

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Convergence Systems, Inc. for a Certificate of Public Convenience and Necessity to Provide Limited Facilities-Based Local Exchange Telecommunications Services Within San Diego and Orange Counties in the State of California.

Application 08-12-005
(Filed December 9, 2008)

DECISION GRANTING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO PROVIDE LIMITED FACILITIES-BASED LOCAL EXCHANGE AND INTEREXCHANGE TELECOMMUNICATIONS SERVICES

1. Summary of Decision

Convergence Systems, Inc. (Convergence) is granted a certificate of public convenience and necessity (CPCN) to construct telecommunications facilities and provide limited facilities-based local exchange and interexchange telecommunications services as a competitive local exchange carrier in San Diego and Orange Counties, subject to the terms and conditions set forth in the Order.

This proceeding is closed.

2. Background

2.1. Applicant

Convergence is a California corporation in good standing with its principal place of business in San Diego. It currently provides computer and data consulting services to businesses, often purchasing facilities access from Competitive Local Carriers (CLCs).

2.2. Project Proposal

Convergence seeks Commission authority to provide limited facilities-based telecommunications services in San Diego and Orange Counties, including dark, gray, or lit fiber, by using existing telecommunications conduit and utility poles. Convergence proposes to construct its facilities and offer local telecommunications services by deploying fiber-only facilities that will compete directly with other carriers' DSL services and with cable broadband services. On its fiber-only backbone, Convergence intends to offer state-of-the-art, integrated, digital data services that include Voice over Internet Protocol (VoIP) services. These services will initially include Fiber Subscriber Line (FSL) service to compete with DSL service of other carriers, F-1 service to compete with T-1 and DS3 services, and Fiber Switched Internet Protocol (F-SIP) service, which allows voice services to traverse the fiber network using Internet Protocol integrated with all other data transmissions.

Switching services will be provided through customer premises equipment (in the case of dark fiber) or through Convergence's own switching equipment (in the case of gray or lit fiber). Although Convergence's facilities will have sufficient line and trunk capacity to serve the demand it currently projects, Convergence states that it is capable of acquiring additional capacity, if necessary, through additional construction in or on existing conduits or poles or through the acquisition of facilities through lease from other carriers.

Initially, services will be made available in Convergence's San Diego territory. Convergence projects that its service will be available to some businesses in the San Diego service area within a matter of days after the date

service is authorized, but will be broadly deployed in the authorized territory within 36 months of authorization as facilities become available.¹

3. Financial Qualifications

To be granted a CPCN, an applicant for authority to provide facilities-based local exchange and/or interexchange services must demonstrate that it has a minimum of \$100,000 of cash or cash equivalent to meet its start-up expenses. An applicant must also demonstrate that it has sufficient additional resources to cover all deposits required by local exchange carriers (LECs) and/or interexchange carriers (IECs) in order to provide the proposed service.²

Convergence is a going concern. It furnished audited financial statements in support of its application, and these indicate that its net income satisfies our requirement for cash or cash equivalent for a start-up. The company is not publicly held, and Jason Bales, its President and Chief Executive Officer (CEO), has furnished a personal guarantee to perform all of Convergence's obligations under the CPCN granted here, including the obligation to pay vendors, for 12 months following the grant of the CPCN, up to the amount of \$100,000. These facts constitute a sufficient demonstration that Convergence satisfies our requirements for financial fitness.

¹ Convergence states that, given that its voice service is provisioned solely by using VoIP technology over which the Commission has not extended its jurisdiction, it is not required to provide exchange customers with access to Universal Lifeline Service or E-911 emergency services, but that it will cooperate with existing local exchange carriers (LECs) to arrange for the necessary interconnections to permit efficient completion of calls.

² The financial requirements for LECs are set forth in D.95-12-056, Appendix C. For IECs, the requirements are found in D.91-10-041 and D.93-05-010.

4. Technical Qualifications

An applicant for local exchange and interexchange authority is required to make a reasonable showing of technical expertise in telecommunications or a related business. Convergence's application includes both a description of the company's historical experience and resumes of its key managers.

Since 2005, Convergence has worked as an agent of TelePacific Communications Corporation in assisting customers with their telecommunications needs. Its existing management team has the technical and managerial expertise to provide limited facilities-based telecommunications services by reason of this experience.

Mr. Bales, Convergence's CEO, has been with the company since 2005 and has 11 years of experience in the telecommunications industry. For nearly four years he was CEO of End Point Communications, an Internet terminal company that operates throughout Southern California, offering high-speed wireless and kiosk-based Internet access on a pay-per-use basis. His employment with End Point started in 1996.

Other key personnel include Convergence's Communication Manager, who retired after 31 years of service to Pacific Bell Telephone Company as a construction manager in aerial and underground construction and has a total of 52 years of telecommunications industry experience; its Director of Information Technology, who has 15 years of telecommunications industry experience; and another employee with 10 years of information technology and telecommunications experience who has been involved in building the telecommunications infrastructure for U.S. forces in Afghanistan and Iraq.

Based upon the experience of these personnel, Convergence satisfies our requirement for a showing of technical expertise to provide the services for which it seeks our authority.

5. Fitness

Convergence represents that (i) neither Convergence, nor any affiliate, officer, director, partner, or owner of more than 10% of Convergence, or any person acting in that capacity whether or not formally appointed, has been sanctioned by the Federal Communications Commission or any state regulatory agency for failure to comply with any regulatory statute, rule, or order; and (ii) neither the applicant, nor any affiliate, officer, director, partner, or owner of more than 10% of Convergence, or any person acting in that capacity whether or not formally appointed, held one of those positions with a telecommunications carrier that filed for bankruptcy, or has been found either criminally or civilly liable by a court of appropriate jurisdiction for violation of Section 17000 *et seq.* of the California Business and Professions Code, or for any actions which involved misrepresentations to consumers, or is currently under investigation for similar violations.

6. Rates and Tariffs

Convergence submitted draft tariffs for service as a competitive local carrier (Exhibit G to its application). These are subject to change prior to the actual initiation of service, and will require revision in accordance with the Order.

7. California Environmental Quality Act

Applications for authority to undertake any projects that are subject to the California Environmental Quality Act of 1970 (CEQA), Public Resources Code sections 21000 *et seq.* and its implementing guidelines, must comply with its

requirements. *See* Rule 2.4 of the Commission's Rules of Practice and Procedure. In this matter, the approval will only result in the addition of optical fiber and related facilities in or on existing telecommunications facilities. It can be seen with certainty that these activities, and therefore granting the application, will have no significant effect on the environment, and no additional review under CEQA is necessary.

8. Discussion

The Application, as amended, satisfies our requirements for demonstrating financial, managerial, and technical fitness for certification as a limited facilities-based competitive local carrier. Accordingly, we will approve the application subject to the terms and conditions set forth in the Order.

9. Categorization and Need for Hearings

In Resolution ALJ 176-3227, dated December 18, 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.

10. Comments on Proposed Decision

Public Utilities Code Section 311, subdivision (g)(1), provides that a decision must be served on all parties and be subject to at least 30 days review and comment prior to a vote of the Commission. Subdivision (g)(2) provides that this 30-day comment period may be waived for an uncontested matter in which the decision grants the relief requested. This is such a matter.

Convergence has requested a waiver of the 30-day waiting period required by subdivision (g)(1) on the grounds that a significant pending business

opportunity requires that Convergence have a valid CPCN. Inasmuch as this matter qualifies for the waiver, the public review and comment period is waived to enable the District to receive the underlying funding for construction of the system.

11. Assignment of Proceeding

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

Findings of Fact

1. Convergence is a California corporation in good standing with its principal place of business in San Diego.
2. Convergence intends to establish limited facilities-based local telephone service in San Diego and Orange Counties in the state of California as a CLC, using existing telecommunications conduit and utility poles. Convergence proposes to construct its facilities and offer local telecommunications services by deploying fiber-only facilities that will compete directly with other carriers' DSL services and with cable broadband services.
3. On its fiber-only backbone, Convergence intends to offer state-of-the-art, integrated, digital data services that include Voice over Internet Protocol (VoIP) services. These services will initially include Fiber Subscriber Line (FSL) service to compete with DSL service of other carriers, F-1 service to compete with T-1 and DS3 services, and Fiber Switched Internet Protocol (F-SIP) service.
4. Convergence has sufficient cash or cash equivalent and a personal guarantee of Jason Bale, its President and CEO, to cover any deposits that may be required by other telecommunications carriers in order to provide the proposed service.

5. Convergence's management possesses sufficient relevant industry experience and knowledge to provide the telecommunications services described in the application.

6. As part of its application, Convergence submitted a draft of the form of its anticipated initial tariff. Except for any deficiencies noted in Attachment A to this decision, the form of Convergence's draft tariffs complies with the Commission's requirements.

Conclusions of Law

1. The application demonstrates that Convergence is financially, managerially, and technically fit for certification as a limited facilities-based competitive local carrier in accordance with applicable requirements of the Commission.

2. Public convenience and necessity require Convergence's limited facilities-based services, subject to the terms and conditions set forth in the Order.

3. Since Convergence will not be constructing any facilities pursuant to the CPCN granted herein other than those within or on existing facilities, it can be seen with certainty that granting the application, subject to the terms and conditions set forth in the Order, will have no significant effect on the environment.

4. The application should be granted to the extent set forth in the Order.

5. Because of the public interest in establishing competitive services in the area Convergence proposes to serve, this decision should be effective immediately.

O R D E R

IT IS ORDERED that:

1. A certificate of public convenience and necessity is granted to Convergence Systems, Inc. (Applicant) for authority to provide limited facilities-based local exchange and interexchange telecommunications services as a competitive local carrier subject to the terms and conditions set forth below.

2. Applicant is authorized to provide local exchange service and interexchange service in the service territories of Pacific Bell Telephone Company, Verizon California Inc., SureWest Telephone, and Citizens Telecommunications Company of California Inc. situated in San Diego and Orange Counties.

3. Applicant is authorized to file tariff schedules for the provision of competitive local exchange services in the form indicated by Exhibit G to the Application and as corrected by Commission staff as noted in Attachment A. The final tariff schedules must be reviewed and approved by Commission staff as to form and content before they are permitted to be filed, and Applicant may not offer services until tariffs are on file. Applicant's initial filing shall be made in accordance with General Order 96-B. Applicant shall comply with its tariffs.

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

5. The corporate identification number assigned to Applicant, U-7134-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.

6. Applicant 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 interexchange carriers set forth in Decision (D.) 93-05-010 and D.90-08-032, as well as other applicable Commission's rules, decisions, General Orders, and statutes that pertain to California public utilities, subject to the exemptions granted in this decision.

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

8. Applicant is not authorized to construct facilities, except for the installation of those in or on existing buildings or structures, until Applicant undergoes any required environmental review and applies for and obtains full facilities-based authority, under the procedure adopted by the Commission in D.06-04-030 in *Application for NewPath Networks, LLC for a Modification of its Certificate of Public Convenience and Necessity in Order to Provide Competitive Local Exchange, Access and Non-Dominant Interexchange Services* (April 13, 2006).

9. As a competitive local carrier, Applicant is exempt from the provisions of Public Utilities Code Sections 816 through 830 pertaining to the issuance of stocks and securities, and Section 851 pertaining to the transfer or encumbrance of utility assets when such transfer or encumbrance is for the purpose of securing debt.

10. Application 08-12-005 is closed.

This order is effective today.

Dated _____ 2009, at San Francisco, California.

ATTACHMENT A

List of deficiencies in draft tariff submitted Convergence Systems, Inc. in Application 08-12-005 to be corrected in its initial tariff compliance filing:

1. Tariff Sheet Format: CPUC assigned utility ID number (U#) should be included on each sheet in the upper left header along with Company name and address. (General Order 96-B, Section 8.4.1).
2. User Fee and Public Program Surcharges - include a rule conforming to AT&T tariffs for PUC user Fee and Public Program Surcharges (Resolution T-16901, December 2, 2004).

(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 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 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 0.079% surcharge applicable to all intrastate services except for those excluded by D.94-09-065, as modified by D.95-02-050, to fund the California Teleconnect Fund (D.96-10-066, p. 88, App. B, Rule 8.G; Resolution T-17142, dated April 29, 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 Telephone Company (dba AT&T 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 requirements of General Order (GO) 96-B and the Telecommunications Industry Rules (D.07-09-019).
- 4. Applicant is a nondominant interexchange carrier (NDIEC). The effectiveness of its future NDIEC tariffs is subject to the requirements of GO 96-B and the Telecommunications Industry Rules (D.07-09-019).
- 5. Tariff filings shall reflect all fees and surcharges to which Applicant is subject, as reflected in 2 above.
- 6. Applicant shall file a service area map as part of its initial tariff.
- 7. 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.

8. 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.

9. 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

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

11. 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.

12. 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.

13. 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.

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

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.

15. 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.

16. 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.

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

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

19. 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.

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

21. Applicant shall send a copy of this decision to concerned local permitting agencies no later than 30 days from the date of this order.

(END OF ATTACHMENT B)

ATTACHMENT C
ANNUAL REPORT

An original copy and a machine readable copy using Microsoft Word or compatible format shall be filed with the California Public Utilities Commission, State Office Building, 505 Van Ness Avenue, Room 3107, San Francisco, CA 94102-3298, no later than March 31st of the year following the calendar year for which the annual report is submitted.

Failure to file this information on time may result in a penalty as provided for in 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 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 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 D)