

Decision 09-12-036 December 17, 2009

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Inyo Networks, Inc. for Authority to Operate as a Competitive Provider of Full Facilities-Based and Resold Local Exchange and Interexchange Telecommunications Service within the State of California.

Application 09-07-023
(Filed July 16, 2009;
amended August 20, 2009)

DECISION GRANTING INYO NETWORKS, INC. A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY IN ORDER TO PROVIDE LIMITED FACILITIES-BASED AND RESOLD LOCAL EXCHANGE AND INTEREXCHANGE SERVICE

1. Summary

Inyo Networks, Inc. (Inyo) filed an application for a certificate of public convenience and necessity (CPCN) for authority to provide full facilities-based and resold local exchange telecommunications services in the service territories of Pacific Bell Telephone Company d/b/a AT&T California and Verizon California Inc. and full facilities-based and resold intrastate interexchange telecommunications services within California.

By this decision, we grant Inyo a CPCN to provide limited facilities-based and resold local exchange and intrastate interexchange telecommunications services on the terms and conditions set forth in the ordering paragraphs.

2. Background

On July 16, 2009, Inyo Networks, Inc. (Inyo) filed an application for a certificate of public convenience and necessity (CPCN) to provide full facilities-based and resold local exchange telecommunications services in the

service territories of Pacific Bell Telephone Company d/b/a AT&T California (AT&T) and Verizon California Inc. (Verizon), and full facilities-based and resold intrastate interexchange telecommunications services within California. Inyo proposed to provide such services through its own facilities and by purchasing unbundled network elements from Incumbent Local Exchange Carriers (ILECs).

On August 20, 2009, Inyo filed an amended application, which excluded reference to the community of Charleston View, at Sections 3, 5, 7, and 12 of the original application, and removed Exhibits 4, 4a, and 7 of the original application.

On October 8, 2009, the assigned Administrative Law Judge (ALJ) issued a ruling, requesting further information, and stating that unless otherwise notified, the application would be treated as a request for limited facilities-based authority. On October 18, 2009, Inyo filed a response to the ruling (Response). In its Response, Inyo proposed, in part, to provide service in the service territories of AT&T and Verizon.

Inyo's principal place of business is located at 1101 Nimitz Avenue, Vallejo, CA 94592.

3. Limited versus Full Facilities-Based CPCN

In both its original and amended application, Inyo requests authorization for a CPCN to provide full facilities-based and resold local exchange and intrastate interexchange telecommunications services. A Proponent's Environmental Assessment (PEA) is required for a full facilities-based CPCN. In both its Amended Application and Response, Inyo states that it currently lacks funding to commence construction and that it is not economically feasible for

Applicant to develop a PEA.¹ Thus, the amended application only supports a request for a limited facilities-based CPCN.

In the October 8, 2009 ruling, the Administrative Law Judge (ALJ) stated, in part, that, given the language in the amended application, unless something more was forthcoming, the application would be treated as a request for a limited facilities-based CPCN. In its Response, Inyo agreed to treatment of the application as a request for limited facilities-based authority. Therefore, this application will be treated as a request for limited facilities-based authority.

The treatment of Application (A.) 09-07-023 as a request for a limited facilities-based CPCN does not preclude Inyo from filing an application at a later date to pursue a full facilities-based CPCN. Inyo must not begin construction of facilities beyond those authorized by this decision until further approval is granted.

4. California Broadband Cooperative, Inc. (CBC)

In its application, Inyo discusses the formation of CBC by its two founders and shareholders. These two men formed CBC to identify and address opportunities for funding from the California Advanced Services Fund (CASF) and the American Recovery and Reinvestment Act (ARRA). Inyo acts as CBC's fiscal agent, and the two businesses have the same registered address.

In its Response, Inyo references two other Commission proceedings that it is currently involved in with CBC, regarding requests for approval of funding available from CASF and ARRA. Authorizations of these requests are contingent

¹ Amended Application filed August 20, 2009, at 3 and 4; and Response at 2 and 3.

upon receipt of a CPCN by the applicant or its fiscal agent, though the type of CPCN required is not specified.²

Given the relationship of these companies' founders, shareholders, addresses, and funding requests, the Commission reminds Inyo and CBC that the authority granted herein is valid for Inyo only. If CBC wishes to provide telecommunications services, it must separately apply for authorization to do so.

5. California Environmental Quality Act (CEQA)

The CEQA requires the Commission act 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. Since Inyo states that it will not be constructing any facilities for the purpose of providing local exchange or interexchange services, except for equipment to be installed in existing buildings or structures, it can be seen with certainty that there is no possibility that granting this application will have an adverse impact upon the environment. Before it can construct facilities other than equipment to be installed in existing buildings or structures, Inyo must file for additional authority, and submit to any necessary CEQA review.

6. Financial Qualifications

Pursuant to Rule 4.B of D.95-12-056, an applicant for a CPCN for authority to provide facilities-based local exchange service must demonstrate that it has \$100,000 cash or cash equivalent to meet the firm's start-up expenses. Applicant must also demonstrate that it has sufficient additional resources to cover all

² Decision (D.) 07-12-054, Resolution T-17143, and Pub. Util. Code § 281.

deposits required by other telecommunications carriers in order to provide service in California.

In Exhibits 5 and 6 to the amended application, as well as in its Response, Inyo provides money market bank statements. In its Response, Inyo provides a signed certification of its Chief Operating Officer, Robert Volker, that Inyo will have the required amount of funds available for a period of 12 months. Since Inyo has provided documentation that it possesses in excess of the required minimum of \$100,000 that is reasonably liquid and available, it has demonstrated that it has sufficient funds to meet its start-up expenses and has fulfilled this requirement.

Inyo proposes to initially interconnect with AT&T and Verizon, both of which require a deposit. Inyo has demonstrated that it has sufficient funds to pay the estimated deposits of \$10,000 and \$28,000, respectively. Therefore, Inyo has demonstrated that it has fulfilled this requirement.

7. Managerial and Technical Qualifications

To be granted a CPCN for authority to provide local exchange and interexchange service, an applicant must make a reasonable showing of managerial and technical expertise in telecommunications or a related business.³ Inyo supplied biographical information on its management that demonstrates that it has sufficient expertise and training to operate as a telecommunications provider.

Inyo verified that no one associated with or employed by Inyo as an affiliate, officer, director, partner, or owner of more than 10% of Inyo was

³ D.95-12-056 at Appendix C, Rule 4.A.

previously associated with a telecommunications carrier that filed for bankruptcy, or was sanctioned by the Federal Communications Commission or any state regulatory agency for failure to comply with any regulatory statute, rule, or order.

Inyo also verified that no one associated with or employed by it as an affiliate, officer, director, partner, or owner of more than 10% of Inyo was previously associated with any telecommunications carrier that filed for bankruptcy, or has been found either civilly or criminally liable by a court of appropriate jurisdiction for a violation of Sections 17000, et seq. of the California Business and Professions Code, or for any actions which involved misrepresentations to consumers, nor is currently under investigation for similar violations.

For the above reasons, we find that Inyo is in compliance with the requirements of D.95-12-056.

8. Tariffs

Commission staff reviewed Inyo'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, Inyo shall correct these deficiencies as a condition of our approval of its application.

9. Map of Service Territory

To be granted a CPCN for authority to provide local exchange service, an applicant must provide a map of the service territories it proposes to serve.⁴ In Exhibit 3 to its amended application, and in its Response, Inyo provided a map of

⁴ D.95-12-056 at Appendix C, Rule 4.E.

the location of its proposed service territory, in compliance with this requirement.

10. Expected Customer Base

Inyo provided its estimated customer base for the first and fifth years of operation in Exhibit 7 to the amended application. Therefore, Inyo has complied with this requirement.

11. Conclusion

We conclude that the application conforms to our rules for certification as a competitive local exchange and interexchange carrier. Accordingly, we grant Inyo a CPCN to provide limited facilities-based and resold local exchange telecommunications service in the service territories of AT&T and Verizon and limited facilities-based and resold intrastate interexchange telecommunications services within California, subject to compliance with the terms and conditions set forth in the Ordering Paragraphs.

12. Categorization and Need for Hearing

In Resolution ALJ 176-3238, dated July 30, 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.

13. Waiver of Comment Period

No protests were filed in this proceeding. Therefore, 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 14.6(c)(2) of the

Commission's Rules of Practice and Procedure, the otherwise applicable 30-day period for public review and comment is waived.

14. Assignment of Proceeding

Rachelle B. Chong is the assigned Commissioner and Seaneen M. Wilson is the assigned ALJ in this proceeding.

Findings of Fact

1. Inyo agrees with the assigned ALJ's treatment of A.09-07-023 as a request for a limited facilities-based CPCN in the service territories of AT&T and Verizon, and intrastate interexchange services within the State of California.

2. Inyo has a minimum of \$100,000 of cash or cash equivalent that is reasonably liquid and readily available to meet its start-up expenses.

3. Inyo has sufficient additional cash or cash equivalent to cover deposits that may be required by other telecommunications carriers in order to provide the proposed service.

4. Inyo's management possesses sufficient experience, knowledge, and technical expertise to provide local exchange services to the public.

5. No one associated with or employed by Inyo as an affiliate, officer, director, partner, or owner of more than 10% of Inyo was previously associated with a telecommunications carrier that filed for bankruptcy, or was sanctioned by the Federal Communications Commission or any state regulatory agency for failure to comply with any regulatory statute, rule, or order.

6. No one associated with or employed by it as an affiliate, officer, director, partner, or owner of more than 10% of Inyo was previously associated with any telecommunications carrier that has been found either civilly or criminally liable by a court of appropriate jurisdiction for a violation of Sections 17000, et seq. of the California Business and Professions Code, or for any actions which involved

misrepresentations to consumers, nor is currently under investigation for similar violations.

7. Except for the deficiencies identified in Attachment A to this decision, Inyo's draft tariffs comply with the Commission's requirements.

8. In Exhibit 3 to its amended application, and in its Response, Inyo provided a map of the location of its proposed service territory.

9. Inyo provided an estimate of its customer base for the first and fifth year of operation.

10. The two founders and shareholders of Inyo formed a separate California corporation, CBC, to identify and address opportunities for funding from CASF and ARRA.

11. Inyo acts as CBC's fiscal agent, and the two businesses have the same registered address.

12. The authority granted herein is valid for Inyo only.

Conclusions of Law

1. Inyo's application should be treated as a request for limited facilities-based and resold local exchange and intrastate interexchange service.

2. Inyo should be granted a CPCN to provide limited facilities-based and resold local exchange telecommunications service in the service territories of AT&T and Verizon and limited facilities-based and resold intrastate interexchange telecommunications services within California, subject to the terms and conditions set forth in the Ordering Paragraphs.

3. If CBC intends to provide any telecommunications services subject to the jurisdiction of the Commission, it should separately apply for authorization to do so.

4. Since Inyo states that it will not be constructing any facilities for the purposes of providing local exchange or intrastate interexchange services, except for equipment to be installed in existing buildings or structures, no CEQA review should be necessary at this time.

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

6. Inyo's initial tariff filing should correct the tariff deficiencies shown in Attachment A to this decision.

O R D E R

IT IS ORDERED that:

1. A certificate of public convenience and necessity is granted to Inyo Networks, Inc. to provide limited facilities-based and resold local exchange telecommunications service in the service territories of Pacific Bell Telephone Company d/b/a AT&T California and Verizon California Inc., and limited facilities-based and resold intrastate interexchange telecommunications services within California, subject to the terms and conditions set forth below.

2. The authority granted herein does not apply to California Broadband Cooperative, Inc.

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

4. Inyo Networks, Inc. shall not offer competitive local exchange local services until tariffs are filed with and authorized by this Commission, in

accordance with General Order 96-B and as corrected for deficiencies set forth in Attachment A.

5. The corporate identification number assigned to Inyo Networks, Inc., U-7159-C, 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. In addition, to all the requirements applicable to competitive local exchange carriers and interexchange carriers included in Attachments B, C, and D to this decision, Inyo Networks, Inc. shall be subject to all applicable Commission rules, decisions, General Orders and statutes that pertain to California public utilities.

7. Application 09-07-023 is closed.

This order is effective today.

Dated December 17, 2009, at San Francisco, California.

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

ATTACHMENT A

List of deficiencies in draft tariff submitted by Inyo Networks, Inc. in A.09-07-023 to be corrected in its initial tariff compliance filing.

1. Tariff Sheet Format: Conform the sheet header schedule ID to schedule numbers used in tariff.
2. Tariff Inspection - Include a telephone number and an address in California where a copy of tariff can be inspected by the public. (GO 96-B, Section 8.1.3.)
3. Conform the Limitation of Liability Rule to the requirements in Appendices A and B of D.95-12-057.
4. Conform the Deposit Rule (interest amount) to the requirement in Appendix B of D.95-07-054.
5. Universal Lifeline Telephone Service - Conform the ULTS Income Limits to the amounts posted on the Commission's website:
<http://www.cpuc.ca.gov/PUC/Telco/Public+Programs/lifelineDetails.htm#qualify>

(END OF ATTACHMENT A)

ATTACHMENT B

REQUIREMENTS APPLICABLE TO COMPETITIVE LOCAL EXCHANGE CARRIERS AND INTEREXCHANGE 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 Exhibit 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 0.45% 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 0.079% 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 24, 2008, effective June 1, 2008).

Note: These fees change periodically. In compliance with Resolution T-16901, December 2, 2004, Applicant 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 (GO) 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 keep its books and records in accordance with the Generally Accepted Accounting Principles.

9. 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.

10. 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.

11. 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.

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

13. 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.

14. 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 certificate of public convenience and necessity unless it has received written permission from the Communications Division to file or remit late.

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

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

17. 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.

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

19. 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 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 Pub. Util. Code §§ 2107 and 2108.

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)