

Decision 09-09-041 September 24, 2009

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Application of CalPop.Com, Inc. for a Certificate of Public Convenience and Necessity to Provide Limited Facilities-based and Resold Local Exchange Services in the State of California.

Application 09-05-025  
(Filed May 26, 2009)

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

**1. Summary of Decision**

CalPop.Com, Inc. is granted a certificate of public convenience and necessity to provide limited facilities-based and resold competitive local exchange telecommunications services in the Pacific Bell Telephone Company, SureWest Telephone and Verizon California Inc., territories, and authority to operate as a non-dominant interexchange carrier, subject to the terms and conditions set forth in the Order.

This proceeding is closed.

**2. Background**

**2.1. Applicant**

CalPop.Com, Inc. (CalPop) is a California corporation in good standing with its principal place of business at 600 West 7<sup>th</sup> Street, Suite 360, Los Angeles, California.

## **2.2. Project Proposal**

CalPop seeks authority to provide limited facilities-based and resold local exchange services to business customers in the Pacific Bell Telephone Company (Pacific Bell), SureWest Telephone (SureWest), and Verizon California Inc. (Verizon) service areas. CalPop will provide these services through facilities to be leased from existing carriers, and will not construct any new plant, or extend any existing outside plant, in California to provide these services.

Specifically, CalPop initially intends to provide dedicated private line transmission services for the transmission of point-to-point and point-to-multipoint information within a local exchange area from points of origin in California to destination points in California. Its initial service offerings consist of transport and access services for competitive carriers. CalPop will not undertake any external construction in California to provide these services. It will provide local exchange services using its own facilities and services and those furnished by other authorized carriers.

## **3. Financial Qualifications**

To be granted a certificate of public convenience and necessity (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.<sup>1</sup>

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<sup>1</sup> 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.

CalPop's application includes a showing that it has reasonably liquid assets sufficient to satisfy our requirement for cash or cash equivalent on hand, which satisfies our requirement for a showing of financial fitness.

#### **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. CalPop's application includes the resumes of its president and two other employees. These resumes demonstrate that the management team has experience in internet networking technology, and that the company is a going concern in that field and is well-established in the Los Angeles area. This is sufficient to satisfy our requirement for making a showing of technical expertise to provide the services for which CalPop seeks our authority.

#### **5. Fitness**

CalPop represents that (i) neither CalPop, nor any affiliate, officer, director, partner, or owner of more than 10% of CalPop, 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 CalPop, 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**

CalPop included draft tariffs governing the rates, terms and conditions of its proposed local exchange telecommunications and other services. These tariffs contain tentative rates and terms for all services to be offered, and final rates will be filed before service is commenced, in accordance with our 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 interconnection of CalPop with existing telecommunications facilities, and will involve no external construction. 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 Hearing**

In Resolution ALJ 176-3236, dated June 18, 2009, 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. Waiver of Comment Period**

Pursuant to Rule 14.6(b) of the Commission's Rules of Practice and Procedure, all parties stipulated to waive the 30-day public review and comment period required by Section 311 of the Public Utilities Code and the opportunity to file comments on the proposed decision. Accordingly, this matter was placed on the Commission's agenda directly for prompt action.

**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. CalPop is a California corporation in good standing with its principal place of business in Los Angeles.
2. CalPop intends to establish limited facilities-based and resold local exchange services to business customers in the Pacific Bell, SureWest, and Verizon service areas by purchasing unbundled network elements from incumbent LECs and reselling the services of other certificated carriers.
3. CalPop has sufficient cash or cash equivalent to cover any deposits that may be required by other telecommunications carriers in order to provide the proposed service.
4. CalPop's management possesses sufficient relevant industry experience and knowledge to provide the telecommunications services described in the application.

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

### **Conclusions of Law**

1. The application demonstrates that CalPop 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 CalPop's limited facilities-based services, subject to the terms and conditions set forth in the Order.

3. Since CalPop 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 CalPop 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 CalPop.Com, Inc. 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. CalPop.Com, Inc. is authorized to provide local exchange services in the service territories of Pacific Bell Telephone Company, SureWest Telephone, and Verizon California Inc.

3. CalPop.Com, Inc. is authorized to file tariff schedules for the provisions of competitive local exchange services in the form indicated by the draft tariff included with the Application, as corrected by Commission staff 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 CalPop.Com, Inc. may not offer services until tariffs are on file. CalPop.Com, Inc.'s initial filing shall be made in accordance with General Order 96-B. CalPop.Com, Inc. 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 CalPop.Com, Inc., U-7158-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. CalPop.Com, Inc. 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. CalPop.Com, Inc. shall comply with the requirements applicable to competitive local exchange carriers included in Attachment B to this decision.

8. CalPop.Com, Inc. is not authorized to construct facilities, except for the installation of those in or on existing buildings or structures, until CalPop.Com, Inc. 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, CalPop.Com, Inc. 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 09-05-025 is closed.

This order is effective today.

Dated September 24, 2009, at San Francisco, California.

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

**ATTACHMENT A**

List of deficiencies in draft tariff submitted by CalPop.Com, Inc. in A.09-05-025 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 96B, Section 8.4.1)

**(END OF ATTACHMENT A)**

## ATTACHMENT B

### REQUIREMENTS APPLICABLE TO COMPETITIVE LOCAL EXCHANGE CARRIERS

1. CalPop.Com, Inc. (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 fees 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 \$0.

- 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 (CLEC). 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).
- 4. Tariff filings shall reflect all fees and surcharges to which Applicant is subject, as reflected in 2 above.
- 5. Applicant shall file a service area map as part of its initial tariff.
- 6. Prior to initiating service, Applicant shall provide the Commission's Consumer Affairs Branch with the name and address of its designated contact person(s) for purposes of resolving consumer complaints. This information shall be updated if the name or telephone number changes, or at least annually.

7. Applicant shall notify the Director of the Communications Division in writing of the date that local exchange service is first rendered to the public, no later than five days after service first begins.

8. Applicant shall notify the Director of the Communications Division in writing of the date interLATA service is first rendered to the public within five days after service begins, and again within five days after intraLATA service begins.<sup>1</sup>

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

10. In the event Applicant's books and records are required for inspection by the Commission or its staff, it shall either produce such records at the Commission's offices or reimburse the Commission for the reasonable costs incurred in having Commission staff travel to its office.

11. Applicant shall file an annual report with the Director of the Communications Division, in compliance with GO 104-A, on a calendar-year basis with the information contained in Attachment C to this decision.

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

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

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<sup>1</sup> 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.

14. Within 60 days of the effective date of this order, Applicant shall comply with Pub. Util. Code § 708, Employee Identification Cards, and notify the Director of the Communications Division in writing of its compliance.

15. If Applicant is 90 days or more late in filing an annual report, or in remitting the surcharges and fee listed in 2 above, the Communications Division shall prepare for Commission consideration a resolution that revokes Applicant's CPCN unless it has received written permission from the Communications Division to file or remit late.

16. Applicant is exempt from Commission Rules of Practice and Procedure 3.1(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 Communications Division's Bankruptcy Coordinator.

20. 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 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 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 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)**