

Decision 10-01-009 January 21, 2010

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
Entelegant Solutions, Inc. for a Certificate
of Public Convenience and Necessity to
Operate as a Provider of Facilities-Based
and Resold Local Exchange Service within
in the State of California.

Application 09-07-024
(Filed July 22, 2009)

**DECISION GRANTING CERTIFICATE OF PUBLIC CONVENIENCE
AND NECESSITY TO ENTELEGENT SOLUTIONS, INC.**

1. Summary

Entelegant Solutions, Inc. is granted a certificate of public convenience and necessity pursuant to Pub. Util. Code § 1001 to provide limited facilities-based and resold competitive local exchange services in the State of California.¹ The application is unopposed. This proceeding is closed.

¹ Although Entelegant Solutions, Inc.'s application, by its title, requests "Facilities-Based and Resold Local Exchange Service," the application itself only sought limited facilities-based authority. Applicant states it will provide service through the use of existing facilities and network elements of other carriers and/or its own facilities installed in existing building and structures. As a result, Applicant is granted authority for limited facilities-based service.

2. Background

In prior decisions, we authorized the provision of competitive interexchange services by carriers meeting specified criteria. In addition, we authorized the provision of competitive local exchange service,² by carriers meeting specified criteria, within the service territories of Pacific Bell Telephone Company (Pacific), Verizon California Inc. (Verizon), SureWest Telephone (SureWest), and Citizens Telecommunications Company of California, Inc., dba Frontier Communications of California (CTC).³

Applicant's legal name is Entelegent Solutions, Inc. (Applicant). Applicant is a North Carolina Corporation qualified to do business in California, whose principal place of business is located at 3800 Arco Corporate Drive, Suite 310, Charlotte, North Carolina 28273. Applicant's telephone number is (704) 323-7464. Applicant currently holds a Certificate of Public Convenience and Necessity (CPCN) which authorizes the provision of inter- and intra-local access and transport area services in California as a non-dominant interexchange carrier (NDIEC).⁴

3. Financial Qualifications

To be granted a CPCN, an applicant for authority to provide limited facilities-based and resold local exchange and interexchange services must demonstrate that it has a minimum of \$100,000 cash or cash equivalent to meet

² 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.

³ SureWest was formerly known as Roseville Telephone Company.

⁴ See Decision (D.) 09-07-029, which granted Applicant CPCN #U-7151-C.

the firm's start-up expenses.⁵ An applicant must also demonstrate that it has sufficient additional resources to cover all deposits required by local exchange carriers and/or interexchange carriers (IECs) in order to provide the proposed service.⁶ Applicant provided statements from its money market account, covering a three-month period, to demonstrate that it has sufficient cash to satisfy the financial requirements.⁷

4. Technical Qualifications

Applicants for limited facilities-based authority are required to make a reasonable showing of technical expertise in telecommunications or a related business. Applicant submitted biographical information on its officers 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 Sections 17000 et seq. of the California Business and Professions Code, or for any actions which involved

⁵ The financial requirement for CLECs is contained in D.95-12-056, Appendix C. The financial requirement for NDIECs is contained in D.91-10-041.

⁶ The requirement for CLEC applicants to demonstrate that they have additional financial resources to meet any deposits required by underlying local exchange carriers and/or IECs is set forth in D.95-12-056, Appendix C. For NDIECs, the requirement is found in D.93-05-010.

⁷ Account statements were provided for the period beginning June 1, 2009 through August 31, 2009.

misrepresentations to consumers, or was sanctioned by the Federal Communications Commission or any state regulatory agency for failure to comply with any regulatory statute, rule, or order, and to the best of Applicant's knowledge, is not currently under investigation for similar violations.

5. Tariffs

Applicant filed draft tariff provisions in connection with its application. Applicant does not intend to provide any residential services. The 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.⁸ Applicant has no plan for constructing facilities at this time. Applicant will provide its service through the use of existing facilities and network elements of other carriers and/or its own facilities installed in existing buildings and structures. 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.

⁸ See also Rule 2.4 of the Commission's Rules of Practice and Procedure.

7. Conclusion

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

8. Request to File Under Seal

Applicant requests that the financial information filed in support of the application be kept under seal. The financial information consists of account statements for the three-month period beginning June 1, 2009 through August 31, 2009. Applicant represents that the information is proprietary and sensitive, and the information, if revealed, would place Applicant at an unfair business disadvantage. We have granted similar requests in the past and will do so here.

9. 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.

10. 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.

11. Assignment of Proceeding

Timothy Alan Simon is the assigned Commissioner and Katherine Kwan MacDonald is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. Notice of the application appeared on the Daily Calendar on July 29, 2009.
2. No protests have been filed. A hearing is not required.
3. In prior decisions, the Commission authorized competition, by carriers meeting specified criteria, in providing local exchange telecommunications services within the service territories of Pacific, Verizon, SureWest, and CTC.
4. 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.
5. 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.
6. Applicant's management possesses sufficient experience, knowledge, and technical expertise to provide telecommunications services.
7. Applicant does not intend to provide residential service.
8. As part of its application, Applicant submitted a draft of its initial tariff that contained the deficiencies listed in Attachment A to this decision. Except for these deficiencies, Applicant's draft tariff complies with the Commission's requirements.
9. Applicant will not be constructing facilities, except within existing structures or buildings.

Conclusions of Law

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

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

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

4. Since Applicant will not be constructing facilities, except within 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 California's public utilities.

7. Applicant's initial tariff filing should correct the deficiencies in its draft tariffs as indicated in Attachment A to this decision.

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 Entelegent Solutions, Inc. to expand its operating authority to include limited facilities-based and resold local exchange services subject to the terms and conditions set forth below.

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

3. Entelegent Solutions, Inc. is authorized to file tariff schedules for the provision of competitive local exchange services. Entelegent Solutions, Inc. may not offer competitive local exchange services until tariffs are on file. Entelegent Solutions, Inc.'s initial filing must be made in accordance with General Order 96-B, Telecommunications Industry Rules and Attachment A to this decision. Entelegent Solutions, Inc. must 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 Entelegent Solutions, Inc., U-7151-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. Entelegent Solutions, Inc. must 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 non-dominant interexchange carriers set forth in Decision (D.) 93-05-010, D.90-08-032, as well as all other applicable Commission rules, decisions, General Orders, and statutes that pertain to California public utilities, subject to the exemptions granted in this decision.

7. Entelegent Solutions, Inc. must comply with the requirements applicable to competitive local exchange carriers and non-dominant interexchange carriers included in Attachment B to this decision.

8. Entelegent Solutions, Inc. is not authorized to construct facilities other than those to be installed in existing buildings and structures.

9. Entelegent Solutions, Inc.'s request to have the financial information filed with the application kept under seal is granted for 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 Entelegent Solutions, Inc. 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 09-07-024 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 Entelegent Solutions, Inc., in A.09-07-024 to be corrected in its initial tariff compliance filing.

1. Tariff Sheet Format: The CPUC assigned utility ID number (U-7151-C) must be included on each sheet in the upper left header along with the Company name and address. (General Order 96-B, Section 8.4.1).
2. Availability of the Company's Tariff - Please provide a company address within California service territory where tariffs and cancelled tariffs are available for inspection or copying (General Order 96-B Section 8.1.3).

(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 fee and surcharges that must be regularly remitted per the instructions in Appendix E to 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 0.079% 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, 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 (GO) 96-B and the Telecommunications Industry Rules (D.07-09-019).
- 4. Applicant is a non-dominant interexchange carrier (NDIEC). The effectiveness of its future NDIEC tariffs is subject to the requirements of GO 96-B and the Telecommunications Industry Rules (D.07-09-019).
- 5. Tariff filings shall reflect all fees and surcharges to which Applicant is subject, as reflected in 2 above.
- 6. Applicant shall file a service area map as part of its initial tariff.
- 7. Prior to initiating service, Applicant shall provide the Commission's Consumer Affairs Branch with the name and 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.

8. 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.

9. 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.¹

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

11. 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.

12. 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.

13. 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.

¹ 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. Applicant shall ensure that its employees comply with the provisions of Pub. Util. Code § 2889.5 regarding solicitation of customers.

15. 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.

16. 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.

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

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

19. 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.

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

21. 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, 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)