

Decision 09-11-023 November 20, 2009

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

In the Matter of the Application of Redwood Telephone, LLC for a Certificate of Public Convenience and Necessity to Provide Limited Facilities-Based and Resale Competitive Local Telecommunications Service in the Service Territories of AT&T California, Verizon California, SureWest Telephone Company and Citizens Telephone Company.

Application 09-08-011  
(Filed August 20, 2009)

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

**1. Summary**

Redwood Telephone, LLC seeks a certificate of public convenience and necessity under Pub. Util. Code § 1001 for authority to provide limited facilities-based and resold local exchange telecommunications services as a competitive local exchange carrier. By this decision, we grant the requested authority subject to the terms and conditions set forth below.

**2. Background**

In our prior decisions, we have authorized the provision of competitive interexchange services by carriers meeting specified criteria. In addition, we

have authorized the provision of competitive local exchange service,<sup>1</sup> by carriers meeting specified criteria, within the service territories of Pacific Bell Telephone Company (Pacific Bell), Verizon California Inc. (Verizon), Citizens Telecommunications Company of California, Inc. (CTC) dba Frontier Communications of California, and SureWest Telephone (SureWest).

Redwood Telephone, LLC (Applicant), a California corporation, seeks authority to operate as a limited facilities-based and resale provider of local exchange services within Pacific, Verizon, SureWest, and CTC's service territories. Applicant's principal place of business is located at 4050 Cedar Street, Eureka, California 95503.

### **3. Financial Qualifications**

To be granted a certificate of public convenience and necessity (CPCN) for authority to provide limited facilities-based 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.<sup>2</sup> Applicant provided a guarantee of payment of \$100,000, which is irrevocable for at least 12 months after certification. Applicant provided its balance sheet, a letter from Redwood Capital Bank verifying the balances in Applicant's account and an October 2009

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<sup>1</sup> A competitive local exchange carrier (CLEC) is a common carrier that is issued a CPCN to provide local exchange telecommunications service for a geographic area specified by such carrier.

<sup>2</sup> The financial standards for certification to operate as a CLEC are set forth in Decision (D.) 95-12-056, Appendix C, Rule 4.B.

bank statement showing both current account balances and average account balances.

#### **4. Technical Qualifications**

To be granted a CPCN for authority to provide local exchange service, an applicant must make a reasonable showing of technical expertise in telecommunications or a related business. Applicant 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 was previously associated with any telecommunications carrier that filed for bankruptcy, or has been found either criminally or civilly liable by a court of appropriate jurisdiction for a violation of § 17000 et seq. of the California Business and Professions Code, or for any actions which involved misrepresentations to consumers, and to the best of Applicant's knowledge, is not currently under investigation for similar violations, or was sanctioned by the Federal Communications Commission or any state regulatory agency for failure to comply with any regulatory statute, rule, or order.

#### **5. Tariffs**

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

#### **6. California Environmental Quality Act (CEQA)**

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 as permitted by prior Commission decisions.

#### **7. Request to File Under Seal**

Applicant requests that the financial information filed with the application be kept under seal. The financial information consists of Applicant's balance sheet, a letter from Redwood Capital Bank verifying the balances in Applicant's account and an October 2009 bank statement showing both current account balances and average account balances. Applicant states that the financial information is proprietary, sensitive and that, if revealed, would place Applicant at an unfair business disadvantage. We have granted similar requests in the past and do so here. Applicant requests that supplemental financial information it provided on October 12, 2009, also be included in Applicant's pending Motion for Limited Protective Order. Accordingly, we also designate that supplemental information as filed under seal.

#### **8. Conclusion**

This application conforms to our rules for authority to provide limited facilities-based competitive local exchange telecommunications services. Accordingly, we approve the application subject to the terms and conditions set forth herein.

## **9. Waiver of Comment Period**

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Section 311(g)(2) of the Public Utilities Code and Rule 14(c)(2) of the Commission's Rules of Practice and Procedure, the otherwise applicable 30-day period for public review and comment is waived.

## **10. Assignment of Proceeding**

Rachelle B. Chong is the assigned Commissioner and Katherine K. MacDonald is the assigned Administrative Law Judge in this proceeding.

### **Findings of Fact**

1. Notice of the application appeared in the Daily Calendar on August 25, 2009.
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 Bell, Verizon, SureWest, and CTC.
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 provide the proposed service throughout the State of California.
7. Applicant possesses sufficient experience and knowledge to provide limited facilities-based local exchange telecommunications services throughout the State of California.
8. As part of its application, Applicant submitted a draft of its initial tariff that contained the deficiencies identified in Attachment A to this decision.

Except for these deficiencies, Applicant's draft tariffs complied with the Commission's requirements.

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

10. Public disclosure of the financial information filed under seal would place Applicant at an unfair business disadvantage.

### **Conclusions of Law**

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

2. Applicant has sufficient technical expertise to operate as a limited facilities-based competitive local exchange carrier.

3. Public convenience and necessity require that Applicant's competitive local exchange service, authorized herein, be subject to the terms and conditions set forth herein.

4. 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.

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

6. Applicant, once granted a CPCN, should be subject to the applicable Commission rules, decisions, general orders, and statutes that pertain to public utilities in the State of California.

7. As noted in Attachment A, when Applicant proposes new tariffs, it must file such tariffs in compliance with all Commission rules and regulations.

8. Applicant's request to file its financial information under seal should be granted for two years.

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. A certificate of public convenience and necessity is granted to Redwood Telephone, LLC for limited facilities-based authority to provide local exchange services, subject to the terms and conditions set forth below.
2. Redwood Telephone, LLC is authorized to provide local exchange services in the service territories of Pacific Bell Telephone Company, Verizon California Inc., SureWest Telephone, and Citizens Telecommunications Company of California, Inc.
3. Redwood Telephone, LLC is authorized to file tariff schedules for the provision of local exchange services that address the deficiencies identified in Attachment A.
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 Redwood Telephone, LLC, U-7165, must be included in the caption of all original filings with this Commission, and in the titles of other pleadings filed in existing cases.
6. Redwood Telephone, LLC must 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, general orders, and statutes that pertain to public utilities in the State of California, subject to the exemptions granted in this decision.
7. Redwood Telephone, LLC must comply with the requirements applicable to competitive local exchange carriers included in Attachment B to this decision.

Redwood Telephone, LLC must also comply with the requirements set forth in Attachments C and D.

8. Redwood Telephone, LLC is not authorized to construct facilities, other than equipment to be installed in existing buildings or structures.

9. All sealed information will remain sealed for a period of two years from the effective date of this decision. During that period the information will not be made accessible or disclosed to anyone other than the Commission staff except on the further order or ruling of the Commission, the assigned Commissioner, the assigned Administrative Law Judge (ALJ) or the ALJ then designated as Law and Motion Judge.

10. If Redwood Telephone, LLC believes that further protection of the information kept under seal is needed, it may file a motion no later than one month before the expiration date stating the justification for further withholding of the information from public inspection, or for such other relief as the Commission's rules may then provide.

11. Application 09-08-011 is closed.

This order is effective today.

Dated November 20, 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 Redwood Telephone, LLC in Application 09-08-011 to be corrected in its initial tariff compliance filing.

1. Tariff Sheet Format: California Public Utilities Commission assigned utility ID number (U#) must be included on each sheet in the upper left header along with Company name and address. (General Order 96-B, Section 8.4.1)

**(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 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 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 0.45% 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); Resolution T-17215, dated October 15, 2009, effective December 1, 2009;

- 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 0.79% surcharge applicable to all intrastate services except for those excluded by D.94-09-065, as modified by D.95-02-050, to fund the California Teleconnect Fund (D.96-10-066, p. 88, App. B, Rule 8.G, Resolution T-16888, dated December 1, 2005, effective January 1, 2006).

Note: These fees change periodically. In compliance with Resolution T-16901, December 2, 2004, check the joint tariff for surcharges and fees filed by Pacific Bell Telephone Company 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. 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. 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.

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

7. 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.

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

9. 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 C.

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

11. 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.

12. If Applicant is 90 days or more late in filing an annual report, or in remitting the surcharges and fee listed in 3 above, the Communications Division shall prepare for Commission consideration a resolution that revokes Applicant's certificate of public convenience and necessity unless it has received written permission from the Communications Division to file or remit late.

13. Applicant is exempt from Commission's Rules of Practice and Procedure 3.1(b).

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

15. 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.

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

17. Applicant shall send a copy of this decision to concerned local permitting agencies not later than 30 days from the date of this order.

**(END OF ATTACHMENT B)**

**ATTACHMENT C  
ANNUAL REPORT**

An original paper copy, and a machine-readable electronic copy, on a CD or floppy disk using Microsoft Word or a compatible format, shall be filed with the California Public Utilities Commission, 505 Van Ness Avenue, Room 3107, San Francisco, CA 94102-3298. The filing shall be made no later than March 31<sup>st</sup> 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 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 certificate of public convenience and necessity.
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:

- a. Regulated public utility.
- b. Publicly held corporation.

10. Balance sheet as of December 31<sup>st</sup> 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) 703-1923.

**(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)**