

Decision 09-01-029 January 29, 2009

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Joint Application Under Public Utilities Code §§ 851 and 854 for Approval of the Transfer of Assets and Control over the Public Utility Operations of Champion Broadband California, LLC (U6944C) by CBC Broadband Holdings LLC.

Application 08-09-014
(Filed September 17, 2008)

**DECISION GRANTING APPLICATION FOR APPROVAL
OF TRANSFER OF ASSETS AND CONTROL UNDER
PUBLIC UTILITIES CODE SECTIONS 851 AND 854**

We grant the Application of CBC Broadband Holdings, LLC and Champion Broadband California, LLC (Joint Applicants) for approval of the transfer of the operating assets, operating authorities, customer base, and accounts of Champion Broadband California, LLC (Champion) to CBC Broadband Holdings, LLC (CBC) under Public Utilities Code Sections 851 and 854.

1. Background

Champion is a Wyoming limited liability company. By Decision (D.) 05-06-047, Champion was authorized to provide limited, facilities based and resold local exchange service throughout the service territories of Pacific Bell Telephone Company and Verizon California, Inc., and to provide limited, facilities based and resold interexchange service throughout the state. Champion was also authorized to acquire and operate, as a facilities-based provider of telecommunications services, certain previously-constructed cable television

facilities in the city of Pasadena, and previously constructed open video service facilities located in the cities of Arcadia, Monrovia, and other areas of Los Angeles County.¹

CBC is a start-up company located in San Marino, California, formed specifically for the transaction that is the subject of this application.

2. Analysis and Action

Public Utilities Code Section 851 requires Commission authorization before a company may “merge, acquire, or control ... any public utility organized and doing business in this state... .” The purpose of this and related sections is to enable the Commission, before any transfer of public utility property is consummated, to review the situation and to take such action, as a condition of the transfer, as the public interest may require.²

Where a company that does not possess a CPCN desires to acquire control of a company that does possess a CPCN, we apply the same requirements as in the case of an applicant seeking a CPCN to exercise the type of authority held by the company being acquired.³

2.1. 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

¹ Champion’s assets and operations in and around Pasadena were subsequently conveyed to Charter Fiberlink CA-CCO, LLC.

² D.05-06-047, citing San Jose Water Co. (1916) 10 CXRC 56.

³ See D.05-06-047, p. 9.

effects are avoided, alternatives are investigated, and environmental quality is restored or enhanced to the fullest extent possible.

CBC proposes to offer competitive local carrier (CLC) services obtained via the requested transfer of operating authorities and related assets and control over Champion's existing public utility operations. Joint Applicants assert that, because this transaction represents a transfer of control of existing assets it will not have any effect on the environment. We first note that no CEQA review was deemed necessary when Champion obtained the CPCN now at issue. As set forth in D.05-60-047:

Since Applicant states that it will not be constructing any additional facilities for the purpose of providing local exchange services, except for equipment to be installed in existing buildings or structures, 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 additional facilities.

As CBC seeks to offer only limited facilities-based services, the transfer that is the subject of this application is a "paper transaction" that does not involve any construction. Therefore, it can again be seen with certainty that there is no possibility that granting this application will have an adverse impact upon the environment.

2.2. Financial Qualification

To be granted a 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.⁴ CBC provided a guarantee of payment up to \$125,000 and a balance sheet from its bank that demonstrates its ability to meet the financial requirements.

2.3. 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. CBC supplied biographical information on its management that demonstrates that it has sufficient expertise and training to operate as a telecommunications provider.

CBC represents that, with one exception, no one associated with or employed by it as an affiliate, officer, director, partner, or owner of more than 10% of CBC was previously associated with 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

2.4. Tariffs

Commission staff reviewed Champion's draft tariffs for compliance with Commission rules and regulations. The deficiencies were noted in Attachment A to D.05-06-047 and Champion's obtaining a CPCN was conditioned upon these

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

⁵ Ruben Garcia, President and CEO of CBC was an officer and managed the California operations of Telscape International, Inc., a national telecommunications carrier that entered into Chapter 11 bankruptcy proceedings in 2001. Garcia, and other investors, subsequently purchased the failing operations (as part of a CPCN approved in D.01-10-061) and restored it to financial and operational health.

deficiencies being corrected. CBC has filed no new tariffs and has provided assurances that the transaction will be transparent to Champion's customers. In acquiring Champion's assets CBC adopts Champion's previously approved tariffs and therefore Champions' obligation to correct any outstanding deficiencies.

2.5. CPCN – Conclusion

As set forth above, CBC is qualified to operate as a limited facilities-based and resale provider of local exchange and interexchange telecommunications services within California. Therefore, CBC is qualified to acquire these assets of Champion. Once granted the application, CBC should be subject to the applicable Commission rules, decisions, General Orders, and statutes that pertain to California public utilities and shall comply with the requirements applicable to competitive local exchange carriers and NDIECs included in Attachments A, B, and C to this decision

3. Conclusion

The basic task of the Commission in a Section 851 proceeding is to determine whether the transaction serves the public interest: "The public interest is served when utility property is used for other productive purposes without interfering with the utility's operation or affecting service to utility customers." (D.02-01-058.) Joint Applicants represent that, as a result of the transaction, customers will continue to receive service under the same rates, terms, and conditions as before the transaction. The transaction at issue here should help produce a profitable business and results in no change in rates, terms, or conditions of service. Therefore the transaction is not adverse to the public interest and we will approve the transaction prospectively. However, the CPCN transfer and approval of the transaction, are contingent upon payment of any

fees and surcharges owed by Champion, payment of fees and surcharges owed by CBC for operations as of the date of its acquisition of Champion assets, and CBC's filing all required reports on its acquisition of Champion.

4. Categorization and Need for Hearings

In Resolution ALJ 176-3222, dated October 24, 2008, 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.

5. Comments on Proposed Decision

This is an uncontested matter in which the decision grants the requested relief. There were no protests received and the applicants are the only party in the proceeding. The applicants have expressly waived, the otherwise applicable 30-day period for public review and comment.

6. Assignment of Proceeding

Timothy Alan Simon is the assigned Commissioner and Darwin E. Farrar 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 September 24, 2008.
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. CBC has a minimum of \$100,000 in cash or cash equivalent that is reasonably liquid and readily available to meet its start-up expenses.

6. CBC's management possesses sufficient experience and knowledge to provide local exchange services to the public.

7. As part of its application in D.05-06-047 Champion submitted a draft of its initial tariff that contained the deficiencies identified in Attachment A to that decision. Except for these deficiencies, Champion's draft tariffs complied with the Commission's requirements.

8. Joint Applicants do not propose to construct any facilities in order to provide the proposed service.

Conclusions of Law

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

2. Where a company that does not possess a CPCN desires to acquire control of a company that does possess a CPCN, we apply the same requirements as in the case of an applicant seeking a CPCN to exercise the type of authority held by the company being acquired.

3. CBC has made a reasonable showing of technical expertise in, or related to, telecommunications and meets the requirements of D.05-06-047 for holding a CPCN to provide telecommunications services.

4. Public convenience and necessity require the competitive local exchange services to be offered by CBC, subject to the terms and conditions set forth herein.

5. The application should be granted to the extent set forth in the ordering paragraphs below.

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

7. In acquiring Champion's assets CBC adopts the previously approved tariffs as well as the obligation to correct any outstanding deficiencies.

8. Joint Applicants do not propose to construct any facilities beyond those already approved for Champion. Therefore, it can be seen with certainty that granting CBC the authority to provide local exchange services will not have a significant adverse effect upon the environment.

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. The certificate of public convenience and necessity granted to Champion Broadband California, LLC to operate as a facilities-based and resale provider of competitive local exchange services, and interexchange services, may be transferred to CBC Broadband Holdings, LLC, subject to the terms and conditions set forth below.

2. CBC Broadband Holdings, LLC is authorized to provide local exchange service in the service territories of Pacific Bell Telephone Company and Verizon California Inc.

3. CBC Broadband Holdings, LLC is authorized to file tariff schedules for the provision of competitive local exchange and interexchange services. CBC

Broadband Holdings, LLC shall initially comply with Champion Broadband California's tariffs, subject to any requests to correct outstanding deficiencies.

4. The transferred certificate, 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.

5. The corporate identification number assigned to Champion Broadband California, LLC, U6944C, shall be reassigned to CBC for inclusion in the caption of all original filings with this Commission, and in the titles of other pleadings filed in existing cases.

6. CBC shall comply with all applicable rules adopted in the Local Exchange Competition proceeding (Rulemaking 95-04-043/Investigation 95-04-044), the Commission's rules and regulations for nondominant interexchange carriers (NDIECs) set forth in Decision (D.) 93-05-010 and D.90-08-032, 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.

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

8. CBC is not authorized to construct facilities beyond those existing facilities acquired from Champion, other than equipment to be installed in existing buildings or structures.

9. CBC is authorized to use the facilities acquired from Champion to provide telecommunications services.

10. If CBC wishes to expand its existing facilities beyond those limited facilities Champion was previously authorized to construct, it must obtain a

facilities-based CPCN for such facilities before it can provide telecommunications using them.

11. Pursuant to Pub. Util. Code § 851, CBC's acquisition of Champion is approved prospectively.

12. Granting of the CPCN transfer, and approval of the transaction, is contingent upon payment of the fees and surcharges owed by Champion, payment of fees and surcharges owed by CBC for operations as of the date of its acquisition of Champion assets, and CBC's filing of all reports required since its acquisition of Champion.

13. All of the fees, surcharges, and reports discussed in Ordering Paragraph 13 shall be paid or filed within 30 calendar days of the effective date of this order.

14. Application 08-09-014 is closed.

This order is effective today.

Dated January 29, 2009, 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 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-17142, dated April 24, 2008, effective June 1, 2008).

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 A)

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 §§ 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 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 C)