

Decision 12-06-028 June 21, 2012

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of RCLEC, Inc. for a Certificate of Public Convenience and Necessity to Provide Resold and Limited Facilities-Based Local Exchange and Interexchange Telecommunications Services within California.

Application 12-04-012
(Filed April 6, 2012)

DECISION GRANTING A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO RCLEC, INC.

1. Summary

RCLEC, Inc. (Applicant) is granted a certificate of public convenience and necessity to provide resold and limited facilities-based competitive local exchange and interexchange telecommunications services in California subject to the terms and conditions set forth below. This application is unopposed. This proceeding is closed.

2. Background

In prior decisions, we have authorized the provision of competitive local exchange service,¹ by carriers meeting specified criteria, within the service territories of Pacific Bell Telephone Company dba AT&T California (AT&T), Verizon California Inc. (Verizon), Citizens Telecommunications Company of

¹ A competitive local exchange carrier (CLEC) is a common carrier that is issued a certificate of public convenience and necessity (CPCN) to provide local exchange telecommunications service for a geographic area specified by such carrier.

California, Inc. dba Frontier Communications of California (Frontier), and SureWest Telephone (SureWest).

Applicant, a Delaware corporation, filed an application for a CPCN to provide resold and limited facilities-based interexchange telecommunications services statewide, and competitive local exchange services in the service territories of AT&T, Verizon, Frontier, and SureWest. Applicant's principal place of business is located at 1400 Fashion Island Blvd., 7th Floor, San Mateo, CA 94404. Applicant's telephone number is (650) 472-4100.

3. California Environmental Quality Act (CEQA)

CEQA requires the Commission act as the designated lead agency to assess the potential environmental impact of a project in order that adverse effects are avoided, alternatives are investigated, and environmental quality is restored or enhanced to the fullest extent possible. Applicant will provide its service through the use of existing facilities and network elements of other carriers and/or through its own facilities, installed within existing buildings and structures, and has no other plans for constructing other facilities at this time. Therefore, it can be seen with certainty that there is no possibility that granting this application will have an adverse impact upon the environment. Applicant must file for additional authority, and submit to any necessary CEQA review, before it can construct other types of facilities.

4. Financial Qualifications

To be granted a CPCN, an applicant for authority to provide limited facilities-based and resold local exchange services must demonstrate that it has a minimum of \$100,000 in cash or cash equivalent to meet the firm's start-up

expenses.² 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.³

Applicant has filed a financial guarantee from its parent company, RingCentral, Inc., and bank statements for its parent company, which demonstrate that Applicant meets the above financial requirements for the issuance of a CPCN authorizing the provision of limited facilities-based services in this state.

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.⁴ Applicant supplied biographical information on its management that demonstrated that it has sufficient expertise and training to operate as a telecommunications provider.

Applicant represents that neither Applicant nor any affiliate, officer, director, partner, or owner of more than 10% of Applicant was previously associated with a telecommunications carrier that filed for bankruptcy, was sanctioned by the Federal Communications Commission or any state regulatory agency for failure to comply with any regulatory statute, rule, or order, or has been found either civilly or criminally liable by a court of appropriate jurisdiction

² The financial requirement for CLECs is contained in Decision (D.) 95-12-056, Appendix C.

³ The requirement for CLEC applicants to demonstrate that they have additional financial resources to meet any deposits required by underlying local exchange carriers and/or IECs is set forth in D.95-12-056, Appendix C.

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

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.

5. Tariffs

RCLEC, in its application, requests a waiver to file a limited facilities-based local exchange tariff and interexchange tariff. RCLEC intends to offer its services at rates that are competitive with the rates of the incumbent local exchange carriers and will provide its rates on its website. RCLEC's request for exemption to file tariffs is granted, consistent with D.07-009-018.

Applicant must abide by the consumer protection rules adopted in D.98-08-031, as modified from time to time.

6. 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.⁵ Applicant has complied with this requirement.

7. Expected Customer Base

Applicant is required to provide its estimated customer base for the first and fifth years of operation in its application. Applicant has complied with this requirement.

8. Conclusion

We conclude that the application conforms to our rules for certification as a competitive local exchange and interexchange carrier. Accordingly, we approve the application subject to the terms and conditions set forth herein.

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

9. Request to File Under Seal

Applicant requests that the financial information filed with the application be filed under seal. The financial information consists of financial statements. Applicant represents that the information is proprietary and sensitive. We have granted such requests in the past, and it is reasonable to do so here. In keeping with our standard practice, the financial information shall be kept confidential for two years after the date of this decision.

10. Waiver of Comments

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), the otherwise applicable 30-day period for public review and comment is waived.

11. Categorization and Need for Hearings

In Resolution ALJ 176-3293, dated May 10, 2012, 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.

12. Assignment of Proceeding

Catherine J.K. Sandoval is the assigned Commissioner and Myra J. Prestidge is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. Notice of the application appeared on the Daily Calendar on April 23, 2012. A hearing is not required.

2. In prior decisions, the Commission authorized competition by carriers meeting specified criteria in providing local exchange telecommunications services within the service territories of AT&T, Verizon, SureWest and Frontier.

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

4. Applicant 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.

5. Applicant possesses sufficient experience, knowledge, and technical expertise to provide telecommunications services.

6. Applicant requested a waiver to file a limited facilities-based local exchange tariff and interexchange tariff. Applicant's request for exemption is granted, consistent with D.07-09-018. Applicant must abide by the consumer protection rules adopted in D.98-08-031, as modified from time to time.

7. Applicant will not be constructing facilities except within existing buildings or structures.

Conclusions of Law

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

2. Applicant's request to file its financial information under seal should be granted for a period of two years from the date of this decision, consistent with our standard practice.

3. Applicant has sufficient technical expertise to operate as a telecommunications carrier.

4. Public convenience and necessity require that Applicant's resold competitive local exchange and interexchange services be subject to the terms and conditions set forth herein.

5. Since Applicant will not be constructing any facilities, except within existing buildings or structures, it can be seen with certainty that there will be no significant effect on the environment, and no environmental review pursuant to the CEQA is required.

6. Applicant's request for exemption from filing tariffs is granted, consistent with D.07-09-018. Applicant must abide by the consumer protection rules adopted in D.98-08-031, as modified from time to time.

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

8. The initial tariff filing of Applicant should correct the deficiencies noted in its draft tariffs as indicated in Attachment A to this decision.

9. Because of the public interest in competitive local exchange services, the following order should be effective immediately.

O R D E R

IT IS ORDERED that:

1. A certificate of public convenience and necessity is granted to RCLEC, Inc., to operate as a limited facilities-based and resale provider of local exchange and interexchange services in this state subject to the terms and conditions set forth below.

2. RCLEC, Inc., is authorized to provide local exchange service in the service territories of Pacific Bell Telephone Company dba AT&T California, Verizon California Inc., SureWest Telephone, and Citizens Telecommunications

Company of California, Inc., dba Frontier Communications of California, and interexchange services statewide.

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

4. Applicant is exempt from filing limited facilities-based local exchange tariff and interexchange tariff consistent with Decision (D.) 07-09-018. Applicant must abide by the consumer protection rules adopted in D.98-08-031, as modified from time to time.

5. The corporate identification number assigned to RCLEC, Inc., U7232, shall be included in all original filings with this Commission and in the titles of other pleadings filed in existing cases.

6. In addition to all the requirements applicable to competitive local exchange and interexchange carriers included in Attachments B, C, and D to this decision, RCLEC, Inc., is subject to the Consumer Protection Rules contained in General Order 168, and all applicable Commission rules, decisions, General Orders, and statutes that pertain to California public utilities.

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

8. RCLEC, Inc., must annually pay the user fee and public purpose surcharges specified in Attachment B. Per the instructions in Exhibit E to Decision 00-10-028, the Combined California Public Utilities Commission Telephone Surcharge Transmittal Form must be submitted even if the amount due is \$0. 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 should report user fees even if the amount due is \$0.

9. Prior to initiating service, RCLEC, Inc., must provide the Commission's Consumer Affairs Branch with the name(s) and address(es) 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.

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

11. RCLEC, Inc., must file an affiliate transaction report with the Director of the Communications Division, in compliance with Decision 93-02-019, on a calendar year basis using the form contained in Attachment D.

12. RCLEC, Inc., must file an annual report with the Director of the Communications Division, in compliance with General Order 104-A, on a calendar-year basis with the information contained in Attachment C to this decision.

13. RCLEC, Inc. is not authorized to construct facilities other than those to be installed in existing buildings and structures.

14. RCLEC, Inc.'s financial statements and bank statements shall be filed under seal and shall remain under seal for a period of two years after the date of this order. While under seal, these records may not be inspected by or disclosed to persons other than the assigned Commissioner and his staff, the assigned Administrative Law Judge (ALJ), the Law and Motion ALJ, the Assistant Chief ALJ or the Chief ALJ, except as otherwise agreed to in writing by RCLEC, Inc. or as ordered by a court of competent jurisdiction. If RCLEC, Inc., believes that it is

necessary for this information to remain under seal for longer than two years, RCLEC, Inc., shall file a new motion at least 30 days before the expiration of this limited protective order.

15. Application 12-04-012 is closed.

This order is effective today.

Dated June 21, 2012, at San Francisco, California.

MICHAEL R. PEEVEY

President

TIMOTHY ALAN SIMON

MICHEL PETER FLORIO

CATHERINE J.K. SANDOVAL

MARK J. FERRON

Commissioners

Attachment A

Exemption from filing tariffs is granted.

(END OF ATTACHMENT A)

ATTACHMENT B

REQUIREMENTS APPLICABLE TO COMPETITIVE LOCAL EXCHANGE CARRIERS

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

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

- a. The 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 0.180% of gross intrastate revenue (Resolution M-4819), dated June 7, 2007, effective July 1, 2007);
- d. The current 0.000% 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,

¹ Written acceptance filed in this docket does not reopen the proceeding.

- 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 0.14% 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, 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 must check the joint tariff for surcharges and fees filed by Pacific Bell Telephone (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. 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. Tariff filings must reflect all fees and surcharges to which Applicant is subject, as reflected in #2 above.
- 5. Applicant must file a service area map as part of its initial tariff.
- 6. 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.

7. 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.

8. Applicant must notify the Director of the Communications Division in writing of the date local service is first rendered to the public within five days after service begins.

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

10. 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.

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

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

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

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

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

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

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

18. 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.

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

20. 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 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

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.

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)