

Decision 11-09-005 September 8, 2011

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of Network Billing Systems, LLC (U6067C) for a Certificate of Public Convenience and Necessity to Provide Competitive Local Exchange and Interexchange Telecommunications Services within the State of California.

Application 11-01-026
(Filed January 26, 2011)

**DECISION GRANTING NETWORK BILLING SYSTEMS, LLC
A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY
IN ORDER TO PROVIDE RESOLD COMPETITIVE LOCAL EXCHANGE
AND INTEREXCHANGE TELECOMMUNICATIONS SERVICE**

1. Summary

Network Billing Systems, LLC filed an application for a certificate of public convenience and necessity (CPCN) for authority to provide resold competitive local exchange and interexchange telecommunications services in the service territories of Pacific Bell Telephone Company, d/b/a AT&T California, Verizon California Inc., SureWest Telephone, and Citizens Telecommunications Company of California, Inc., d/b/a Frontier Communications of California and as a non-dominant interexchange carrier throughout California.

By this decision, we grant Network Billing Systems, LLC, a CPCN to provide resold local exchange and interexchange telecommunications service, on the terms and conditions set forth in the Ordering Paragraphs.

2. Background

On January 26, 2011, Network Billing Systems, LLC (Network Billing or Applicant) filed an application with the California Public Utilities Commission for a certificate of public convenience and necessity (CPCN) to provide resold competitive local exchange and interexchange telecommunications service in the service territories of Pacific Bell Telephone Company, d/b/a AT&T California (AT&T), Verizon California Inc. (Verizon), SureWest Telephone (SureWest), and Citizens Telecommunications Company of California, Inc., d/b/a Frontier Communications of California (Frontier) throughout the State of California. The Applicant is a New Jersey limited liability company with its principal address at 155 Willowbrook Boulevard, Wayne, New Jersey 07470.

The Commission previously granted Applicant a “registration license” to provide interexchange telecommunications services under the Commission’s streamlined registration process in D.98-09-088.¹ Applicant now seeks authority to provide specialized dedicated point to point local exchange voice telecommunications services for commercial subscribers as a competitive local carrier.² Applicant does not plan to offer basic local service.

3. California Environmental Quality Act (CEQA)

The CEQA requires the Commission act, in certain circumstances, as the designated lead agency to assess the potential environmental impact of a project in order that adverse effects are avoided, alternatives are investigated, and environmental quality is restored or enhanced to the fullest extent possible.

¹ Decision (D.) 08-12-023.

² Application (A.) 11-01-026, at 2.

However, since the Applicant states that it does not intend to construct any facilities, it can be seen with certainty that there is no possibility that granting this application will have an adverse impact upon the environment.

4. Financial Qualifications

Pursuant to Rule 4.B of D.95-12-056 (Appendix C), an applicant for a CPCN for authority to provide resold local exchange and interexchange telecommunications service must demonstrate that it has \$25,000 cash or cash equivalent to meet the firm's start-up expenses. Applicant must also demonstrate that it has sufficient additional resources to cover all deposits required by other telecommunications carriers in order to provide service in California.

At Exhibit E (confidential) to the application, the Applicant has provided financial statements that demonstrate that it has access to well over \$25,000 cash or cash equivalent. This amount is sufficient to cover start-up expenses and is reasonably liquid and available.

Applicant proposes to offer service within the territories of AT&T, Verizon, Frontier, and SureWest. In its application, Network Billing indicates that it has been serving California customers since 1998 and currently has resale and/or deposit agreements with carriers. It is not anticipated that any additional resale and/or deposit agreements would be required by AT&T, Verizon, Frontier and SureWest. Thus, Applicant satisfies our financial qualifications requirements.

5. Managerial and Technical Qualifications

To be granted a CPCN for authority to provide local exchange and interexchange telecommunications service, an applicant must make a reasonable showing of managerial and technical expertise in telecommunications or a

related business.³ Applicant has provided biographical information on its management in Exhibit F to its application that demonstrates that it has sufficient expertise and training to operate as a telecommunications provider.

Applicant has verified that no one associated with it or employed by it as an affiliate, officer, director, partner, or owner of more than 10% of Network Billing was previously associated with a telecommunications carrier that filed for bankruptcy, or was sanctioned by the Federal Communications Commission or any state regulatory agency for failure to comply with any regulatory statute, rule, or order.

Applicant has also verified that no one associated with or employed by it as an affiliate, officer, director, partner, or owner of more than 10% of Network Billing was previously associated with any telecommunications 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.

6. Tariffs

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

³ D.95-12-056 at Appendix C, Rule 4.A.

7. Map of Service Territory

To be granted a CPCN for authority to provide local exchange service, an applicant must provide a map of the service territories it proposes to serve.⁴ In its application (Exhibit D), Applicant provided a map of the location of its proposed service territory, in compliance with this requirement.

8. Expected Customer Base

Applicant provided its estimated customer base for the first and fifth years of operation in Section 15 of its application. The Applicant has complied with this requirement.

9. Request for Treatment as a Non-dominant Carrier

Applicant requests treatment as a non-dominant carrier, which would include exemption from the requirements of Pub. Util. Code §§ 816-830 concerning stocks and security and § 851 concerning the encumbrance and transfer of utility property. The Commission detailed its rules regarding exemption of non-dominant carriers in D.85-01-008, and subsequently modified them in D.85-07-081 and D.85-11-044. We grant Applicant's request for non-dominant carrier status, provided that applicant follow all rules detailed in the above referenced decisions.

10. Request to File Under Seal

Pursuant to Rule 11.4, Network Billing has filed a motion for leave to file Exhibit E to the application as confidential material under seal. Applicant represents that the information is sensitive, and disclosure could place it at an unfair business disadvantage. We have granted similar requests in the past, and

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

do so here. All sealed information should remain sealed for a period of two years from the effective date of this order.

11. Conclusion

We conclude that the application conforms to our rules for certification as a competitive local exchange and interexchange carrier. Accordingly, we grant Network Billing a CPCN to provide resold local exchange and interexchange telecommunications services in the service territories of AT&T, Verizon, Frontier, and SureWest, subject to compliance with the terms and conditions set forth in the Ordering Paragraphs.

12. Categorization and Need for Hearing

In Resolution ALJ 176-3269, dated February 3, 2011, the Commission preliminarily categorized this application as ratesetting, and preliminarily determined that hearings were not necessary. No protests have been received. There is no apparent reason why the application should not be granted. Given these developments, a public hearing is not necessary, and it is not necessary to disturb the preliminary determinations.

13. Comments on Proposed Decision

No protests were filed in this proceeding. Therefore, this is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Pub. Util. Code § 311(g)(2), the otherwise applicable 30-day period for public review and comment is being waived.

14. Assignment of Proceeding

Timothy Alan Simon is the assigned Commissioner and W. Anthony Colbert is the assigned ALJ in this proceeding.

Findings of Fact

1. Notice of the application appeared on the Daily Calendar on February 3, 2011. No protests have been filed. A hearing is not required.
2. Applicant has a minimum of \$25,000 of cash or cash equivalent that is reasonably liquid and readily available to meet its start-up expenses.
3. Applicant currently has deposit agreements with other telecommunication carriers and has sufficient additional cash or cash equivalent to cover additional obligations that they may require in order to provide the proposed service.
4. Applicant's management possesses sufficient experience, knowledge, and technical expertise to provide local exchange and interexchange telecommunications services to the public.
5. No one associated with or employed by Applicant as an affiliate, officer, director, partner, or owner of more than 10% was previously associated with a telecommunications carrier that filed for bankruptcy, or was sanctioned by the Federal Communications Commission or any state regulatory agency for failure to comply with any regulatory statute, rule, or order.
6. No one associated with or employed by it as an affiliate, officer, director, partner, or owner of more than 10% of the Applicant was previously associated with any telecommunications 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.
7. Applicant has provided a map of the location of its proposed service territory.

8. Applicant has provided an estimate of its customer base for the first and fifth year of operation.

9. Applicant does not propose to construct any facilities.

10. Applicant has filed a motion for leave to file confidential financial information under seal.

Conclusions of Law

1. Applicant should be granted a CPCN to provide resold competitive local exchange and interexchange telecommunications services in the service territories of AT&T, Verizon, Frontier, and SureWest, subject to the terms and conditions set forth in the Ordering Paragraphs.

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

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

4. Applicant 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.

5. Since Applicant does not propose to construct any facilities, it can be seen with certainty that granting it authority to provide local exchange services will not have a significant adverse effect upon the environment.

6. Applicant's motion to file material under seal should be granted, material under seal should not be made accessible or disclosed to anyone other than the Commission and its staff for two years, except upon further order or ruling of the Commission, the assigned Commissioner, the assigned Administrative Law Judge (ALJ), or the ALJ then designated as Law and Motion Judge.

O R D E R

IT IS ORDERED that:

1. A Certificate of Public Convenience and Necessity is granted to Network Billing Systems, LLC, to provide resold competitive local exchange and interexchange telecommunications services in the service territories of Pacific Bell Telephone Company d/b/a AT&T California, Verizon California Inc., Citizens Telecommunications Company of California, Inc, d/b/a/ Frontier Communications Company of California, and SureWest Telephone, subject to the terms and conditions set forth below.

2. The corporate identification number assigned to Network Billing Systems, LLC, U6067C must be included in the caption of all original filings with this Commission, and in the titles of other pleadings filed in existing cases.

3. 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, Applicant 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.

4. Applicant is a non-dominant carrier, subject to the Commission rules and regulations as detailed in Decision (D.) 85-01-008 and modified in D.85-07-081 and D.85-11-044.

5. Applicant must file, in this docket, a written acceptance of the certificate granted in this proceeding within 30 days of the effective date of this order.

6. Applicant must annually pay the user fee and public purpose surcharges specified in Attachment B. Per the instructions in Exhibit E to Decision 00-10-028, the Combined California Public Utilities Commission Telephone Surcharge Transmittal Form must be submitted even if the amount

due is \$0. Under Public Utilities Code Section 405, carriers that are in default of reporting and submitting user fees for a period of 30 days or more will be subject to penalties including suspension or revocation of their authority to operate in California. Therefore, carriers must report user fees even if the amount due is \$0.

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

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

9. Applicant 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 with the information contained in Attachment D.

10. Applicant 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.

11. Applicant must file a tariff within 12 months of the effective date of this order, or its certificate will be cancelled.

12. Applicant's request to file materials under seal is granted. Materials under seal shall not be made accessible or disclosed to anyone other than the Commission and its staff for two years, except upon further order or ruling of the Commission, the assigned Commissioner, the assigned Administrative Law Judge (ALJ), or the ALJ then designated as Law and Motion Judge. If Applicant believes that it is necessary for this information to remain under seal for longer

than two years, Applicant shall file a motion stating the justification for further withholding this information from public inspection. This motion shall be filed at least 30 days before the expiration of that two-year period granted by this order.

13. Application 11-01-026 is closed.

This order is effective today.

Dated September 8, 2011, at San Francisco, California.

MICHAEL R. PEEVEY
President
TIMOTHY ALAN SIMON
MICHEL PETER FLORIO
CATHERINE J.K. SANDOVAL
MARK J. FERRON
Commissioners

ATTACHMENT A

List of deficiencies in tariff filed by Network Billing Systems, LLC, in A.11-01-026 to be corrected in its tariff compliance filing.

1. CPUC assigned utility ID number (U#) should be included on each sheet in the upper left header along with Company name and address. (General Order 96B, Section 8.4.1).
2. Application For Service: Please add procedure for customer to obtain service, see Decision 95-07-054, Appendix B, Rule 2.
3. Limits of Liability: Must adopt either Pacific Bell's (now AT&T) or Verizon's limits of liability.
4. Demarcation points: Please have own demarcation tariff or adopt another carrier's tariff.
5. Prorating of bills: Please add procedure for proration of bills, see Decision 95-07-054, Appendix B, Rule 7.
6. Please state California address at which the tariff is available for inspection (GO 96B, Section 8.1.3) or provide Internet URL where tariffs are posted.
7. Please add the procedure the customer may use to request amortization of unpaid charges that is in compliance to Decision 95-07-054, Appendix B, Rule 6.B.(2).5.
8. Please add a description and rule for Caller ID and CPNI Restrictions that is in compliance with Decision 95-07-054, Appendix B, Rule 14.
9. Change of Service Provider: Please add rules in Decision 95-07-054, Appendix B, Rule 11.

10. Blocking of 976/900 Calls: Please provide information on how customers can request the blocking of 976/900 pay-oper-call telephone information service. See Decision 95-07-054, Appendix B, Rule 15.

11. Please include samples of customer forms.

ATTACHMENT B

REQUIREMENTS APPLICABLE TO COMPETITIVE LOCAL EXCHANGE CARRIERS AND INTEREXCHANGE CARRIERS

1. Applicant shall file, in this docket, a written acceptance of the certificate granted in this proceeding within 30 days of the effective date of this order.
2. Applicant is subject to the following fees and surcharges that must be regularly remitted. Per the instructions in Appendix 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 current 1.15% surcharge applicable to all intrastate services except for those excluded by D.94-09-065, as modified by D.95-02-050, to fund the Universal Lifeline Telephone Service Trust Administrative Committee Fund (Pub. Util. Code § 879; Resolution T-17071, dated March 1, 2007, effective April 1, 2007);
 - b. The current 0.20% surcharge applicable to all intrastate services except for those excluded by D.94-09-065, as modified by D.95-02-050, to fund the Deaf and Disabled Telecommunications Program (Pub. Util. Code § 2881; D.98-12-073 and Resolution T-17127, dated December 20, 2007, effective January 1, 2008);
 - c. The user fee provided in Pub. Util. Code §§ 431-435, which is 0.18% of gross intrastate revenue (Resolution M-4819), dated June 7, 2007, effective July 1, 2007;
 - d. The current 0.00% surcharge applicable to all intrastate services except for those excluded by D.94-09-065, as modified by D.95-02-050, to fund the California High Cost Fund-A (Pub. Util. Code § 739.3; D.96-10-066, pp. 3-4, App. B, Rule 1.C; Resolution T-17299, dated November 19, 2010, effective December 1, 2010);
 - e. The current 0.300% surcharge applicable to all intrastate services except for those excluded by D.94-09-065, as

modified by D.95-02-050, to fund the California High Cost Fund-B (D.96-10-066, p. 191, App. B, Rule 6.F.; D.07-12-054); Resolution T-17311, dated March 24, 2011, effective May 1, 2011;

- f. The current 0.00% surcharge applicable to all intrastate services except for those excluded by D.94-09-065, as modified by D.95-02-050, to fund the California Advanced Services Fund (D.07-12-054); Resolution T-17248, dated December 17, 2009, effective January 1, 2010; and
- g. The current 0.079% surcharge applicable to all intrastate services except for those excluded by D.94-09-065, as modified by D.95-02-050, to fund the California Teleconnect Fund (D.96-10-066, p. 88, App. B, Rule 8.G, Resolution T-17142, dated April 24, 2008, effective June 1, 2008).

Note: These fees change periodically. In compliance with Resolution T-16901, December 2, 2004, Applicant should 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 charges until further revised.

- 3. 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).
- 4. Applicant is a non-dominant interexchange carrier (NDIEC). The effectiveness of its future NDIEC tariffs is subject to the requirements of General Order 96-B and the Telecommunications Industry Rules (D.07-09-019).
- 5. Tariff filings shall reflect all fees and surcharges to which Applicant is subject, as reflected in 2 above.
- 6. Applicant shall file a service area map as part of its initial tariff.
- 7. Prior to initiating service, Applicant shall provide the Commission's Consumer Affairs Branch with the name and address of its designated contact

person(s) for purposes of resolving consumer complaints. This information shall be updated if the name or telephone number changes, or at least annually.

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

9. Applicant shall notify the Director of the Communications Division in writing of the date interLATA service is first rendered to the public within five days after service begins, and again within five days after intraLATA service begins.¹

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

11. In the event Applicant's books and records are required for inspection by the Commission or its staff, it shall either produce such records at the Commission's offices or reimburse the Commission for the reasonable costs incurred in having Commission staff travel to its office.

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

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

¹ California is divided into 10 Local Access and Transport Areas (LATAs), each containing numerous local telephone exchanges. InterLATA describes services, revenues and functions relating to telecommunications originating within one LATA and terminating in another LATA. IntraLATA describes services, revenues and functions relating to telecommunications originating within a single LATA.

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

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

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

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

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

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

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

21. Applicant shall send a copy of this decision to concerned local permitting agencies not 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 shall be filed with the California Public Utilities Commission, State Office Building, 505 Van Ness Avenue, Room 3107, San Francisco, CA 94102-3298, no later than March 31st of the year following the calendar year for which the annual report is submitted.

Failure to file this information on time may result in a penalty as provided for in §§ 2107 and 2108 of the Public Utilities Code.

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

1. Each utility shall 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 shall 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 should 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 should be clearly noted.

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

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

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

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

(END OF ATTACHMENT D)