

Decision 11-12-014 December 1, 2011

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of California Broadband Cooperative, Inc. for Authority to Operate as a Competitive Provider of Full Facilities-Based and Resold Local Exchange and Interexchange Telecommunications Service within the State of California.

Application 11-09-010
(Filed September 16, 2011)

DECISION GRANTING CALIFORNIA BROADBAND COOPERATIVE, INC. A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY IN ORDER TO PROVIDE FULL FACILITIES-BASED AND RESOLD LOCAL EXCHANGE AND INTEREXCHANGE TELECOMMUNICATION SERVICES

1. Summary

California Broadband Cooperative, Inc. (CBC) filed an application for a certificate of public convenience and necessity (CPCN) for authority to operate as a competitive provider of full facilities-based and resold competitive local exchange and nondominant interexchange telecommunication services within the State of California. Specifically, CBC requested authority to operate as a full facilities-based local exchange carrier in the territories currently served by Pacific Bell Telephone Company dba AT&T California, Verizon California Inc., SureWest Telephone (formerly Roseville Telephone Company), and Frontier Communications of California and Citizens Long Distance (collectively "Frontier

Communications")¹ and as a non-dominant interexchange carrier in the entire State of California.

By this decision, we grant a CPCN to CBC to provide full facilities-based and resold local exchange and interexchange telecommunication services on the terms and conditions set forth in the ordering paragraphs.

2. Background

On September 16, 2011 California Broadband Cooperative, Inc. (CBC) filed an application for a certificate of public convenience and necessity (CPCN) to provide full facilities-based and resold local exchange telecommunication services in the service territories of Pacific Bell Telephone Company dba AT&T California (AT&T), Verizon California Inc. (Verizon), SureWest Telephone (SureWest), and Frontier Communications of California and Citizens Long Distance, and full facilities-based and resold intrastate interexchange telecommunication services within California. Included with the CBC application was a Motion For Leave To File Confidential Materials (Exhibits 4 thru 7) Under Seal pursuant to Pub. Util. Code § 583 and General Order 66-C.

On September 21, 2011 CBC filed a Motion to Strike Reference to Frontier Communications of the Westcoast, Inc. from the application because that

¹ CBC identified Frontier Communications of California and Citizens Long Distance as the d/b/a/s of Frontier Communications of the West Coast Inc., Frontier Communications of the Southwest, Inc., Citizens Telecommunications Co. of Ca., and Frontier Communications of America, Inc. A review of the Frontier utilities registered with the Commission, however, identifies the Frontier entities in California as the following: Citizens Telecommunications Company of Ca., Inc., d/b/a Frontier Communications of California; Frontier Communications West Coast Inc.; Frontier Communications of the Southwest Inc.; Frontier Communications Online and Long Distance Inc.; and Frontier Communications Company of America. We refer herein to these entities as "Frontier Communications."

company is a rate-regulated telecommunication carrier whose territory is not yet open to competition.

In its application, CBC seeks to provide full facilities-based and resold local exchange services and intrastate interexchange services to business customers and other certificated carriers throughout the state of California. CBC asserts that it will provide services through a combination of its own facilities and unbundled network elements from incumbent local exchange carriers (ILECs). Although it seeks statewide authority, CBC asserts that it initially intends to offer facilities-based local exchange services as part of its Digital 395 Middle Mile network, which will provide wholesale middle mile broadband and backhaul services in the Counties of Inyo, Mono, San Bernardino and Kern. CBC asserts that it anticipates that its middle mile services will be provided to wholesale customers and other prospective members, including government, education and medical agencies, telephone, wireless, cable, and Internet Service Providers.

CBC also seeks authority to resell the local exchange and interexchange services of other carriers to business customers throughout the state. CBC asserts that it intends to resell local exchange service and switched and dedicated interexchange carrier services. CBC seeks such statewide resale authority because it will permit CBC to serve those customers in the state that it would be unable to serve by means of its own facilities-based operations.

CBC has been awarded grants totaling \$100,443,505 through California Advanced Services Fund (CASF) funding of \$19,294,717² and American Recovery

² See Resolution T-17232 (describing CBC's "Digital 395 project" for which it conditionally received a California Advanced Services Fund grant).

and Reinvestment Act of 2009 (ARRA) funding of \$81,148,788³. CBC will expend these funds to deploy a broadband telecommunications network within existing public rights of-way and on public/private property in the Counties of Inyo, Mono, San Bernardino and Kern. Such network will operate utilizing a newly deployed Voice over Internet Protocol Class 5 end office switch and a SONET-based passive optical network transmission platform. The system will also include facilities to provide switching, routing and transmission, network management and associated support systems, including backup power sources. Local distribution loops will be constructed using optical fiber cables and other telecommunications transmission media. Further, CBC believes that the system design will coincide with the specifications in the description that it provided with its CASF Application.

CBC asserts that the annual fixed and operating costs of its operations are expected to be well within the financial resources available to CBC through the procurement of financing and anticipated revenues. CBC asserts that the financing will be secured by revenues generated from operating the network and through an interest in the network facilities.

CBC's principal place of business is located at 1101 Nimitz Avenue, Vallejo, CA 94592.

3. California Environmental Quality Act (CEQA)

CEQA requires that the Commission act as the designated lead agency for this project to assess the potential environmental impact of a project in order that adverse effects are avoided, alternatives are investigated, and environmental

³ See NTIA Awarded Grants (<http://www2.ntia.doc.gov/grantee/california-broadbandcooperative-inc>).

quality is restored or enhanced to the fullest extent possible. On November 10, 2011, the Commission approved Resolution T-17347 which adopted the Final Initial Study and Mitigated Negative Declaration prepared for the CBC project in accordance with the CEQA Guidelines, the Public Resources Code, and Commission Resolution T-17232. We incorporate that decision into this decision by reference.

In its application, CBC proposed construction activities that will generally include, but not be limited to, micro-trenching, regular trenching, directional bore digging, installation of underground conduit in existing rights-of-way and utility easements, replacement of existing utility poles, installation of new poles, and installation of underground vaults to accommodate communications equipment. Construction will take place in existing rights-of-way and utility easements.

CBC asserts that, in most cases, it will operate by installing equipment in or on existing poles, towers, buildings, fiber, conduits, ducts, rights-of-way, trenches and other facilities and structures of other entities. CBC specifically notes that it may engage in activities such as micro-trenching, regular trenching at a typical depth of 1-3 feet and typical width of 1-6 inches, and installation of underground conduit (average diameter of 1-4 inches) in existing rights-of-way and utility easements (trenching and underground conduit installation). CBC may also replace existing utility poles (performed at a utility's request or to meet applicable engineering and safety standards), install new poles where existing ones are not available, and install underground vaults to accommodate communications equipment where such construction is required, typically by a city or municipality. Occasionally, a portion of this activity will take place on private property in existing easements. In some cases, underground conduit

installation will involve use of a directional bore method in addition to or instead of trenching. Specific projects are unknown and speculative at this time.

These activities may fall within the following (Non-Exhaustive) classes of projects that are exempt from CEQA and for which neither an Environmental Impact Report nor a Negative Declaration is required.

- Class 3 Exemption: construction including water main, sewage, electrical, gas and *other extensions of reasonable length* to serve such construction. This includes the construction of limited numbers of new small facilities or CBC extensions. 14 CCR § 15303.
- Class 4 Exemption: minor public or private alterations in the condition of land, water, and/or vegetation which do not involve the removal of healthy, mature, scenic trees except for forestry and agricultural purposes. Among other things, this includes *filling of earth into previously excavated land with material compatible with the natural features of the site, and minor trenching and backfilling* where the surface is restored. 14 CCR § 15304.
- Class 32 (“in fill”) Exemption: applies where: i) the projects are consistent with the applicable general plan designation and applicable general plan policies and applicable zoning designation and regulation; ii) proposed development occurs within city limits on a project site of more than five acres substantially surrounded by urban uses; iii) the project site has no value as habitat for endangered, rare or threatened species; iv) approval of the project would not result in significant effects relating to traffic, noise, air quality, or water quality; and v) the site can be adequately served by all required utilities and public services. 14 CCR § 15332.

CBC’s proposed activities would involve: 1) construction of reasonably short extensions (Class 3); 2) ground disturbing activity limited to primarily minor trenching and back filling (Class 4); and will occur in heavily developed urban and suburban areas which meet the criteria for urban in-fill (Class 32).

CBC requests leave 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 generally tracks the expedited review process that we have approved for other carriers.⁴ Such a process will expedite CEQA review and is appropriate for any type of construction that is 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 explain why further environmental review is required. At the same time, the proposed CEQA review process will enable CBC to undertake construction of its projects in a timely manner.

Similar to the procedure approved for other carriers,⁵ the following procedure will be used to obtain Commission approval of CBC's claimed CEQA exemptions for proposed construction projects:

- CBC 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.

⁴ See Decision (D.) 10-12-004 (Mobilitie, LLC); D.08-12-027 (ATC Outdoor DAS); D.10-04-038 (SnowCrest Telephone, Inc.); D.10-01-014 (Pacific Lightwave); D.09-11-021 (Freedom Telecommunications, Inc.); D.09-07-043 (PublicWireless, Inc.).

⁵ See e.g., D.06-04-030 (NewPath Networks, LLC); D.06-04-063 (ClearLinx Network Corporation); D.06-06-047 (Sunesys, Inc.); D.08-12-027 (ATC Outdoor DAS, LLC); D.07-04-045 (NextG Networks of California, Inc.); D.07-08-026 (Broadband Associates International); and D.07-11-028 (Trillion Partners, Inc.).

- 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 CBC's submission for the proposed project to confirm that the claimed exemption(s) from CEQA are applicable.
- Within 21 days from the date of CBC's submittal, the Energy Division will issue either:
 - A Notice to Proceed (NTP) and file a Notice of Exemption with the State Clearinghouse, Office of Planning and Research, or

- A letter of denial stating the specific reasons why the claimed exemption(s) are not applicable to the proposed project.

We have reviewed the application and find that:

- CBC'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 CBC'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 CBC 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 authorize CBC to follow the process described in the order herein, for Commission review of claimed CEQA exemptions for construction projects undertaken pursuant to CBC's full facilities-based authority 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 CBC's claimed CEQA exemption(s), and issues a letter of denial to CBC, CBC 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.

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

We have previously determined that the public convenience and necessity require that competition be allowed in the provision of competitive local

exchange service, Rulemaking 95-04-043/Investigation 95-04-044. Granting this application will benefit the public interest by expanding the availability of technologically advanced telecommunications services within the state.

4. Financial Qualifications

Pursuant to Rule 4.B of Decision (D.) 95-12-056, an applicant for a CPCN for authority to provide facilities-based local exchange service must demonstrate that it has \$100,000 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.

CBC has been awarded grants totaling \$100,443,505 through state and federal grant programs. In Exhibit 5 to the application, CBC provides financial forecasts for years 1 through 8, in Exhibit 6 they provide a copy of a current bank statement, and in Exhibit 7 they provide a projection of customer connections for years 1 through 5. In those documents, CBC has provided documentation that it possesses in excess of the required 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.

5. Managerial and 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.⁶ CBC supplied biographical information on its management that demonstrates

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

that it has sufficient expertise and training to operate as a telecommunications provider.

CBC verified that no one associated with or employed by CBC as an affiliate, officer, director, partner, or owner of more than 10% of CBC 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.

CBC also verified that no one associated with or employed by it as an affiliate, officer, director, partner, or owner of more than 10% of CBC was previously associated with any telecommunications carrier that filed for bankruptcy, or has been found either civilly or criminally liable by a court of appropriate jurisdiction for a violation of Sections 17000, et seq. of the California Business and Professions Code, or for any actions which involved misrepresentations to consumers, nor is currently under investigation for similar violations.

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

6. Tariffs

CBC requests an exemption from the tariffing requirements, pursuant to the Commission's General Order 96-B, Telecommunications Industry Rule 5.14 because CBC does not intend to offer residential services. CBC asserts that it will offer its services pursuant to individual contracts with customers, on a nondiscriminatory basis, and individual case basis. CBC's request for exemption is granted, consistent with D.07-09-018.

7. Request for Treatment as a Non-Dominant Interexchange Carrier and Exemption from Specific Provisions of Pub. Util. Code § 851

CBC requests that, in connection with its authorization as a competitive local exchange carrier (CLC), it be accorded the same streamlined regulatory treatment previously accorded to other CLCs, and non-dominant interexchange carrier treatment, 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 CBC 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 CBC's request for non-dominant carrier status, provided that they follow all rules detailed in the above referenced decisions.

8. Request for Exemption from the Requirement to Keep its Books and Records in Accordance with the Uniform System of Accounts

CBC requests that it be exempted from any requirement to maintain its books and records in accordance with the Uniform System of Accounts specified in Title 47 I.E Part 32. CBC asserts that it is not part of an ILEC corporate entity and should therefore be exempted from the requirement to keep their books of account in conformance with the Uniform System of Accounts as we did for all CLEC's in D.99-02-038. We agree and cite D.07-04-024 as additional authority to do so.

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.⁷ In Exhibit 3 to its application, CBC provided a map of the location of its proposed service territory, in compliance with this requirement.

10. Expected Customer Base

CBC provided its estimated customer base for the first, second, third and fifth years of operation in Exhibit 7 to the application. Therefore, CBC has complied with this requirement.

11. Conclusion

We conclude that the application conforms to our rules for certification as a competitive provider of full facilities-based and resold competitive local exchange and nondominant interexchange telecommunication services within the State of California. Accordingly, we grant CBC a CPCN to operate as a full facilities-based local exchange carrier in the territories currently served by AT&T, Verizon, SureWest, and Frontier Communications and as a non-dominant interexchange carrier in the entire State of California, subject to compliance with the terms and conditions set forth in the Ordering Paragraphs.

12. Categorization and Need for Hearing

In Resolution ALJ 176-3281, dated September 22, 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

⁷ D.95-12-056 at Appendix C, Rule 4.E.

these developments, a public hearing is not necessary, and it is not necessary to disturb the preliminary determinations.

13. Waiver of Comment Period

No protests were filed in this proceeding. Therefore, this is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Section 311(g)(2) of the Public Utilities Code and Rule 14.6(c)(2) of the Commission's Rules of Practice and Procedure, the otherwise applicable 30-day period for public review and comment is waived.

14. Assignment of Proceeding

Catherine J. K. Sandoval is the assigned Commissioner and Richard W. Clark is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. California Broadband Cooperative, Inc. (CBC) filed an application, on September 16, 2011, for a certificate of public convenience and necessity (CPCN) for authority to operate as a competitive provider of full facilities-based and resold competitive local exchange and nondominant interexchange telecommunication services within the State of California.

2. CBC requested authority to operate as a full facilities-based local exchange carrier in the territories currently served by AT&T, Verizon, SureWest, and Frontier Communications and as a non-dominant interexchange carrier in the entire State of California.

3. On September 21, 2011 CBC filed a Motion to Strike reference to Frontier Communications of the Westcoast, Inc. from the application because that company is a rate-regulated telecommunications carrier whose territory is not yet open to competition.

4. CBC has been awarded grants totaling \$100,443,505 through state (CASF funding of \$19,294,717)⁸ and federal (ARRA funding of \$81,148,788)⁹ grant programs.

5. CBC requested an exemption from the tariffing requirements, pursuant to the Commission's General Order 96-B, Telecommunications Industry Rule 5.14 because CBC does not intend to offer residential services.

6. CBC requested that it be exempted from the requirements of Pub. Util. Code §§ 816-830 concerning stocks and security and § 851 concerning the encumbrance and transfer of CBC property.

7. CBC requested that it be exempted from any requirement to maintain its books and records in accordance with the Uniform System of Accounts specified in Title 47 I.E Part 32.

8. The environmental impacts of CBC's middle mile network has already been studied by the Commission and a Mitigated Negative Declaration (MND) was approved in Resolution T-1737 on November 10, 2011, consistent with CEQA. Applicant is seeking authority to undertake certain construction activities pursuant to this CPCN application, in addition to those studied in the MND, that it believes are exempt from CEQA but subject to the 21-day process for obtaining review and approval of such construction by the Commission Energy Division staff.

⁸ See Resolution T-17232 (describing CBC's "Digital 395 project" for which it conditionally received a California Advanced Services Fund grant).

⁹ See NTIA Awarded Grants (<http://www2.ntia.doc.gov/grantee/california-broadbandcooperative-inc>).

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

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

11. CBC 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.

12. CBC's management possesses sufficient experience, knowledge, and technical expertise to provide local exchange and inter-exchange services to the public.

13. No one associated with or employed by CBC as an affiliate, officer, director, partner, or owner of more than 10% of CBC 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.

14. No one associated with or employed by it as an affiliate, officer, director, partner, or owner of more than 10% of CBC 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 Sections 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.

15. In Exhibit 3 to its application, CBC provided a map of the location of its proposed service territory.

16. CBC provided an estimate of its customer base for the first, second, third and fifth year of operation.

17. Pursuant to Rule 11.4, Applicants filed a motion for leave to file confidential materials under seal, including Exhibits 4 through 7 to the application.

Conclusions of Law

1. CBC should be granted a CPCN to provide full facilities-based and resold competitive local exchange telecommunication services in the territories currently served by AT&T, Verizon, SureWest, and Frontier Communications and as a non-dominant interexchange carrier in the entire State of California, subject to compliance with the terms and conditions set forth in the Ordering Paragraphs.

2. CBC should be allowed to use the Energy Division 21-day CEQA exemption process for aspects of the project not covered by Resolution T-17347.

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

4. CBC should be granted an exemption from our tariff filing requirements pursuant to the Commission's General Order 96-B, Telecommunications Industry Rule 5.14.

5. CBC should be granted an exemption from requirements of Pub. Util. Code §§ 816-830 concerning stocks and security and § 851 concerning the encumbrance and transfer of CBC property.

6. CBC should be granted an exemption from any requirement to maintain its books and records in accordance with the Uniform System of Accounts specified in Title 47 I.E Part 32.

7. Applicants' motion to file their Exhibits 4 through 7 to the supplement to the application under seal should be granted for two years.

O R D E R

IT IS ORDERED that:

1. A certificate of public convenience and necessity is granted to the California Broadband Cooperative, Inc., to provide full facilities-based and resold competitive local exchange telecommunication services in the territories currently served by Pacific Bell Telephone Company dba AT&T California, Verizon California, Inc., SureWest Telephone (formerly Roseville Telephone Company), and Frontier Communication as a non-dominant interexchange carrier in the entire State of California, subject to compliance with the terms and conditions set forth below.

2. The certificate of public convenience and necessity granted and the authority to render service under rates, charges, and rules authorized herein will expire if not exercised within 12 months after the effective date of this order.

3. The corporate identification number assigned to California Broadband Cooperative, Inc., U 7221, 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. California Broadband Cooperative, Inc. may seek authorization to construct facilities which may be subject to an exemption from the requirements of the California Environmental Quality Act, pursuant to the process set forth in section 3 of the body of this order. For other types of projects, California Broadband Coalition, Inc. shall apply for Commission authorization and undergo any required environmental review before commencing construction.

5. The California Environmental Quality Act review process adopted in today's decision is appropriate for the projects as described in the application. A different level of California Environmental Quality Act review may be required, should California Broadband Coalition, Inc. propose different types of construction projects.

6. The staff of the Commission's Energy Division is authorized to review, process, and act upon California Broadband Coalition, Inc. requests for a determination that its proposed construction activities are exempt from the requirements of the California Environmental Quality Act.

7. 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, California Broadband Cooperative, Inc. shall be subject to all applicable Commission rules, decisions, General Orders and statutes that pertain to California public utilities.

8. California Broadband Cooperative, Inc.'s motion to file their Exhibits 4 through 7 to supplement the application under seal is granted. The information will remain under seal for a period of two years after the date of issuance of this order. During this two-year period, this information will remain under seal and may not be viewed by any person other than the assigned Commissioner, the assigned Administrative Law Judge (ALJ), the Assistant Chief ALJ, or the Chief

ALJ, except as agreed to in writing by California Broadband Cooperative, Inc. or their successors in interest, or as ordered by a court of competent jurisdiction. If California Broadband Cooperative, Inc. or its successors in interest, believe that it is necessary for this information to remain under seal for longer than two years, California Broadband Cooperative, Inc., or their successors in interest may file a new motion at least 30 days before the expiration of this limited protective order.

9. Application 11-09-010 is closed.

This order is effective today.

Dated December 1, 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
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Exemption from filing tariffs is granted.

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 1.150% 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 0.200% 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 either 0.180% 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, at 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 0.140% 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-17343, dated September 22, 2011, effective November 1, 2011; and
- g. The current 0.079% surcharge applicable to all intrastate services except for those excluded by D.94-09-065, as modified by D.95-02-050, to fund the California Teleconnect Fund (D.96-10-066, at 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. The decision granting this application exempts the California Broadband Coalition, Inc. from the requirement to file tariffs with the Commission.
- 4. 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.
- 5. 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.
- 6. 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

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

8. 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.

9. 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.

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

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

12. 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.

13. If Applicant is 90 days or more late in filing an annual report, or in remitting the surcharges and fee listed in 2 above, the Communications Division

¹ California is divided into ten 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.

shall prepare for Commission consideration a resolution that revokes Applicant's CPCN unless it has received written permission from the Communications Division to file or remit late.

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

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

16. 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.

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

18. 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.

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)