided *Revised Exhibit E*, which depicts the location of its proposed service territory, in compliance with this requirement.

8. 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 GO 104-A, Section 2. Intermountain states that it is not aware of any reportable matters pursuant to GO 104-A, Section 2.²² Intermountain, therefore, has nothing to report under this rule.

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

9. Expected Customer Base

Intermountain estimates it will serve ten customers during the first year of operation and 50 customers during the fifth year of operation.²³ Therefore, Intermountain has complied with this requirement.

10. Request for Treatment as a Non-dominant Carrier

Applicant requests treatment as a non-dominant interexchange carrier (NDIEC) by stating it “will operate as a non-dominant carrier.”²⁴ Applicant is a “small start-up” and “will compete against large established carriers such as AT&T California, Frontier California, AT&T Communications, CenturyLink, and others having far greater financial resources and established customer bases.”²⁵

²² Application at 9.

²³ *Id.*

²⁴ *Id.*, p. 6.

²⁵ Response of Intermountain Infrastructure Group, LLC to Assigned ALJ Ruling, Jan. 4, 2019, at 5.

As an NDIEC, Applicant requests exemption from the requirements of Pub. Util. Code §§ 816 – 830 concerning stocks and security and § 851 concerning the encumbrance and transfer of utility property.²⁶ While the Commission has granted exemption from §§ 816 – 830 to others, exemption from §§ 851 – 854 is not commonly granted and an exception is not warranted here. 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, which provides an exemption from Pub. Util. Code §§ 816 – 830 concerning stocks and security, provided that it follows all rules detailed in the above referenced decisions.²⁷

11. 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. The Commission is satisfied that Intermountain will meet the Commission’s minimum safety goals and expectations of competitive local exchange carriers (CLECs) because:

1) Intermountain has taken steps to meet the financial requirements as set forth in this decision for a facilities-based CLEC, and 2) Intermountain 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

²⁶ Application at 6.

promote the safety, health, comfort, and convenience of its patrons, employees, and the public.”

12. Conclusion

We conclude that the application conforms to our rules for certification as a competitive local exchange and interexchange carrier. Accordingly, we grant intermountain 1) full facilities-based and resold competitive telecommunications services in the service territories of AT&T California, Frontier California, Frontier Communications, and Consolidated Communications; and 2) full facilities-based and resold 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 Intermountain and corresponding obligations. Intermountain receives authority to operate in the prescribed service territory, and this authority enables Intermountain, pursuant to section 251 of the 1934 Communications Act, as amended by the 1996 Telecommunications Act (47 U.S.C. § 251), to interconnect with telecommunications carriers.²⁸ This authority also enables Intermountain to obtain 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, Intermountain shall comply with all Public Utilities Code provisions, Commission rules, General Orders, and decisions applicable to telephone corporations providing approved services. The applicable statutes, rules, General Orders, and decisions include, but are not limited to consumer

²⁸ The California Public Utilities Code uses the term “telephone corporation.” Its counterpart in federal law is a “telecommunications carrier.”

protection rules, tariffing, and reporting requirements. Moreover, Intermountain shall pay all Commission prescribed user fees and public purpose program surcharges as set forth in the Appendix B of this decision, comply with CEQA, and 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."

13. Request to File Under Seal

Pursuant to Rule 11.4 of the Commission's Rules of Practice and Procedure, Intermountain has filed motions for leave to file Exhibit F, the financial documentation supporting the application, as confidential materials under seal. Intermountain represents that the information is sensitive, and disclosure could place Intermountain at an unfair business disadvantage. We have granted similar requests in the past and do so here.

14. Categorization and Need for Hearings

In Resolution ALJ 176-3417, dated May 31, 2018, the Commission preliminarily categorized this application as ratesetting, and preliminarily determined that an evidentiary hearing is necessary. On October 24, 2018, the assigned ALJ held a pre-hearing conference. On November 15, 2018, the assigned Commissioner issued the Scoping Memo and Ruling choosing to not disturb the preliminary determination that an evidentiary hearing is necessary. No protests have been received. There is no apparent reason why the application should not be granted. Given these developments, this decision now concludes that an evidentiary hearing is not necessary.

15. Waiver of Comment Period

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

16. Assignment of Proceeding

Liane M. Randolph is the assigned Commissioner and Zhen Zhang is the assigned ALJ in this proceeding.

Findings of Fact

1. Intermountain is a telephone corporation and a public utility as defined in Pub. Util. Code § 234(a) and § 216(a).
2. The Commission is the Lead Agency for this project under CEQA.
3. Intermountain's proposed construction activities may fall within one or more CEQA categorical exemptions.
4. Intermountain's authority to provide telecommunications services will not have a significant adverse effect upon the environment.
5. Intermountain has a minimum of \$100,000 of cash or cash equivalent that is reasonably liquid and readily available to meet its start-up expenses.
6. Intermountain has sufficient additional cash or cash equivalent to cover deposits that may be required by other telephone corporations in order to provide the proposed service.
7. Intermountain's management possesses sufficient experience, knowledge, and technical expertise to provide local exchange services to the public.
8. No one associated with or employed by Intermountain as an affiliate, officer, director, partner, agent, or owner (directly or indirectly) of more than 10 percent of Intermountain, or anyone acting in a management capacity for

Intermountain: (a) held one of these positions with a company that filed for bankruptcy; (b) been personally found liable, or held one of these positions with a company that has been found liable, for fraud, dishonesty, failure to disclose, or misrepresentations to consumers or others; (c) been convicted of a felony; (d) been the subject of a criminal referral by judge or public agency; (e) had a telecommunications license or operating authority denied, suspended, revoked, or limited in any jurisdiction; (f) personally entered into a settlement, or held one of these positions with a company that has entered into settlement of criminal or civil claims involving violations of §§ 17000 et seq., §§ 17200 et seq., or §§ 17500 et seq. of the California Business & Professions Code, or of any other statute, regulation, or decisional law relating to fraud, dishonesty, failure to disclose, or misrepresentations to consumers or others; or (g) been found to have violated any statute, law, or rule pertaining to public utilities or other regulated industries; or (h) 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.

9. To the best of Intermountain's knowledge, neither Intermountain, or any affiliate, officer, director, partner, nor owner of more than 10 percent of Intermountain, or any person acting in such capacity whether or not formally appointed, is being, or has been investigated by the Federal Communications Commission or any law enforcement or regulatory agency for failure to comply with any law, rule or order.

10. Intermountain requested and is eligible for exemption from tariffing requirements and must observe the consumer protection rules adopted in D.98-08-031.

11. Intermountain provided a map of the location of its proposed service territory.

12. Intermountain 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.

13. Intermountain provided an estimate of its customer base for the first and fifth year of operation.

14. Pursuant to Rule 11.4, Intermountain filed a motion for leave to file Exhibit F as confidential under seal.

Conclusions of Law

1. Intermountain should be granted a CPCN to provide 1) full facilities-based and resold competitive telecommunications services in the service territories of AT&T California, Frontier California, Frontier Communications, and Consolidated Communications; and 2) full facilities-based and resold interexchange service in California, subject to the terms and conditions set forth in the Ordering Paragraphs.

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

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

4. Intermountain should be granted an exemption from the requirement to file tariffs.

5. Intermountain's motion to file under seal its Exhibit F to the application, should be granted for three years.

6. Intermountain 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. A certificate of public convenience and necessity is granted to Intermountain to provide 1) full facilities-based and resold competitive telecommunications services in the service territories of AT&T California, Frontier California, Frontier Communications, and Consolidated Communications, formerly SureWest Telephone; and 2) full facilities-based and resold interexchange service in California, subject to the terms and conditions set forth below.

2. In the event Intermountain decides to offer services that require a tariff, such as local exchange services for residential customers, Intermountain must submit proposed tariffs and/or user guides to the Communications Division via Tier 2 advice letters using the General Order 96-B advice letter process before initiation of service.

3. The corporate identification number assigned to Intermountain, U7355C, must be included in the caption of all original filings with this Commission, and in the titles of other pleadings filed in existing cases.

4. Intermountain must file, in this docket, a written acceptance of the certificate granted in this proceeding within 30 days of the effective date of this decision. Written acceptance filed in this docket does not reopen the proceeding.

5. The certificate granted by this decision will expire if not exercised within 12 months of the effective date of this decision.

6. Intermountain must notify the Director of the Communications Division of the date that local exchange service is first rendered to the public, no later than five days after service first begins, by email to cdcompliance@cpuc.ca.gov.

7. Intermountain 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, Intermountain must submit a Tier 1 advice letter to the Communications Division, 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.

8. Intermountain 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 Communications Division a copy of its executed performance bond and the carrier has not been granted an extension of time by the Communications Division.

9. 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, Intermountain 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.

10. Intermountain must pay the public purpose surcharges specified in Attachment B, and the Combined California Public Utilities Commission Telephone Surcharge Transmittal Form must be submitted even if the amount due is \$0.

11. Intermountain must pay an annual minimum user fee of \$100 or 0.30 percent of gross intrastate revenue, whichever is greater. Under Public Utilities 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.

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

13. Prior to initiating service, Intermountain must provide the Commission's Communications Division with the name(s), address(es), and telephone number(s) 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/communications>. This information must be updated if the name or telephone number changes, or at least annually.

14. Intermountain must submit an affiliate transaction report to the Director of the Communications Division, by email to cdcompliance@cpuc.ca.gov, in compliance with Decision 93-02-019, on a calendar year basis using the form contained in Attachment D.

15. Intermountain must submit an annual report to the Director of the Communications Division, by email to cdcompliance@cpuc.ca.gov, in compliance with General Order 104-A, on a calendar-year basis with the information contained in Attachment C to this decision.

16. Intermountain must submit an application for expanded authority to operate without NDIEC status prior to any full facilities-based construction.

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

18. If Intermountain wishes to engage in full facilities-based construction activities and believes that these activities are exempt from California Environmental Quality Act, Intermountain shall first apply to the Commission's Energy Division staff for a determination of exemption from California Environmental Quality Act by providing the Commission's Energy Division (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 Intermountain of either its approval or its denial of Intermountain's claim for exemption from California Environmental Quality Act review within 21 days from the time that Intermountain's submittal is complete.

19. If the Energy Division approves Intermountain's claimed California Environmental Quality Act exemption(s), the staff shall prepare a Notice to Proceed and file a Notice of Exemption with the State Clearinghouse, Office of Planning and Research. If the Energy Division disapproves Intermountain's claimed California Environmental Quality Act exemptions, the staff shall issue to Intermountain a letter which states the specific reasons that the claimed California Environmental Quality Act exemptions do not apply to the proposed project.

20. If the Energy Division disapproves Intermountain's claimed California Environmental Quality Act exemption(s), Intermountain 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.

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

22. Evidentiary hearing is not necessary.

23. Application 18-05-021 is closed.

This decision is effective today.

Dated February 21, 2019, at San Francisco, California.

MICHAEL PICKER

President

LIANE M. RANDOLPH

MARTHA GUZMAN ACEVES

CLIFFORD RECHTSCHAFFEN

GENEVIEVE SHIROMA

Commissioners

ATTACHMENT A

This Attachment is Intentionally Left Blank

(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,²⁹ a written acceptance of the certificate granted in this proceeding within 30 days of the effective date of this order.

2. The certificate granted and the authority to render service under the rates, charges, and rules authorized will expire if not exercised within 12 months of the date of this decision.

3. 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);

²⁹ Written acceptance filed in this docket does not reopen the proceeding.

- 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 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/General.aspx?id=1124>.

- i. 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/General.aspx?id=1010>. To request a user ID and password for TUFFS online filing and for questions, please e-mail Telco_surcharges@cpuc.ca.gov.
- ii. Carriers must submit and pay the PUC User Fee (see Item 3.g above) upon receiving the User Fee statement sent by the Commission Instructions for reporting and filing are available at <http://www.cpuc.ca.gov/General.aspx?id=1009>. Please call (415) 703-2470 for questions regarding User Fee reporting and payment.

4. If Applicant is a competitive local exchange carrier (CLEC), 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).

5. If 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).

6. Tariff filings must reflect all fees and surcharges to which Applicant is subject, as reflected in Item 3 above.

7. 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 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, Applicant must submit a Tier-1 advice letter to the Communications Division, 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.

8. 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 Communications Division a copy of its executed performance bond and the carrier has not been granted an extension of time by the Communications Division.

9. Applicants providing local exchange service must submit a service area map as part of their initial tariff to the Communications Division.

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

11. In addition, Applicant must provide the Commission's Communications Division with the name(s), address(es), and telephone number(s) 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/communications>. This information must be updated if the name(s), address(es), and telephone number(s) change, or at least annually.

12. Applicant must notify the Director of the Communications Division, in writing submitted by email to cdcompliance@cpuc.ca.gov, no later than five days after service first begins, of the date that local exchange service is first rendered to the public.

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

14. 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.

15. Applicant must submit an annual report to the Director of the Communications Division at cdcompliance@cpuc.ca.gov, in compliance with General Order 104-A, on a calendar-year basis with the information contained in Attachment C to this decision.

16. Applicant must submit an affiliate transaction report to the Director of the Communications Division at cdcompliance@cpuc.ca.gov, in compliance with D.93-02-019, on a calendar-year basis using the form contained in Attachment D.

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

18. 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 of its compliance in writing, by email to cdcompliance@cpuc.ca.gov.

19. If Applicant is 90 days or more late in submitting an annual report, or in remitting the surcharges and fee listed in #3 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.

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

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

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

23. 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 submitted to 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 submit 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 submitted to 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 submit, 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)