

Decision 10-01-014 January 21, 2010

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

In the Matter of the Application of Pacific Lightwave, a California Corporation for Authority to Provide Local Exchange Services as a Facilities-Based Competitive Local Carrier.

Application 09-07-017  
(Filed July 10, 2009)

**DECISION GRANTING THE APPLICATION OF PACIFIC LIGHTWAVE, A CALIFORNIA CORPORATION FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY IN ORDER TO PROVIDE FULL FACILITIES-BASED COMPETITIVE LOCAL EXCHANGE SERVICE**

**1. Summary**

Pacific Lightwave, a California Corporation, is granted a Certificate of Public Convenience and Necessity under Pub.Util. Code § 1001 for authority to provide full facilities-based local exchange telecommunications services as a non-dominant competitive local carrier within California, subject to the terms and conditions set forth in the ordering paragraphs. This proceeding is closed.

**2. Background**

Applicant's legal name is Pacific Lightwave, a California Corporation (Pacific Lightwave). Pacific Lightwave's principal place of business is located at 78-005 Wildcat Drive, Suite 104, Palm Desert, CA 92211.

Pacific Lightwave seeks a Certificate of Public Convenience and Necessity (CPCN) in order to provide full facilities-based local exchange services to residential and business customers within California, in the service territories of

Pacific Bell Telephone Company d/b/a AT&T California (AT&T), Verizon California Inc. (Verizon), SureWest Telephone (SureWest), and Citizens Telecommunications Company of California Inc. d/b/a Frontier Communications of California (Citizens/Frontier). In particular, Pacific Lightwave proposes to: 1) acquire leased facilities from other providers and build wireless solutions for placement in areas where traditional development costs and/or zoning and permitting processes have made deployment prohibitively expensive or difficult; and 2) install and operate equipment to support wireless backhaul service for voice service, using existing fiber-optic cables with conversion equipment located on existing buildings and other structures. Pacific Lightwave also seeks treatment as a non-dominant carrier.

### **3. Financial Qualifications**

To be granted a CPCN for authority to provide facilities-based local exchange service, the applicant must demonstrate that it has \$100,000 cash or cash equivalent to meet the firm's start-up expenses. Pacific Lightwave 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>1</sup>

In Exhibits B, D, and E to the application, as well as in its Responses to ALJ Requests<sup>2</sup> (Responses), Pacific Lightwave provided actual and forecasted financial information, as well as a letter affirming that it has an unsecured

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<sup>1</sup> The financial standards for certification to operate as a competitive local carrier are set forth in Decision (D.) 95-12-056, Appendix C, Rule 4.B.

<sup>2</sup> Filed September 25, 2009, October 26, 2009, and November 9, 2009.

revolving line of credit for an amount sufficient to cover start-up expenses, that is reasonably liquid and available.<sup>3</sup> Pacific Lightwave also plans to fund initial operation through the existing equity in the company, issuance of common stock in the corporation, and by future revenues generated by its provision of services. Based on the actual and forecasted financial information in Exhibits B and D to the application, Pacific Lightwave is financially qualified to offer the telecommunications services for which authority is sought.

Pacific Lightwave proposed to initially interconnect with two other telecommunications carriers, Verizon and TelePacific Communications (TelePacific). Only Verizon requires a deposit, of \$10,000. Pacific Lightwave has demonstrated that it has sufficient funds to pay this deposit, based on its actual and forecasted financial information and revolving line of credit, Exhibits B, D, and E to the application, and its Responses.

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

An applicant for authority to provide local exchange service must make a reasonable showing of managerial and technical expertise in telecommunications or a related business. Pacific Lightwave supplied biographical information on its management that demonstrates that it has sufficient expertise and training to operate as a telecommunications provider.<sup>4</sup>

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

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<sup>3</sup> Application (A.) 09-07-017 at Exhibit E and Response to ALJ Request filed September 25, 2009.

<sup>4</sup> A.09-07-017 at Exhibit H.

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

Pacific Lightwave also verified that no one associated with or employed by it as an affiliate, officer, director, partner, or owner of more than 10% of it 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.

The name Pacific Lightwave has been used by a telecommunications utility, GST Pacific Lightwave Inc., in the past. The Applicant stated that neither it nor its officers are related to GST Pacific Lightwave Inc. in any way.

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

## **5. Map of Service Territory**

Rule 3.1(c) of the Commission's Rules of Practice and Procedure (Rules),<sup>5</sup> in part, sets forth the requirement that a utility filing an application under Pub. Util. Code § 1001 provide a map showing the location of the proposed construction or extension. In Attachment A to its Proponent's Environmental

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<sup>5</sup> Unless otherwise noted, items labeled "Rule" are from the Commission's Rules of Practice and Procedure.

Assessment, Pacific Lightwave has provided a map of the location of its proposed construction or extension, in compliance with this requirement.

## **6. Expected Customer Base**

Rule 3.1(j) sets forth the requirement that a telephone utility filing an application under Pub. Util. Code § 1001 provide the estimated number of customers for the first and fifth years of service. Pacific Lightwave has provided this information in Exhibit G to the application. Because Exhibit G contains proprietary and competitively sensitive information, Pacific Lightwave has requested confidential treatment of Exhibit G.

## **7. General Order (GO) 104-A Statement**

Rule 3.1(i) sets forth the requirement that a utility filing an application under Pub. Util. Code § 1001 provide a statement regarding GO 104-A. Pacific Lightwave is not a publicly traded company, and has no proxy statements, 10Ks or annual reports to provide. Further, Pacific Lightwave states that it is not aware of any reportable matters pursuant to GO 104-A, Section 2. Pacific Lightwave, therefore, has nothing to report under this rule.

On a going-forward basis, though, Pacific Lightwave must file all reports required of a public utility under Commission jurisdiction.

## **8. Request for Treatment as a Non-dominant Carrier**

Pacific Lightwave requests treatment as a non-dominant carrier, which would include exemption from the requirements of Pub. Util. Code §§ 816-830 concerning stocks and security and § 851 concerning the encumbrance and transfer of utility property. The Commission detailed its rules regarding exemption of non-dominant carriers in D.85-01-008, and subsequently modified in D.85-07-081 and D.85-11-044. We grant Pacific Lightwave's request

for non-dominant carrier status, provided that they follow all rules detailed in the above-referenced decisions.

## **9. Tariffs**

Commission staff reviewed Pacific Lightwave'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, Pacific Lightwave is directed to correct these deficiencies as a condition of our granting approval of its tariffs.

## **10. California Environmental Quality Act (CEQA) Compliance**

Pursuant to CEQA and Rule 2.4, the Commission examines projects to determine any potential environmental impacts in order that adverse effects are avoided and environmental quality is restored or enhanced to the fullest extent possible under CEQA.

Pacific Lightwave's proposed construction activities will generally take place in existing rights-of-way, utility easements, and/or on top of existing utility poles.<sup>6</sup> The proposed construction may include trenching for the placement of underground conduit, installing cable in existing or new conduit, and installing cable on existing poles. Pacific Lightwave may also utilize fixed wireless facilities to connect customers to backbone facilities, which would require installation of small antennae and associated radio transmitters.

Pacific Lightwave asserts that, these activities, by their very nature, fall within classes of projects that are exempt from CEQA and for which neither an

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<sup>6</sup> See Proponents Environmental Assessment (PEA), filed September 18, 2009.

Environmental Impact Report nor a Negative Declaration is required.

Specifically, Pacific Lightwave identifies:

- Class 1 Exemption: operation, repair, maintenance, leasing or minor alteration of existing public or private structures and facilities, with negligible or no expansion of an existing use. This includes existing facilities used to provide public utility services. 14 CCR Section 15301.
- Class 3 Exemption: construction including water main, sewage, electrical, gas and *other utility extensions of reasonable length* to serve such construction. This includes the construction of limited numbers of new small facilities or utility extensions. 14 CCR Section 15303.

Pacific Lightwave's proposed activities involve construction of reasonably short utility extensions (Class 3). In order to provide its service, Pacific Lightwave also intends to utilize the existing conduits, poles, and other facilities of local cable operators (Class 1). Exemption of these activities is consistent with Commission precedent. Pacific Lightwave's proposed new construction activities are similar to those undertaken by other carriers that we have decided are categorically exempt from CEQA. *See, e.g., D.06-04-063 (ClearLinx Network Corporation); D.06-04-067 (CA-CLEC LLC).*

Pacific Lightwave does not know at this time, all of the specific areas where it may have to undertake construction. Pacific Lightwave, therefore, requests approval to utilize a procedure for expedited review of its projects once it is aware of a specific site(s) in which it plans construction. The proposed procedure, described in Application Exhibit B, tracks the expedited review procedure that we have approved for other carriers. Such a process will expedite CEQA review and is appropriate for the type of construction outlined here, which will be categorically exempt. By establishing this expedited review process, we are able to review the information on a specific project to confirm

that it is categorically exempt from CEQA or explain why further environmental review is required. At the same time, the proposed CEQA review process will enable Pacific Lightwave to undertake construction of its projects in an efficient manner without experiencing delays caused by an unnecessarily protracted CEQA review.

The Commission will use a review procedure comparable to that approved for other carriers that have sought Commission approval for CEQA exemption for proposed construction projects. Pacific Lightwave will provide and the Commission's Energy Division will review a detailed description of the proposed project, the environmental setting, and the construction workplan, as well as a statement of CEQA exemptions (See Attachment E for a complete description of procedure) that is adopted by this decision.

We approve the process set forth in Attachment E for Commission review of claimed CEQA exemptions for construction projects undertaken pursuant to Pacific Lightwave's full facilities-based authority, based on the specific facts of this case.

Pacific Lightwave shall not perform any full facilities-based construction activities without first obtaining a Notice to Proceed from the Energy Division or authorization by the Commission after the requisite environmental review.

We have previously determined that the public convenience and necessity require that competition be allowed in the provision of competitive local exchange service, Rulemaking 95-04-043/Investigation 95-04-044. Granting this application will benefit the public interest by expanding the availability of technologically advanced telecommunications services within the state.

## **11. Conclusion**

We conclude that the application conforms to our rules for certification as a competitive local carrier. Accordingly, we shall grant Pacific Lightwave a CPCN to provide local exchange service as a non-dominant carrier, subject to compliance with the terms and conditions set forth in the Ordering Paragraphs.

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

Pursuant to Rule 11.4, Pacific Lightwave has filed several motions for leave to file selected confidential materials under seal. These materials include: 1) Exhibits B, D, E, and G to the application, filed July 10, 2009; 2) the Proponent's Environmental Assessment, filed September 18, 2009; 3) Attachments to Response to ALJ Request, dated September 25, 2009; and 4) Attachments to Response to ALJ Request, dated October 26, 2009. Pacific Lightwave represents that the information is proprietary and sensitive. Pacific Lightwave states that the information, if revealed, would place it at an unfair business disadvantage. We have granted similar requests in the past and do so here regarding Exhibits B, D, E, and G to the application filed July 10, 2009 and Attachments to Response to ALJ Request dated September 25, 2009. While we traditionally provide confidential treatment of proprietary and sensitive company data, we must also balance this with the need for an open and public CEQA process. Pacific Lightwave stated that the PEA and response to follow-up questions that it moved to be filed under seal on September 18, 2009 and October 26, 2009, provided "details about Pacific Lightwave's business plans that, if

disclosed publicly, could put Pacific Lightwave at a competitive disadvantage.”<sup>7</sup> This information, though, included generic information regularly provided in a public fashion as part of the CEQA process. We therefore deny Pacific Lightwave’s motions to file the Proponent’s Environmental Assessment, filed September 18, 2009 and the Attachments to Response to ALJ Request, dated October 26, 2009 under seal.

### **13. Categorization and Need for Hearings**

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.

### **14. 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 14.6(c)(2), the otherwise applicable 30-day period for public review and comment is waived.

### **15. Assignment of Proceeding**

Timothy Alan Simon is the assigned Commissioner and Seaneen M. Wilson is the assigned Administrative Law Judge in this proceeding.

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<sup>7</sup> A.09-07-017 Motions dated September 18, 2009 and October 26, 2009. Same quote is found in both motions.

### **Findings of Fact**

1. Pacific Lightwave seeks authorization to provide full facilities-based local exchange services within the State of California, in the service territories of AT&T, Verizon, SureWest, and Citizens/Frontier.

2. Pacific Lightwave 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. Pacific Lightwave 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. Pacific Lightwave'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 Pacific Lightwave as an affiliate, officer, director, partner, or owner of more than 10% of it was previously associated with a telecommunications carrier that filed for bankruptcy, or was sanctioned by the FCC 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 Pacific Lightwave 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.

7. In Exhibit F to its application, Pacific Lightwave submitted a draft of its initial tariff that contains the deficiencies identified in Attachment A to this

decision. Except for these deficiencies, Pacific Lightwave's draft tariffs comply with the Commission's requirements.

8. Pacific Lightwave complies with the requirement in Rule 3.1(c), which, in part, requires that a utility filing an application under Pub. Util. Code § 1001, provide a map showing the location of the proposed construction or extension.

9. Pacific Lightwave has no information to report under Rule 3.1(i), which requires that a utility filing an application under Pub. Util. Code § 1001, provide a statement regarding compliance with GO 104-A.

10. Pacific Lightwave provided an estimate of its customer base for the first and fifth year of operation.

11. Neither Pacific Lightwave nor its officers are related in any way to GST Pacific Lightwave Inc.

12. Pacific Lightwave requests treatment as a non-dominant carrier, which would include exemption from the requirements of Pub. Util. Code §§ 816-830 concerning stocks and security and § 851 concerning the encumbrance and transfer of utility property.

13. The Commission is the Lead Agency for this project under CEQA.

14. Pacific Lightwave's proposed construction activities will generally take place in existing rights-of-way, utility easements, and/or on top of existing utility poles. This proposed construction may include trenching for the placement of underground conduit, installing cable in existing or new conduit, and installing cable on existing poles. Pacific Lightwave may also utilize fixed wireless facilities to connect customers to backbone facilities, which would require installation of small antennae and associated radio transmitters.

15. Pacific Lightwave's proposed construction activity falls within one or more CEQA categorical exemptions.

16. Pacific Lightwave's authority to provide local exchange services will not have a significant adverse effect upon the environment.

17. Pursuant to Rule 11.4, Pacific Lightwave filed several motions for leave to file confidential materials under seal, including 1) Exhibits B, D, E, and G to the application, filed July 10, 2009; 2) Attachments to Response to ALJ Request, dated September 25, 2009; 3) Proponent's Environmental Assessment, filed September 18, 2009; and 4) Attachments to Response to ALJ Request, dated October 26, 2009.

18. The Proponent's Environmental Assessment and Attachments to Response to ALJ Request dated October 26, 2009, is generally of a type provided in the public CEQA process.

### **Conclusions of Law**

1. Pacific Lightwave's request for a CPCN to provide full facilities-based local exchange services within the State of California, in the service territories of AT&T, Verizon, SureWest, and Citizens/Frontier, subject to the terms and conditions set forth in the Ordering Paragraphs, should be granted.

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

3. Pacific Lightwave should be granted non-dominant carrier status, subject to Commission rules and regulations as detailed in D.85-01-008 and modified in D.85-07-081 and D.85-11-044.

4. Pacific Lightwave's initial tariff filing should correct the deficiencies noted in its draft tariffs as indicated in Attachment A to this decision.

5. Pacific Lightwave should be allowed to use the Energy Division 21-day CEQA exemption process.

6. Pacific Lightwave's motion to file under seal its 1) Exhibits B, D, E, and G to the application, filed July 10, 2009; and 2) Attachments to Response to ALJ Request, dated September 25, 2009; should be granted for two years.

7. Pacific Lightwave's motion to file under seal its: 1) Proponent's Environmental Assessment, filed September 18, 2009; and 2) Attachments to Response to ALJ Request, dated October 26, 2009, should be dismissed. This information is not of a type generally granted confidential treatment.

## **O R D E R**

### **IT IS ORDERED** that:

1. A Certificate of Public Convenience and Necessity is granted to Pacific Lightwave, a California Corporation, to operate as a full facilities-based provider of local exchange services as a non-dominant carrier within California, in the service territories of Pacific Bell Telephone Company d/b/a AT&T California, Verizon California Inc., SureWest Telephone, and Citizens Telecommunications Company of California Inc. d/b/a Frontier Communications of California, subject to the terms and conditions set forth below.

2. The staff of the Commission's Energy Division is authorized to review, process, and shall act upon Pacific Lightwave, a California Corporation's requests for a determination that its full facilities-based construction activities are exempt from the requirements of the California Environmental Quality Act.

3. If Pacific Lightwave, a California Corporation, wishes to engage in full facilities-based construction activities and believes that these activities are exempt from the California Environmental Quality Act, Pacific Lightwave, a California Corporation, shall first apply to the Commission's Energy Division staff for a determination of exemption from California Environmental Quality Act using the procedure set forth in Attachment E.

4. Pacific Lightwave, a California Corporation, shall have non-dominant carrier status, subject to Commission rules and regulations as detailed in Decision (D.) 85-01-008 and modified in D.85-07-081 and D.85-11-044.

5. Pacific Lightwave, a California Corporation's motions to file under seal are granted. The information shall be filed under seal and shall remain under seal for a period of two years after the date of this order. During this two-year period, this information shall remain under seal and shall not be viewed by any person other than the assigned Commissioner, the assigned Administrative Law Judge, the Assistant Chief Administrative Law Judge, or the Chief Administrative Law Judge, except as agreed to in writing by Pacific Lightwave, a California Corporation or as ordered by a court of competent jurisdiction. If Pacific Lightwave, a California Corporation, believes that it is necessary for this information to remain under seal for longer than two years, Pacific Lightwave, a California Corporation, shall file a new motion at least 30 days before the expiration of this limited protective order.

6. Pacific Lightwave's motions to file under seal its: 1) Proponent's Environmental Assessment, filed September 18, 2009; and 2) Attachments to Response to ALJ Request, dated October 26, 2009, are denied.

7. Pacific Lightwave, a California Corporation, may file tariff schedules for the provision of competitive local exchange services, corrected for the deficiencies detailed in Attachment A to this decision. Pacific Lightwave, a California Corporation, may not offer competitive local exchange services until tariffs are filed with and authorized by this Commission. Pacific Lightwave, a California Corporation's filing shall be made in accordance with General Order 96-B.

8. 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.

9. The corporate identification number assigned to Pacific Lightwave, a California Corporation, U-7154-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.

10. In addition to all the requirements applicable to competitive local exchange carriers and inter-exchange carriers included in Attachments B, C, and D to this decision, Pacific Lightwave, a California Corporation, shall be subject to all applicable Commission rules, decisions, General Orders, and statutes that pertain to California Public Utilities.

11. Application 09-07-017 is closed.

This order is effective today.

Dated January 21, 2010, at San Francisco, California.

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

## **ATTACHMENT A**

List of deficiencies in draft tariff submitted by Pacific Lightwave, a California Corporation, in A.09-07-017 to be corrected in its initial tariff compliance filing.

1. Tariff Sheet Format: CPUC assigned utility ID number (U-7154-C) should be included on each sheet in the upper left header along with Company name and address. (General Order (GO) 96-B, Section 8.4.1.)
2. Tariff Inspection - Sheet 17 - Include a telephone number and a company address in California where a copy of tariff can be inspected by the public. (GO 96-B, Section 8.1.3.)
3. User Fee and Public Program Surcharges - Sheet 2 - include a rule conforming to AT&T tariffs for PUC User Fee and Public Program Surcharges (Resolution T-16901, December 2, 2004).

**(END OF ATTACHMENT A)**

## ATTACHMENT B

### REQUIREMENTS APPLICABLE TO COMPETITIVE LOCAL EXCHANGE CARRIERS 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 0.00% 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 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 Public Utilities (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's 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 Public Utilities 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)**

## ATTACHMENT E

### **Review Process for Claimed CEQA Exemptions for Proposed Construction Projects**

- Pacific Lightwave will provide the Commission's Energy Division with:
  - A detailed description of the proposed project, including:
    - Customer(s) to be served;
    - The precise location of the proposed construction project; and
    - Regional and local site maps.
  - A description of the environmental setting, to include at a minimum:
    - Cultural, historical, and paleontological resources;
    - Biological resources; and
    - Current land use and zoning.
  - A construction workplan, to include:
    - Commission Preconstruction Survey Checklist – Archaeological Resources;
    - Commission Preconstruction Survey Checklist – Biological Resources;
    - A detailed schedule of construction activities, including site restoration activities;
    - A description of construction/installation techniques;
    - A list of other agencies contacted with respect to siting, land use planning, and environmental resource issues, including contact information; and
    - A list of permits required for the proposed project.
  - A statement of the CEQA exemption(s) applicable to the proposed project; and

- Documentation and factual evidence sufficient to support a finding that the claimed exemption(s) is (are) applicable.
- The Energy Division will review Pacific Lightwave's submission for the proposed project to confirm that the claimed exemption(s) from CEQA are applicable.
- Within 21 days from the date of Pacific Lightwave's submittal, the Energy Division will issue either:
  - A Notice to Proceed (NTP) and file a Notice of Exemption with the State Clearinghouse, Office of Planning and Research, or
  - A letter of denial stating the specific reasons why the claimed exemption(s) are not applicable to the proposed project.

We have reviewed the application and Supplement and find that:

- Pacific Lightwave's proposed facilities-based project activities are very limited;
- These activities would in almost all circumstances be very likely to qualify for an exemption from CEQA; and
- The proposed process for reviewing the applicability of CEQA exemptions to Pacific Lightwave's facilities-based projects is not only adequate for the Commission's purposes as CEQA Lead Agency, but is also in the public interest because it enables Pacific Lightwave to respond in a timely manner to requests for service without the delay or burden of a full CEQA review when such review is unnecessary.
- If the Energy Division disapproves Pacific Lightwave's claimed CEQA exemption(s), and issues a letter of denial to Pacific Lightwave, Pacific Lightwave shall either re-design the specific project and facilities and then reapply for a finding of exemption from CEQA, or file a formal application with the Commission seeking the requisite approval and full CEQA review, before commencing any construction activities.

**(END OF ATTACHMENT E)**