

Decision 08-02-029 February 28, 2008

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Rural Broadband Now!, LLC for a Certificate of Public Convenience and Necessity to Provide Full Facilities-Based and Resale Competitive Local Exchange Services Within the California Service Areas of Pacific Bell Telephone Company dba AT&T California and Verizon California, Inc.

Application 07-11-013
(Filed November 14, 2007)

**OPINION GRANTING CERTIFICATE OF
PUBLIC CONVENIENCE AND NECESSITY**

1. Summary

Rural Broadband Now!, LLC (Applicant) seeks a certificate of public convenience and necessity (CPCN) under Pub. Util. Code § 1001 for authority to provide full facilities-based and resold local exchange telecommunications services as a competitive local carrier (CLC).¹ By this decision, we grant the requested authority subject to the terms and conditions set forth below.

Where Applicant proposes to install adjacent Digital Subscriber Line Access Multiplexer (DSLAM) terminals to offer local exchange services, Applicant is authorized to use the Energy Division's 21-day California

¹ A CLC is a common carrier that is issued a CPCN to provide local exchange telecommunications service for a geographic area specified by such carrier.

Environmental Quality Act (CEQA) exemption process for Commission approval of such construction.

2. Background

In prior decisions, we authorized the provision of competitive local exchange service within the service territories of Pacific Bell Company (Pacific), Verizon California, Inc. (Verizon), SureWest Telephone (SureWest), and Citizens Telecommunications Company of California, Inc., dba Frontier Communications of California (Frontier).²

Applicant, a California corporation requests authority to operate as a full facilities-based and resale provider of local exchange services within the service areas of Pacific and Verizon California (Verizon).

Applicant's principal place of business is located at 111 South Main St., Willits, California 95490. Applicant's telephone number is (707) 459-0824.

3. Financial Qualifications

To be granted CPCN for authority to provide facilities-based and resold local exchange service, an applicant must demonstrate that it has \$100,000 cash or cash equivalent to meet the firm's start-up expenses. The 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.³ Applicant provided a copy of a certificate of deposit from its bank that demonstrates that it meets the financial requirements.

² SureWest was formerly known as Roseville Telephone Company.

³ The financial standards for certification to operate as a CLC are set forth in Decision (D.) 95-12-056, Appendix C, Rule 4.B.

4. Technical Qualifications

To be granted a CPCN for authority to provide local exchange service, an applicant must make a reasonable showing of technical expertise in telecommunications or a related business. Applicant supplied biographical information on its management that demonstrates that it has sufficient expertise and training to operate as a telecommunications provider.

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

5. Tariffs

Commission staff reviewed Applicants draft tariffs for compliance with Commission rules and regulations. The deficiencies are noted in Attachment A to this decision. In its compliance tariff filing, Applicant is directed to correct these deficiencies as a condition of our granting approval of its tariffs.

6. California Environmental Quality Act (CEQA)

The CEQA requires the Commission 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 proposes to offer CLC services by leasing switching services from Verisign, Inc., and through the resale of other Pacific, Verizon, or CLC local services such as local transport and termination. In addition, Applicant proposes

to offer CLC services through “outside” construction of an adjacent DSLAM remote terminal for interconnection with Pacific’s remote terminals.

Except for the DSLAM terminal which we discuss below, Applicant will not be constructing any facilities for the purpose of providing local exchange services except for equipment to be installed in existing buildings or structures. Therefore, it can be seen with certainty that there is no possibility that granting Applicant authority to provide local exchange service will have an adverse impact upon the environment.

Applicant states that the only construction proposed at this time is the installation of a DSLAM remote terminal interconnected with a pre-existing adjacent terminal. Due to the small structural scale of the proposed construction, Applicant requests that it be allowed to use the expedited CEQA exemption review process for Commission approval of the installation. Applicant does not rule out the possibility of constructing additional DSLAM installations.

The Commission’s Energy Division reviewed Applicant’s request and states that due to the small size of the proposed structure (about the size of a mailbox), the installation will likely fall within one or more CEQA categorical exemptions. The Division recommends that Applicant be allowed to use the Division’s 21-day CEQA exemption process. We agree that Applicant should be allowed to use the expedited review process for the proposed DSLAM installation and any future DSLAM installations it may install.

Rural Broadband shall follow 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:

- Rural Broadband 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; and
 - 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.

If the Energy Division denies Rural Broadband's request to find the proposed project exempt under CEQA, Rural Broadband shall either re-design the project and 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.

Rural Broadband shall not perform any construction activities without first obtaining a 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 06-10-006.

Further, Energy Division states that local jurisdictions may be concerned that the Commission's expedited review process may routinely permit the installation of above-ground equipment in locally-designated underground districts. However, local ordinances often permit the jurisdiction to grant

exceptions to this requirement, thereby permitting the installation of above-ground equipment in those districts. Thus, the procedure we adopt here will apply to installation of above-ground equipment in underground districts where an exception to the undergrounding requirement is granted by the jurisdiction.

7. Conclusion

We conclude that the application conforms to our rules for certification as a CLC. Accordingly, we shall grant Applicant a CPCN to provide local exchange service, subject to compliance with the terms and conditions set forth herein.

8. Categorization and Need for Hearings

In Resolution ALJ 176-3204, dated December 6, 2007, 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.

9. Comments on Proposed Decision

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

10. Assignment of Proceeding

Rachelle B. Chong is the assigned Commissioner and Bertram D. Patrick is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. A notice of the filing of the application appeared in the Daily Calendar on November 26, 2007.

2. There were no protests to this application.
3. A hearing is not required.
4. In prior decisions, the Commission authorized competition in providing local exchange telecommunications services within the service territories of Pacific, Verizon, SureWest, and Frontier.
5. Applicant has a minimum of \$100,000 of cash or cash equivalent that is reasonably liquid and readily available to meet its start-up expenses.
6. Applicant's management possesses sufficient experience and knowledge to provide local exchange services to the public.
7. As part of its application, Applicant submitted a draft of its initial tariff that contained the deficiencies identified in Attachment A to this decision. Except for these deficiencies, Applicant's draft tariffs complied with the Commission's requirements.
8. Other than a DSLAM installation, Applicant does not propose to construct any facilities, except for equipment to be installed in existing buildings or structures, in order to provide the proposed service.

Conclusions of Law

1. Applicant has the financial ability to provide the proposed service.
2. Applicant has made a reasonable showing of technical expertise in, or related to, telecommunications.
3. Public convenience and necessity require the competitive local exchange services to be offered by Applicant, subject to the terms and conditions set forth herein.
4. The application should be granted to the extent set forth below.

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

6. Applicant's initial tariff filing should correct the deficiencies noted in its draft tariffs as indicated in Attachment A to this decision.

7. Other than installing a DSLAM terminal, Applicant does not propose to construct any facilities except for equipment to be installed in existing buildings or structures. The Energy Division has found that the proposed activity will likely fall within one or more CEQA categorical exemptions and recommends that the Applicant be allowed to use the Division 21-day CEQA exemption process. Therefore, it can be seen with certainty that granting Applicant authority to provide local exchange services will not have a significant adverse effect upon the environment.

8. 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 Rural Broadband Now!, LLC (Applicant) to provide full facilities-based and resold local exchange services in the service territory of Pacific Bell Telephone Company and Verizon California Inc. subject to the terms and conditions set forth below.

2. Applicant is authorized to file tariff schedules for the provision of competitive local exchange services. Applicant may not offer competitive local exchange services until tariffs are on file. Applicant's initial filing shall be made in accordance with General Order (GO) 96-B, and the Telecommunications

Industry Rules (D.07-09-019), and shall correct the deficiencies noted in Attachment A.

3. 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.

4. The corporate identification number assigned to Applicant, U7073C, shall be included in the caption of all original filings with this Commission, and in the titles of other pleadings filed in existing cases.

5. Applicant 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, GOs and statutes that pertain to California public utilities, subject to the exemptions granted in this decision.

6. Applicant shall comply with the requirements applicable to competitive local exchange carriers included in Attachment B to this decision.

7. Applicant is not authorized to construct facilities, except for equipment to be installed in existing buildings or structures.

8. Where Applicant proposes to offer competitive local carrier services through outside construction such as installing adjacent Digital Subscriber Line Access Multiplexer terminals, Applicant shall use the Energy Division's 21-day California Environmental Quality Act exemption process for obtaining prior Commission approval of such construction. Applicant shall not perform any construction activities without obtaining a Notice to Proceed from the Energy Division or authorization by the Commission after the requisite environmental review.

9. Application 07-11-013 is closed.

This order is effective today.

Dated February 28, 2008, at San Francisco, California.

MICHAEL R. PEEVEY

President

DIAN M. GRUENEICH

JOHN A. BOHN

RACHELLE B. CHONG

Commissioners

Commissioner Timothy Alan Simon, being necessarily absent, did not participate.

ATTACHMENT A

List of deficiency in tariff filed by Rural Broadband Now!, LLC in A.07-11-013 to be corrected in its tariff compliance filing:

1. Sheets 9 to 11, Taxes and Surcharges – Please revise per Resolution T-16901, December 2, 2004, to concur with AT&T tariffed surcharges and fees.
2. Sheets 14 and 21, Consumer Affairs Branch Los Angeles Office address; please correct to the following current address:

**Los Angeles Office
320 West 4th Street, Ste. 500
Los Angeles, CA 90013**

3. Please include a rule on Legal Requirements for Refusal of Service per Decision 91188.
4. If applicant provides basic residential telephone service as defined by Decision 96-10-066, applicant will amend tariff to provide a Universal Lifeline Telephone Service offer consistent with Resolution T-16996 (March 2, 2006) and General Order 153.

(END OF ATTACHMENT A)

ATTACHMENT B

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 D.00-10-028. The Combined California PUC Telephone Surcharge Transmittal Form must be submitted even if the amount due is zero.

3. Revenues collected for the California Advanced Services Fund (CASF) at the surcharge rate of 0.25% shall be held by the carrier in a memorandum account tracking system and the account will accrue monthly interest on the accumulated balance at the short-term commercial paper rate. Carriers shall continue to hold custody of all the collected CASF surcharge revenues and accumulated interest until the Commission provides further direction on the disposition of these revenues.

- a. The current 1.15% surcharge applicable to all intrastate services except for those excluded by D.94-09-065, as modified by D.95-02-050, to fund the Universal Lifeline Telephone Service Trust Administrative Committee Fund (Pub. Util. Code § 879; Resolution T-17071, dated March 1, 2007, effective April 1, 2007);
- b. The current 0.20% surcharge applicable to all intrastate services except for those excluded by D.94-09-065, as modified by D.95-02-050, to fund the California Relay Service and Communications Devices Fund (Pub. Util. Code § 2881; D.98-12-073 and Resolution T-17127, dated December 20, 2007, effective January 1, 2008);

- c. The user fee provided in Pub. Util. Code §§ 431-435, which is 0.18% of gross intrastate revenue (Resolution M-4819), dated June 7, 2007, effective July 1, 2007;
- d. The current 0.13% 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 High Cost Fund-A (Pub. Util. Code § 739.3; D.96-10-066, pp. 3-4, App. B, Rule 1.C; Resolution T-17128, dated December 20, 2007, effective January 1, 2008);
- e. The current 0.25% 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);
- f. The current 0.25% 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 Advances Services Fund (D.07-12-054); and
- g. 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, you 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.

4. Applicant is a competitive local exchange carrier (CLC). The effectiveness of its future tariffs is subject to the requirements of General Order 96-B and the Telecommunications Industry Rules (D.07-09-019).

5. Applicant is a nondominant interexchange carrier (NDIEC). The effectiveness of its future NDIEC tariffs is subject to the requirements of General Order 96-B and the Telecommunications Industry Rules (D.07-09-019).

6. Tariff filings shall reflect all fees and surcharges to which Applicant is subject, as reflected in 2 above.

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

8. 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.

9. 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.

10. 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

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

12. 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

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.

Commission's offices or reimburse the Commission for the reasonable costs incurred in having Commission staff travel to its office.

13. 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.

14. 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.

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

16. 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.

17. 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 Communications Division to file or remit late.

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

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

20. 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.

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

22. 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, 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)