

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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

Application 06-09-017
(Filed September 15, 2006)

**OPINION GRANTING APPLICATION OF YGNITION NETWORKS, INC.
FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY**

I. Summary

Ygnition Networks, Inc. (Applicant) seeks a certificate of public convenience and necessity (CPCN) under Pub. Util. Code § 1001 for authority to provide limited facilities-based and resold local exchange telecommunications services. By this decision, we grant the requested authority subject to the terms and conditions set forth below.

II. Background

In prior decisions, we authorized the provision of competitive interexchange services by carriers meeting specified criteria. In addition, we authorized the provision of competitive local exchange service, by carriers meeting specified criteria, within the service territories of Pacific Bell Telephone Company dba SBC California (Pacific), Verizon California Inc. (Verizon),

SureWest Telephone Company (SureWest),¹ and Citizens Telecommunications Company of California, Inc. (Citizens).

Applicant, a Washington corporation, seeks authority to provide limited facilities-based and resold local exchange services as a competitive local carrier (CLC) within the service territories of Pacific, Verizon, SureWest, and Citizens.

Applicant's principal place of business is located in Seattle, Washington.

III. Financial Qualifications

To be granted a CPCN, an applicant for authority to provide facilities-based and resold local exchange and/or interexchange services must demonstrate that it has a minimum of \$100,000 of cash or cash equivalent to meet the firm's start-up expenses.² An applicant must also demonstrate that it has sufficient additional resources to cover all deposits required by local exchange carriers (LECs) and/or interexchange carriers (IECs) in order to provide the proposed service.³ Applicant has provided financial documentation that demonstrates that it has sufficient cash to satisfy the above financial requirement plus any required deposits.

However, Applicant's audited financial statements for 2004 and 2005 show that Applicant has been operating at a loss with negative cash flows and has incurred substantial debt. The auditor's report notes that:

¹ SureWest Telephone Company was previously known as Roseville Telephone Company.

² The financial requirement for CLCs is contained in Decision (D.) 95-12-056, Appendix C. The financial requirement for IECs is contained in D.91-10-041.

³ The requirement for CLC applicants to demonstrate that they have additional financial resources to meet any deposits required by underlying LECs and/or IECs is set forth in D.95-12-056, Appendix C. For IECs, the requirement is found in D.93-05-010.

The Company has historically suffered recurring operating losses and negative cash flows from operations. As of December 31, 2005, the Company had an accumulated deficit of approximately \$18.9 million and negative working capital of approximately \$400,000 ... Management believes cash and cash equivalent balances, the subsequent financing discussed in Note 12, and any net cash provided by operations will provide adequate resources to fund operations into 2007. There is no assurance that these results will be achieved. The Company's inability to obtain additional cash as needed could have a material adverse effect on its financial position, results of operations, and its ability to continue in existence.

Applicant states that as of November 2006, it had over \$2.1 million in cash on hand, had \$1 million in unused credits lines available, was up to date on all credit obligations, and has a positive cash flow. Applicant further states that its revenues have steadily increased from \$11 million in 2004, to \$19 million in 2005, to \$25 million in 2006, and that Applicant expects continued growth in 2007.

We are concerned that Applicant has been operating at a loss in 2004 and 2005 and has incurred substantial credit obligations. However, since Applicant has at least \$100,000 in cash available for the operations of the company plus the cost of any required deposits, Applicant has met the minimum financial requirements for issuance of a CPCN authorizing the provision of limited facilities-based and resold services. In order to ensure that Applicant continues to meet our financial qualifications for issuance of a CPCN, Applicant shall file audited financial statements for fiscal year 2006 within 60 days after the issuance of this decision or within a reasonable extended timeframe as may be granted by the Director of the Commission Telecommunications Division (TD), and shall file audited financial statements each year with its annual report as a condition of retaining its CPCN for the following three years. If, in the future, the Director of TD finds that Applicant no longer meets the financial qualifications for its CPCN,

TD shall take the requisite steps for the Commission to revoke Applicant's current CPCN or, if Applicant meets the lesser financial qualifications for a CPCN authorizing resold services only, to reduce Applicant's operating authority to authorize the provision of resold services only.

IV. Technical Qualifications

Applicants for CLC authority are required to make a reasonable showing of technical expertise in telecommunications or a related business. Applicant submitted biographical information on its management that demonstrates that it possesses sufficient experience and knowledge 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 has been sanctioned by the Federal Communications Commission or any state regulatory agency for failure to comply with any regulatory statute, rule, or order.

V. Tariffs

Commission staff reviewed Applicant's draft tariffs for compliance with Commission rules and regulations. Any tariff deficiencies are stated in Appendix B.

VI. California Environmental Quality Act (CEQA)

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 will not be constructing any facilities, other than equipment to be installed in existing buildings or structures, for the purpose of providing interexchange or local exchange services.

Therefore, it can be seen with certainty that there is no possibility that granting this application will have an adverse effect upon the environment. Applicant must file for additional authority and submit to any required CEQA review before it can construct facilities other than equipment to be installed in existing buildings or structures.

VII. Conclusion

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

VIII. Motion to File Confidential Documents Under Seal

Applicant filed a motion on September 15, 2006 requesting to file its audited financial statements for 2004 and 2005 under seal. We grant this motion, except for the comments of the auditor quoted in this decision.

IX. Comments on Proposed Decision

This is an uncontested matter, in which the decision grants the relief requested. Accordingly, pursuant to § 311(g)(2) of the Pub. Util. Code and Rule 14.6 (c)(2) of the Commission's Rules of Practice and Procedure, the otherwise applicable 30-day period for public review and comment is being waived.

X. Categorization and Need for Rehearing

In Resolution ALJ 176-3180, dated October 5, 2006, 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.

XI. Assignment of Proceeding

Rachelle B. Chong is the assigned Commissioner and Myra J. Prestidge is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. Notice of the application appeared in the Daily Calendar on September 26, 2006.
2. No protests have been filed.
3. A hearing is not required.
4. In prior decisions, the Commission authorized competition, by carriers meeting specified criteria, in providing local exchange telecommunications services within the service territories of Pacific, Verizon, SureWest, and Citizens.
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 has sufficient additional cash or cash equivalent to cover any deposits that may be required by other telecommunications carriers in order to meet the minimum requirement for issuance of a CPCN authorizing the provision of limited facilities-based and resold services.
7. Applicant's audited financial statements show that Applicant was operating at a loss and experiencing negative cash flows in 2004 and 2005 and has incurred substantial credit obligations.
8. Applicant states that it has over \$2.1 million in cash on hand, has \$1 million available in unused credit lines, has recently had a positive cash flow for its operations, is up to date on all credit obligations, and experienced a steady growth in revenues in 2004, 2005, and 2006.

9. Applicant possesses sufficient experience and knowledge to provide telecommunications services.

10. As part of its application, Applicant submitted a draft of its initial tariff.

11. Applicant will not be constructing facilities, other than equipment to be installed in existing buildings or structures.

Conclusions of Law

1. Applicant meets the minimum financial requirements for issuance of a CPCN authorizing the provision of limited facilities-based and resold local exchange services.

2. Based on Applicant's audited financial statements for 2004 and 2005, it is reasonable to require Applicant file audited financial statements for 2006 within 60 days of the issuance of this order or a reasonable extended timeframe as may be granted by the Director of TD, and to file audited financial statements with the Commission along with its annual report each year for the following three years, as a condition of retaining its CPCN.

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

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

5. Since Applicant will not be constructing any facilities, other than equipment to be installed in existing buildings or structures, it can be seen with certainty that there will be no significant effect on the environment.

6. The application should be granted to the extent set forth below.

7. Applicant's motion to file its audited financial statements for 2004 and 2005 under seal should be granted, except for the portion of the auditor's report quoted in this decision.

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

9. Applicant must submit a complete draft of its initial tariff that complies with the requirements established by the Commission and that corrects any deficiencies identified in Appendix B.

10. Because of the public interest in competitive local exchange and interexchange 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 Ygnition Networks, Inc. (Applicant) to operate as a limited facilities-based and resale provider of competitive local exchange services, subject to the terms and conditions set forth below.

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

3. Applicant is authorized to file tariff schedules for the provision of competitive local exchange services as submitted in the application. Applicant may not offer services until tariffs are on file. Applicant's initial filing shall be made in accordance with General Order (GO) 96-A, excluding Sections IV, V, and VI. The tariffs shall be effective not less than one day after tariff approval by the Commission's Telecommunications Division. Applicant shall comply with its tariffs.

4. Applicant shall correct the outstanding tariff deficiencies identified in Appendix B before being authorized to begin service.

5. 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.

6. The corporate identification number assigned to Applicant, U 7019 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.

7. 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.

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

9. Applicant shall file audited financial statements for its fiscal year 2006 with the Commission Telecommunications Division within 60 days of the issuance of this order, or within a reasonable extended timeframe as may be granted by the Director of the Commission Telecommunications Division.

10. Applicant shall file audited financial statements each year, along with its annual reports, with the Commission Telecommunications Division for 2007, 2008, and 2009, as a condition of retaining its CPCN.

11. Applicant is not authorized to construct facilities, other than equipment to be installed in existing buildings or structures.

12. Applicant's September 15, 2006 motion to file its audited financial statements for 2004 and 2005 under seal is granted, except for the portion of the auditor's comments quoted in this order.

13. The confidential documents of Applicant, which have been filed under seal as an attachment to the Motion for Leave to File Confidential Materials Under Seal, shall remain under seal for a period of two years from the date of this ruling; and during that period, the information shall not be made accessible or disclosed to anyone other than Commission staff except on the further order or ruling of the Commission, the assigned Commissioner, the Chief Administrative Law Judge, the assigned Administrative Law Judge (ALJ), or the ALJ then designated as Law and Motion Judge.

14. If Applicant believes that further protection of this information is needed after two years, Applicant may file a motion stating the justification for further withholding the information from public inspection or disclosure, or for such other relief as the Commission Rules may then provide. This motion must be filed no later than 30 days before the expiration of this protective order.

15. Application 06-09-017 is closed.

This order is effective today.

Dated _____, at San Francisco, California.

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 1.29% 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-16966, dated December 1, 2005, effective January 1, 2006);
 - b. The current 0.05% 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-17044, dated July 20, 2006, effective August 1, 2006);
 - 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);
 - e. The current 2.00% 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-16964, dated December 1, 2005, effective January 1, 2006); 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).
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:
 4. "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. 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 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 (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.
 - '(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 § 876.'"

5. 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 Telecommunications Division. 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 phone number 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 Telecommunications 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. A. 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 Telecommunications Division, in compliance with GO 104-A, on a calendar-year basis with the information contained in Attachment B to this decision.

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

13. Applicant shall ensure that its employees comply with the provisions of Public Utilities (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 Telecommunications 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 Telecommunications 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 Commission Rule of Practice and Procedure 18(b).

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 Telecommunications 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)

ATTACHMENT B

List of deficiencies in tariff filed by Ygnition Networks, Inc. in Application 06-09-017 in its tariff compliance filing.

1. CLC 1-T, Sheets 28 - 41, Residential Lifeline Service: Update certification and eligibility criteria pursuant to Resolution T-16996, March 2, 2006.

(END OF ATTACHMENT B)

ATTACHMENT C ANNUAL REPORT

An original and two copies shall be filed with the California Public Utilities Commission, 505 Van Ness Avenue, Room 3107, San Francisco, CA 94102-3298, no later than March 31 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 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. The number and date of the Commission decision granting the Utility's CPCN.
 7. Date operations were begun.
 8. Description of other business activities in which the utility is engaged.
 9. A list of all affiliated companies and their relationship to the utility. State if affiliate is:
 - 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.

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;
- 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 tariffed 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)