

Decision 10-02-022 February 25, 2010

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of MassComm, Inc. d/b/a Mass Communications For a Certificate of Public Convenience and Necessity to Permit the Company to Provide Resold Local Exchange Telecommunications Service within the State of California.

Application 09-10-029
(Filed October 22, 2009)

**DECISION GRANTING MASSCOMM, INC. d/b/a MASS COMMUNICATIONS A
CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY IN ORDER TO
PROVIDE RESOLD LOCAL EXCHANGE SERVICE IN CALIFORNIA**

1. Summary

MassComm, Inc. d/b/a Mass Communications (MassCom) filed an application for a certificate of public convenience and necessity (CPCN) for authority to provide resold local exchange telecommunications services in the service territories of Pacific Bell Telephone Company d/b/a AT&T California and Verizon California, Inc.

By this decision, we grant MassComm a CPCN to provide resold local exchange telecommunications services, on the terms and conditions set forth in the ordering paragraphs.

2. Background

On October 22, 2009, MassComm, Inc. d/b/a Mass Communications (MassComm) filed an application for a certificate of public convenience and necessity (CPCN) to provide 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).

On December 3, 2009, the Assigned Administrative Law Judge (ALJ) issued a ruling, requesting further information. On December 15, 2009, MassComm filed a response to the ruling (Response). MassComm's principal place of business is located at 65 Broadway, Suite 1803, New York, New York 10006.

3. 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 MassComm states that it does not intend to construct any facilities, 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, MassComm must file for additional authority, and submit to any necessary CEQA review.

4. Financial Qualifications

Pursuant to Rule 4.B of the Initial Rules for Local Exchange Service Competition in California adopted in Decision (D.) 95-12-056, an applicant for a CPCN for authority to provide resold local exchange service must demonstrate that it has \$25,000 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 deposits required by other telecommunications carriers in order to provide service in California.

At Attachment D to the application, MassComm provided a recent bank statement demonstrating that it has access to \$25,000 cash or cash equivalent, an amount sufficient to cover start-up expenses that is reasonably liquid and available. In its Response, MassComm Chief Executive Officer and President, Darren Mass, certified that MassComm would maintain this sufficient level of unencumbered cash or cash equivalent for a period of 12 months after approval of its application.

MassComm proposes to offer service within the AT&T and Verizon service areas, utilizing the excess capacity of Paetec Communications, Inc. (Paetec). MassComm states that, since it has provided telecommunications service through Paetec in other states for two years, no additional deposit is required of MassComm at this time. If deposits are required in the future, MassComm has demonstrated that it has sufficient funds to pay deposits, based on its bank statements shown in Attachment D to the application.

5. 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.¹ MassComm supplied biographical information on its management in Attachment F to its application that demonstrated that it has sufficient expertise and training to operate as a telecommunications provider.

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

¹ D.95-12-056 at Appendix C, Rule 4.A.

of MassComm 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.

MassComm also verified that no one associated with or employed by it as an affiliate, officer, director, partner, or owner of more than 10% of MassComm 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 § 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 MassComm is in compliance with the requirements of Rule 4.A. of D.95-12-056.

6. Tariffs

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

7. 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.² In

² D.95-12-056 at Appendix C, Rule 4.E.

its Response, MassComm provided a map of the location of its proposed service territory, in compliance with this requirement.

8. Expected Customer Base

MassComm provided its estimated customer base for the first and fifth years of operation in Section VII of its application. Therefore, MassComm has complied with this requirement.

9. Conclusion

We conclude that the application conforms to our rules for certification as a competitive local exchange carrier. Accordingly, we grant MassComm a CPCN to provide resold local exchange telecommunications service in the service territories of AT&T and Verizon, subject to compliance with the terms and conditions set forth in the ordering paragraphs.

10. Categorization and Need for Hearings

In Resolution ALJ 176-3243, dated October 29, 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.

11. Comments on Proposed Decision

No protests were filed in this proceeding. Therefore, this is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Pub. Util. Code § 311(g)(2), the otherwise applicable 30-day period for public review and comment is being waived.

12. Assignment of Proceeding

Dian Grueneich is the assigned Commissioner and Seaneen M. Wilson is the assigned ALJ in this proceeding.

Findings of Fact

1. MassComm seeks authorization of a CPCN to provide resold local exchange service in AT&T and Verizon's service territories.
2. MassComm has a minimum of \$25,000 of cash or cash equivalent that is reasonably liquid and readily available to meet its start-up expenses.
3. MassComm 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. MassComm'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 MassComm as an affiliate, officer, director, partner, or owner of more than 10% of MassComm 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 MassComm 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 § 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, MassComm's draft tariffs comply with the Commission's requirements.

8. MassComm provided a map of the location of its proposed service territory.

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

10. Under Pub. Util. Code § 405, carriers that are in default of reporting and submitting user fees for a period of 30 days or more will be subject to penalties including suspension or revocation of their authority to operate in California. Therefore, carriers must report user fees even if the amount due is zero.

Conclusions of Law

1. MassComm should be granted a CPCN to provide resold local exchange telecommunications service in the service territories of AT&T and Verizon, subject to the terms and conditions set forth in the ordering paragraphs.

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

3. MassComm'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 MassComm, Inc., to provide resold local exchange telecommunications service in the service territories of Pacific Bell Telephone Company d/b/a AT&T California and Verizon California, Inc., subject to the terms and conditions set forth below.

2. MassComm, Inc. must not offer competitive local exchange 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.

3. The corporate identification number assigned to MassComm, Inc., U-7176-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.

4. MassComm, Inc. must file, in this docket, a written acceptance of the certificate granted in this proceeding within 30 days of the effective date of this order. This filing does not reopen the proceeding.

5. MassComm, Inc. must annually pay the user fee and public purpose surcharges specified in Attachment B. Per the instructions in Appendix E to Decision 00-10-028, the Combined California PUC Telephone Surcharge Transmittal Form must be submitted even if the amount due is \$0. Under Pub. Util. Code § 405, carriers that are in default of reporting and submitting user fees for a period of 30 days or more will be subject to penalties including suspension or revocation of their authority to operate in California. Therefore, carriers must report user fees even if the amount due is zero.

6. Prior to initiating service, MassComm, Inc. must 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 must be updated if the name or telephone number changes, or at least annually.

7. MassComm, Inc. must 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. MassComm, Inc. must file an affiliate transaction report with the Director of the Communications Division, in compliance with Decision 93-02-019, on a calendar-year basis using the form contained in Attachment D.

9. MassComm, Inc. must file an annual report with the Director of the Communications Division, in compliance with General Order 104-A, on a calendar-year basis with the information contained in Attachment C to this decision.

10. MassComm, Inc. must file a tariff within 12 months of the effective date of this order, or its certificate of public convenience and necessity will be cancelled.

11. MassComm, Inc. must comply with the Consumer Protection Rules contained in General Order 168.

12. 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, MassComm, Inc. is subject to all applicable Commission rules, decisions, General Orders, and statutes that pertain to California public utilities.

The Commission may terminate this license if MassComm, Inc. fails to comply with any of these requirements.

13. Application 09-10-029 is closed.

This order is effective today.

Dated February 25, 2010, at San Francisco, California.

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

ATTACHMENT A

List of deficiencies in draft tariff submitted by MassComm, Inc. d/b/a Mass Communications, in A.09-10-029 to be corrected in its initial tariff compliance filing.

1. Tariff Sheet Format: CPUC assigned utility ID number (U-7176-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. Universal Lifeline terms at Sheet 65 - update offerings consistent with those found at:
<http://www.cpuc.ca.gov/PUC/Telco/Public+Programs/lifelineDetails.htm#qualify>
3. Rules - Each Rule should have its own sheet or series of sheets (GO 96-B, Section 8.5.7).
4. Provide Company address in California where tariffs and cancelled sheets can be inspected (GO 96-B, Section 8.1.3).

(END OF ATTACHMENT A)

ATTACHMENT B

REQUIREMENTS APPLICABLE TO COMPETITIVE LOCAL EXCHANGE CARRIERS AND INTEREXCHANGE CARRIERS

1. Applicant must 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 29, 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 charges until further revised.

3. Applicant is a competitive local exchange carrier (CLC). The effectiveness of its future tariffs is subject to the requirements of General Order 96-B and the Telecommunications Industry Rules (D.07-09-019).

4. Tariff filings must reflect all fees and surcharges to which Applicant is subject, as reflected in 2 above.

5. Applicant must file a service area map as part of its initial tariff.

6. Prior to initiating service, Applicant must 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 must 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 must notify the Director of the Communications Division in writing of the date local service is first rendered to the public within five days after service begins.

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

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

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

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

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

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

15. If Applicant is 90 days or more late in filing an annual report, or in remitting the surcharges and fee listed in 2 above, the Communications Division shall prepare for Commission consideration a resolution that revokes Applicant's

CPCN unless it has received written permission from the Communications Division to file or remit late.

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

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

18. Applicant is exempt from the requirements of Pub. Util. Code § 851 for the transfer or encumbrance of property whenever such transfer or encumbrance serves to secure debt.

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

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

(END OF ATTACHMENT B)

**ATTACHMENT C
ANNUAL REPORT**

An original and a machine readable, copy using Microsoft Word or compatible format must 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 §§ 2107 and 2108 of the Public Utilities Code.

Required information:

1. Exact legal name and U # of the reporting utility.
2. Address.
3. Name, title, address, and telephone number of the person to be contacted concerning the reported information.
4. Name and title of the officer having custody of the general books of account and the address of the office where such books are kept.
5. Type of organization (*e.g.*, corporation, partnership, sole proprietorship, etc.).
If incorporated, specify:
 - a. Date of filing articles of incorporation with the Secretary of State.
 - b. State in which incorporated.
6. Number and date of the Commission decision granting the Certificate of Public Convenience and Necessity.
7. Date operations were begun.
8. Description of other business activities in which the utility is engaged.
9. List of all affiliated companies and their relationship to the utility. State if affiliate is a:
 - a. Regulated public utility.
 - b. Publicly held corporation.
10. Balance sheet as of December 31st of the year for which information is submitted.
11. Income statement for California operations for the calendar year for which information is submitted.

12. Cash Flow statement as of December 31st of the calendar year for which information is submitted, for California operations only.

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 must 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 must 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)