

Decision 07-04-045 April 12, 2007

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of NextG Networks of California, Inc. (U 6745 C) to expand its existing Certificate of Public Convenience and Necessity [A.02-09-019, D.03-01-061] to include full Facilities-based Telecommunications Services.

Application 06-05-031
(Filed May 19, 2006)

**OPINION GRANTING REQUEST FOR EXPANDED
AUTHORITY AND EXPEDITED ENVIRONMENTAL REVIEW
AND ORDERING FURTHER ENFORCEMENT PROCEEDINGS**

We grant NextG Networks of California, Inc.'s (NextG) request for full facilities-based local exchange services authority and expedited environmental review, subject to the requirements and conditions stated below. Granting this authority is consistent with prior decisions and follows no issuance in this proceeding of a stop work order. Although we grant NextG's application, we order that a separate investigation be opened to consider whether NextG violated its limited facilities-based Certificate of Public Convenience and Necessity (CPCN) issued in Decision (D.) 03-01-061, when NextG engaged in ground-disturbing activity. The investigation also should consider whether NextG violated Rule 1.1 of the Commission's Rules of Practice and Procedure in failing to disclose to the Commission that it engaged in ground-disturbing activity. Further, NextG should be ordered to show cause why a penalty should not be imposed for any violations.

1. Background

In this application, NextG seeks approval of a process for expedited environmental review of facilities construction, consistent with the authority granted to ClearLinx Network Corporation (ClearLinx), now known as ExteNet Systems, Inc. (ExteNet), in D.06-04-063 and to CA-CLEC LLC in D.06-04-067, and expansion of its CPCN to full facilities-based authority. NextG provides radiofrequency transport services for wireless carriers and constructs transport networks consisting of a central switch-like hub and a system of fiber optic cables, remote nodes, and small antennae attached to poles and other structures. ExteNet and the League of California Cities and the City and County of San Francisco (Cities) protested the application. ExteNet alleges NextG has violated its limited facilities-based authority in constructing its distributed antenna system (DAS) networks and requests a stop work order. ExteNet's request for a stop work order was referred to the Commission's Energy Division by the Administrative Law Judge (ALJ). The Cities object to allowing the expedited review process to include the construction of new utility poles in underground utility districts. NextG replied to the protests, and the ALJ granted leave to ExteNet and NextG to file additional responsive pleadings, which they did on July 28 and August 8, 2006, respectively.

A prehearing conference (PHC) was held on September 13, 2006. On September 29, 2006, an assigned Commissioner's ruling and scoping memo issued. The scoping memo stated this proceeding would address whether the Commission should (1) grant NextG's request for authority as a facilities-based telecommunications carrier and for expedited review of facilities construction, and (2) initiate an enforcement investigation to address NextG's alleged violations of its limited facilities-based authority. The scoping memo confirmed

the ratesetting categorization and that hearings were necessary on the issue of alleged violations. Hearings were held on November 6 and 8, 2006 on the enforcement issue. Opening and reply briefs were filed on December 4 and 11, 2006, respectively.

The Energy Division's stop work order investigation was limited to environmental violations. The Energy Division monitored the discovery produced, the hearings, and the filed briefs as part of its stop work order investigation.

2. Stop Work Order

The Energy Division did not request that a stop work order be issued in this proceeding. Thus, the request for a stop work order is moot, and we may proceed with NextG's request for expanded authority and expedited environmental review. The procedural schedule contemplated issuance of an interim decision on the request for expanded authority after the Energy Division's investigation of the stop work order request and a final decision on whether enforcement proceedings were necessary. No interim decision issued, and this decision will resolve both issues. We first address NextG's request for expanded authority and expedited environmental review and then address whether enforcement proceedings are necessary to resolve the alleged violations of NextG's CPCN.

3. Facilities-Based CPCN

The requirements for the expanded CPCN authority requested by NextG here are the same as those previously met by NextG for its existing CPCN (U-6754 C), except for California Environmental Quality Act (CEQA)

requirements.¹ We have previously granted the expedited review process requested by NextG to two competitors, ExteNet and CA-CLEC LLC in D.06-04-063 and D.06-04-067. Therefore, we must determine whether NextG's proposed construction and process for requesting determinations of exemption from CEQA by Commission staff meet the requirements of CEQA and similarly should be approved.

NextG seeks authority in this application to modify its existing CPCN to include full facilities-based competitive local exchange service. NextG states that the location of its projects is not known at this time but that they will be geographically dispersed. NextG states that the proposed construction activities include: (1) new pole installations, (2) small-scale trenching and underground conduit installation, and (3) micro-trenching and installation of laterals. NextG states these activities are projects which are categorically exempt from CEQA.

Both in its application and in the record in this proceeding, NextG has demonstrated that its proposed projects take place in existing rights-of-way and in utility easements. NextG will install a limited number of new poles, will engage in small-scale trenching and underground conduit installation of up to five miles, and will do micro-trenching and installation of laterals of up to 25 feet. NextG states these activities fall within the extensions, minor alternations and infill exemptions to CEQA, so neither an environmental impact report nor a Negative Declaration is required.

¹ NextG also filed financial documentation. NextG relies on managerial biographical information filed with its original application. This information demonstrates that NextG otherwise meets the requirements for a full facilities-based CPCN.

NextG proposes the following procedure for obtaining Commission approval of its claimed CEQA exemptions for proposed construction projects and for comparable activities where a CEQA exemption is likely:

- NextG will provide the Commission's CEQA staff in the Energy Division with:
 - A description of the proposed project, including the environmental setting
 - A description of the proposed construction plan
 - A list of applicable CEQA exemptions
 - Documentation and factual support necessary to support a finding of categorical exemption.
- Within 21 days from the date of the submission, the Commission's 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.

The procedure NextG proposes conforms to the procedure adopted in D.06-04-063 and D.06-04-067. We will apply that procedure here. If the Energy Division disapproves NextG's claimed CEQA exemption(s), and issues a letter of denial to NextG, NextG shall 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.

NextG 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. This procedure shall remain in place unless we adopt different requirements in Rulemaking (R.) 06-10-006.

The Cities are concerned that the expedited review process might include the installation of utility poles in underground districts. NextG states local ordinances often grant exceptions for construction in those districts by utilities for communications services. Thus, the procedure we adopt here will apply to installing utility poles in underground districts where local jurisdictions grant such exceptions.

We conclude that the application conforms to our rules for authority to provide full facilities-based local exchange services. Accordingly, we shall approve the application subject to the terms and conditions set forth herein.

4. Enforcement Proceedings

NextG's limited facilities-based CPCN permits NextG to provide radiofrequency transport services involving construction in or on existing utility poles and other existing structures. (*See* D.03-01-061, D.06-01-006, D.06-07-036.) That authority does not include ground-disturbing activity. NextG admits it has engaged in ground-disturbing activity in the construction of DAS networks, including the installation of new underground conduit in existing public rights-of-way to either pull fiber or make lateral connections between equipment on a pole and fiber or bring power to nodes. However, NextG states it engaged in these ground-disturbing activities in reliance on the authority of its wireless carrier partners, for whom it is building the networks. Wireless carriers have

that authority, and NextG states that authority is sufficient for it to engage in new underground construction on behalf of those carriers.²

NextG originally applied for limited facilities-based authority in 2002, because it intended to install DAS networks and did not intend to engage in ground-disturbing activity. NextG's Proponent's Environmental Assessment (PEA), filed with Application 02-02-019, and refiled in Case (C.) 05-03-010, stated that NextG would install equipment exclusively in or on existing structures and facilities and would, if new construction of facilities was necessary to provision its services, comply with applicable rules and regulations in securing any expanded authority necessary for such construction. This application requests that authority while clarifying that NextG has operated within the confines of its current authority in constructing DAS networks. Specifically, NextG states:

[t]o date, NextG has been able to establish its network through the installation of its fiber on existing poles and in existing underground conduit in public rights-of-way and the installation of its microcells and antennas on existing poles in the public way. [footnote omitted] However, NextG now is facing difficulty in certain limited areas where existing poles and conduit in rights-of-way are not available or available only at a prohibitive cost. . . . As a result, NextG will have to engage in limited installation of new poles and underground conduit (through which it will pull fiber) in existing public rights-of-way and existing private utility easements. The installation of new poles and underground conduit is beyond the scope of NextG's existing limited facilities-based authority.

² NextG installs some networks using existing conduit. These networks are within NextG's existing limited facilities-based authority.

In this application, NextG's PEA details the new construction activity, which consists of installation of poles, small-scale trenching and micro-trenching. After ExteNet filed its protest, NextG admitted it engaged in ground-disturbing activity for a number of DAS projects between issuance of D.03-01-061 and the filing of its application. The amount of ground-disturbing activity between those periods was approximately one mile. During that timeframe, NextG did not affirmatively disclose to the Energy Division environmental staff that it was trenching, as NextG's Vice President of Government Relations, Robert Delsman, testified at the hearing.

NextG maintains that the ground-disturbing activity, with a few exceptions due to failure to follow its procedures, was done under the authority of its wireless carrier partners. Applications for permits authorizing trenching submitted to local jurisdictions were filed in NextG's and the wireless carriers' names.

NextG's application is silent on the wireless carrier partner arrangement. Instead, NextG states:

In certain instances, it may be the case that the wireless carrier to whom NextG will provide service will undertake certain of the new construction activities described herein pursuant to the wireless carrier's existing commercial mobile service (CMRS) authority and subject to the terms and conditions of General Order ("GO") 159-A.

This statement that some construction activities would be undertaken by the wireless carrier differs from NextG's current position that it engaged in ground-disturbing activity under the wireless carrier's authority. There are internal NextG e-mails that discuss the arrangement, but no agreement with the

wireless carriers formally discusses the terms under which such construction would occur.

Although an informal agreement may be sufficient to establish that NextG was using the authority of the wireless carriers to engage in ground-disturbing activities, the wireless carriers did not comply with our requirements for wireless carrier construction. NextG, on behalf of the wireless carriers and in its own name on several occasions, applied for and received necessary excavation permits from local jurisdictions. Although NextG understands our notification letter requirements under GO 159-A, before the protest to this application was filed, neither the wireless carriers for which NextG engaged in ground-disturbing activity nor NextG on their behalf submitted the GO 159-A notification letters necessary when land use approvals are required for cell siting and related construction activity. The one wireless carrier who complied with GO 159-A notification did so at a later date. The wireless carriers' failure to comply with our notification requirements belies NextG's claim that its arrangement with them was consistent with our rules and regulations.

Our earlier consideration of a proposed partnership arrangement for a CLEC does not support NextG's position that it could engage in new underground construction under the authority of the wireless carriers. That decision declined to authorize a limited facilities-based CLEC, Cmetric, authority to engage in construction activities through a partnership arrangement with other certificated carriers. (D.99-11-025, 1999 Cal. PUC LEXIS 746.) NextG states that decision is distinguishable, because it did not consider the partnership arrangement presented here, that of a CLEC partnering with a wireless carrier that has the required authority to trench.

NextG's arguments in favor of its partnership arrangement permitting ground-disturbing activity are not persuasive. Cmetric presented the Commission with a proposal to enter into a partnership arrangement with certificated carriers and we rejected the proposal, because we needed to study and appropriately mitigate the impacts of any construction. NextG did not present its proposed partnership arrangement to us for our consideration, so there was no opportunity for us to fulfill our role under CEQA to review the environmental impacts of the proposed construction. Further, since no GO 159-A notification letter was submitted for any construction prior to the filing of this application, we could not have ascertained whether local land use approvals had been received.

NextG also did not act as the agent of the wireless carriers while constructing transport networks. NextG admits it has an ownership interest in components of the DAS network it installs on behalf of wireless carriers. Although the arrangements between NextG and the wireless partners are detailed, no provision in the agreements NextG entered into with the wireless carriers places ownership of new underground construction completed by NextG in the wireless carriers' names. At a minimum, NextG continues to own most of the network it constructed under contracts entered into with the wireless carrier partners.

NextG has failed to persuade us that it engaged in new underground construction under the authority of its wireless carrier partners consistent with our regulations. NextG's ground-disturbing activities are extensive; NextG had trenched approximately 64 miles before this proceeding was submitted. Therefore, a separate investigation should be opened to consider NextG's

violation of its limited facilities-based authority, and NextG should be ordered to show cause why a penalty should not be assessed.

NextG was not forthright with us in discussing its ground-disturbing activities. Neither in the complaint case concerning the extent of its CLEC authority in constructing DAS networks (C.05-03-010) nor in its application did NextG disclose it was engaged in ground-disturbing activity. Only after ExteNet protested the application, did NextG admit its activities. Thus, the investigation we order should consider whether NextG violated Rule 1.1.

Although we find that an investigation should be opened to consider NextG's past behavior, NextG could have applied for and been granted full facilities-based authority, as we are doing in this decision, at the same time as ExteNet and CA-CLEC LLC. No environmental violations have been found for the new underground construction examined in this proceeding. To the contrary, NextG has demonstrated it complied with land use requirements of local jurisdictions and disturbed the ground to the minimal extent possible with small scale and micro-trenching. There also have been no complaints alleging environmental impacts. These factors should be considered in the investigation.

5. Request to File Under Seal

NextG requests that the financial information filed as Attachment B to this application be filed under seal. The financial information consists of NextG's financial statements. We have granted similar requests in the past, and we grant NextG's request here.

6. Comments on the Proposed Decision

The proposed decision of the ALJ in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and Rule 14.2(a).

Comments were filed on March 13, 2007, and reply comments were filed on March 19, 2007.

7. Assignment of Proceeding

Rachelle B. Chong is the assigned Commissioner and Janice Grau is the assigned ALJ in this proceeding.

Findings of Fact

1. In D.03-01-061, NextG was granted authority to provide limited facilities-based local exchange services. NextG provides radiofrequency transport services for wireless carriers and constructs transport networks consisting of a central switch-like hub and a system of fiber optic cables, remote nodes, and small antennae attached to poles and other structures.

2. NextG seeks expansion of its existing CPCN to obtain authorization to provide full facilities-based local exchange services by installing and operating DAS facilities. NextG seeks expedited environmental review of its proposed construction activities and comparable activities that likely will be categorically exempt from CEQA.

3. ExteNet protested the application because it alleged NextG had violated its limited facilities-based authority in constructing its DAS networks.

4. The Cities filed a protest to object to allowing the expedited environmental review to include the construction of new utility poles in underground utility districts.

5. In D.06-04-063 and D.06-04-067, ExteNet and CA-CLEC LLC, respectively were granted full facilities-based authority and an expedited environmental review procedure. NextG did not seek comparable authority until after the issuance of those decisions.

6. The proposed construction activities, including installation of poles, small-scale trenching and micro-trenching, are projects which potentially are categorically exempt from CEQA.

7. The procedure proposed by NextG, in which NextG would notify Commission Energy Division staff of the claimed CEQA exemptions and Commission Energy Division staff would review and act upon Applicant's claimed CEQA exemptions, has been adopted for other DAS carriers in D.06-04-063 and D.06-04-067.

8. NextG has met the requirements for issuance of a CPCN authorizing the provision of full facilities-based local exchange services.

9. NextG has engaged in ground-breaking activities in the construction of DAS networks. Between the issuance of D.03-01-061 and the filing of this application, NextG trenched a total of approximately one mile.

10. Most applications for permits for the DAS networks, including new underground construction, were submitted to local jurisdictions in NextG's and the wireless carriers' names. Some applications were submitted in NextG's name only.

11. GO 159-A requires notification letters when land use approvals are required for cell siting and related construction activity. Prior to the filing of this application, no GO 159-A letters were submitted by the wireless carriers for the DAS networks subject to land use approvals or NextG on their behalf.

12. In D.99-11-025, the Commission declined to authorize a limited facilities-based CLEC to engage in construction activities through a partnership arrangement with other certificated carriers.

13. NextG did not seek Commission authorization of a proposed partnership arrangement with wireless carriers to construct DAS networks.

14. NextG received no complaints about environmental concerns for construction of its DAS networks.

Conclusions of Law

1. Except for the requirement for additional environmental (CEQA) review, the requirements for a full facilities-based CPCN are generally the same as for a limited facilities-based CPCN.

2. NextG's description of its future construction projects and proposed process for Commission review of claimed CEQA exemptions for these projects, as described above, meet the requirements of CEQA, based on the specific facts of this case.

3. If the Commission subsequently adopts different requirements for review of claimed CEQA exemptions for telecommunications carriers generally in R.06-10-006, NextG should be subject to those requirements, as applicable.

4. Public convenience and necessity require NextG's full facilities-based local exchange services to be offered to the public subject to the terms and conditions set forth herein.

5. The application should be approved.

6. Upon approval of the application, NextG should be subject to the applicable Commission rules, decisions, GOs, and statutes that pertain to California public utilities.

7. NextG should remain subject to the requirement of D.03-01-061, its licensing decision.

8. It is reasonable to apply D.99-11-025's prohibition against CLEC partnerships with other certificated carriers to NextG's arrangement with wireless carriers to engage in ground-disturbing activities.

9. It is reasonable to open an investigation to consider whether NextG violated its limited facilities-based CPCN issued in D.03-01-061. NextG should be ordered to show cause why a penalty should not be imposed for any violations.

10. NextG's request to file its financial information under seal should be granted, to the extent set forth below.

11. 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 (CPCN) is granted to NextG Networks of California, Inc. (NextG) to operate as a full facilities-based provider of local exchange services in the service territories of Pacific Bell Telephone Company, Verizon California Inc., SureWest Telephone, and Citizens Telephone Company, subject to the terms and conditions set forth below. This authorization expands NextG's existing authority to provide limited facilities-based local exchange services in this state.

2. NextG is authorized to construct the facilities addressed in this decision only upon receiving prior Commission approval.

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

4. If NextG wishes to engage in full facilities-based construction activities and believes that these activities are exempt from CEQA, NextG shall first apply to

the Commission Energy Division staff for a determination of exemption from CEQA using the following procedure:

- A. NextG will provide the Commission Energy Division with:
 1. A detailed description of the proposed project, including:
 - a. Customer(s) to be served;
 - b. The precise location of the proposed construction project; and
 - c. Regional and local site maps.
 2. A description of the environmental setting, including at a minimum:
 - a. Cultural, historical, and paleontologic resources;
 - b. Biological resources; and
 - c. Current land use and zoning.
 3. A construction workplan, including:
 - a. Commission Preconstruction Survey Checklist – Archaeological Resources;
 - b. Commission Preconstruction Survey Checklist – Biological Resources;
 - c. A detailed schedule of construction activities, including site restoration activities;
 - d. A description of construction/installation techniques;
 - e. A list of other agencies contacted with respect to siting, land use planning, and environmental resource issues, including contact information; and
 - f. A list of permits required for the proposed project.
 4. A statement of the CEQA exemption(s) claimed to apply to the proposed project; and
 5. Documentation supporting the finding of exemption from CEQA.

- B. The Commission Energy Division will then review the submittal and notify NextG of either its approval or its denial of NextG's claim for exemption from CEQA review within 21 days from the time that NextG's submittal is complete.
- C. If the Commission Energy Division approves NextG's claimed CEQA exemption(s), the staff will prepare a Notice to Proceed (NTP) and file a Notice of Exemption with the State Clearinghouse, Office of Planning and Research.
- D. If the Commission Energy Division disapproves NextG's claimed CEQA exemptions, the staff will issue to NextG a letter which states the specific reasons that the claimed CEQA exemptions do not apply to the proposed project.
- E. If the Commission Energy Division disapproves NextG's claimed CEQA exemption(s), NextG shall 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 full facilities-based construction activities.

5. NextG shall not engage in any construction activity relating to a pending CEQA exemption request before receiving an NTP from Commission Energy Division staff.

6. If the Commission adopts different requirements for obtaining Commission review of proposed CEQA exemptions applicable to NextG in Rulemaking 06-10-006, NextG shall be subject to those requirements.

7. NextG remains subject to the requirements of Decision (D.) 03-01-061, which granted NextG a CPCN authorizing the provision of limited facilities-based local exchange services.

8. NextG will operate under its current tariffs. NextG shall comply with those tariffs.

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

10. The corporate identification number assigned to NextG, U 6745 C, shall be included in the caption of all original filings with this Commission, and in the titles of other pleadings filed in existing cases.

11. NextG shall comply with all applicable rules adopted in the Local Exchange Competition proceeding (Rulemaking 95-04-043/ Investigation 95-04-044), as well as all other applicable Commission rules, decisions, General Orders, and statutes that pertain to California public utilities, subject to the exemptions granted in this decision.

12. NextG shall comply with the requirements applicable to competitive local exchange carriers included in Attachments A, B, and C to this decision.

13. NextG's financial statements and information filed as Attachment B to the application shall be filed under seal and shall remain under seal for a period of two years after the date of this order. During this two-year period, the information filed as Attachment B to the application shall remain under seal and shall 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 Applicant or as ordered by a court of competent jurisdiction. If NextG believes that it is necessary for this information to remain under seal for longer than two years, NextG shall file a new motion at least 30 days before the expiration of this limited protective order.

14. An investigation and order to show cause shall be opened to consider whether NextG violated the authority granted it in D.03-01-061 and Rule 1.1 of the Commission's Rules of Practice and Procedure.

15. Hearings were necessary in this proceeding.
16. Application 06-05-031 is closed.

This order is effective today.

Dated April 12, 2007, at San Francisco, California.

MICHAEL R. PEEVEY
President
DIAN M. GRUENEICH
JOHN A. BOHN
RACHELLE B. CHONG
TIMOTHY ALAN SIMON
Commissioners

ATTACHMENT A

REQUIREMENTS APPLICABLE TO COMPETITIVE LOCAL EXCHANGE 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 fee 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 zero.

- a. The current 1.15% surcharge applicable to all intrastate services except or 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 0.37% 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 Relay Service and Communications Devices Fund (Pub. Util. Code § 2881; D.98-12-073 and Resolution T-17072, dated March 1, 2007, effective April 1, 2007);
- c. The user fee provided in Pub. Util. Code §§ 431-435, which is 0.11% of gross intrastate revenue (Resolution M-4816), dated March 15, 2006, effective April 1, 2006;
- d. The current 0.21% 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-16963, dated December 1, 2005, effective January 1, 2006);

A.06-05-031 ALJ/JLG/sid

- e. The current 1.30% 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., Resolution T-17078, dated March 1, 2007, effective April 1, 2007); and
- f. The current 0.13% 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-16888, dated December 1, 2005, effective January 1, 2006).

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 (dba SBC California) and apply the current surcharge and fee amounts in that joint tariff on end-user bills until further revised.

3. Applicant is a competitive local exchange carrier (CLC). The effectiveness of its future tariffs is subject to the schedules set forth in Appendix C, Section 4.E of D.95-12-056:

“E. CLCs shall be subject to the following tariff and contract filing, revision and service pricing standards:

“(1) Uniform rate reductions for existing tariff services shall become effective on five (5) working days’ notice to the Commission. Customer notification is not required for rate decreases.

“(2) Uniform major rate increases for existing tariff services shall become effective on thirty (30) days’ notice to the Commission, and shall require bill inserts, or a message on the bill itself, or first class mail notice to customers at least 30 days in advance of the pending rate increase.

- “(3) Uniform minor rate increases, as defined in D.90-11-029, shall become effective on not less than five (5) working days’ notice to the Commission. Customer notification is not required for such minor rate increases.
- “(4) Advice letter filings for new services and for all other types of tariff revisions, except changes in text not affecting rates or relocations of text in the tariff schedules, shall become effective on forty (40) days’ notice to the Commission.
- “(5) Advice letter filings revising the text or location of text material which do not result in an increase in any rate or charge shall become effective on not less than five (5) days’ notice to the Commission.
- “(6) Contracts shall be subject to GO 96-A rules for NDIECs, except interconnection contracts.
- “(7) CLCs shall file tariffs in accordance with PU Code Section 876.”

4. Applicant may deviate from the following provisions of GO 96-A: (a) paragraph II.C.(1)(b), which requires consecutive sheet numbering and prohibits the reuse of sheet numbers; and (b) paragraph II.C.(4), which requires that “a separate sheet or series of sheets should be used for each rule.” Tariff filings incorporating these deviations shall be subject to the approval of the Commission’s Communications Division. Tariff filings shall reflect all fees and surcharges to which Applicant is subject, as reflected in 2 above.

5. Applicant shall file a service area map as part of its initial tariff.

6. 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.

7. 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.

8. 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

9. Applicant shall 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 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.

11. 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.

12. 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.

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.

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

16. Applicant is exempt from General Order 96-A, subsections III.G(1) and (2), and Rule 18(b) of the Commission's 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 shall immediately notify the Communications Division's Bankruptcy Coordinator.

20. 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 A)

A.06-05-031 ALJ/JLG/sid

ATTACHMENT B
ANNUAL REPORT

An original and a machine readable, copy using Microsoft Word or compatible format shall be filed with the California Public Utilities Commission, 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 Sections 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 B)

ATTACHMENT C
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 Sections 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 C)