

Decision 10-04-007 April 8, 2010

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of Agnostic Networks, LLC for a certificate of public convenience and necessity to provide:
(i) resold and facilities-based competitive local exchange service throughout the service territories of Pacific Bell Telephone Company, Verizon California, Inc., SureWest Telephone, and Citizens Telecommunications Company of California, Inc.; and (ii) resold and facilities-based interexchange service statewide.

Application 09-11-021
(Filed November 30, 2009)

**DECISION GRANTING CERTIFICATE OF PUBLIC CONVENIENCE
AND NECESSITY TO AGNOSTIC NETWORKS, LLC**

1. Summary

Agnostic Networks, LLC 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 and interexchange services in the State of California,¹ on a detariffed basis, subject to the terms and conditions set forth below. The application is unopposed. This proceeding is closed.

2. Background

¹ Agnostic Networks, LLC clarified that it seeks only limited facilities-based authority in response to an inquiry from the assigned Administrative Law Judge.

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 Agnostic Networks, LLC (Applicant). Applicant is a Nevada Corporation, authorized to do business in California, whose principal place of business is located at 1382 Pacific Avenue, San Francisco, California 94109. Applicant's telephone number is 415-260-7518.

3. California Environmental Quality Act (CEQA)

CEQA requires the Commission, as the designated lead agency, to assess the potential environmental impact of a project in order that adverse effects are avoided, alternatives are investigated, and environmental quality is restored or enhanced to the fullest extent possible. Applicant will provide its service through the use of existing facilities and network elements of other carriers and/or through its own facilities, installed in existing buildings and structures and has no plans for constructing other facilities at this time. 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

² A competitive local exchange carrier (CLEC) is a common carrier that is issued a certificate of public convenience and necessity (CPCN) to provide local exchange telecommunications service for a geographic area specified by such carrier.

³ SureWest was formerly known as Roseville Telephone Company.

authority, and submit to any required CEQA review, before it can construct facilities.

4. Financial Qualifications

To be granted a CPCN, an applicant for authority to provide limited facilities-based and resold competitive local exchange and interexchange services must demonstrate that it has a minimum of \$100,000 cash or cash equivalent to meet the firm's start-up expenses.⁴ 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.⁵

Applicant provided a personal guarantee of payment of at least \$100,000, plus sufficient additional amounts to cover any required deposits, which is irrevocable for at least 12 months after certification. Applicant provided balance sheets from the guarantors' investment accounts as supporting documentation.

5. Technical Qualifications

Applicants for IEC and Competitive Local Exchange Carrier (CLEC) authority are required to make a reasonable showing of technical expertise in telecommunications or a related business.⁶ Applicant submitted biographical

⁴ The financial requirement for CLECs is contained in Decision (D.) 95-12-056, Appendix C. The financial requirement for non-dominant interexchange carriers (NDIECs) is contained in D.91-10-041.

⁵ 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.

⁶ D.95-12-056 at Appendix C, Rule 4.A.

information on one of its co-founders, who will be the managing member, which 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 telecommunication carrier that filed for bankruptcy; 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; 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. Tariffs

Although Applicant filed draft tariff provisions in connection with its application, Applicant does not intend to provide residential services. Applicant intends to provide services on a detariffed basis. Applicant must post all detariffed rates, terms, and conditions of service on an internet site pursuant to Rule 5.2 of the Telecommunications Industry Rules in General Order 96-B (D.07-09-019). Also, Applicant must notify customers, for any service not provided under tariff, of higher rates or charges, or more restrictive terms or conditions or withdrawal of service or transfer of ownership or customer base pursuant to Rule 5.3 of the Telecommunications Industry Rules (D.07-09-019).

The Commission staff reviewed Applicant's draft tariffs for compliance with Commission rules and regulations. There were no deficiencies.

(See Appendix A.)

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.⁷

Applicant complied with this requirement.

8. Expected Customer Base

As required, applicant provided its estimated base for the first and fifth years of operation in its application.⁸

9. Conclusion

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

10. Categorization and Need for Hearing

In Resolution ALJ 176-3246, dated December 17, 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. Motion for Protective Order

Pursuant to Pub. Util. Code § 583 and General Order 66-C, Applicant requests that the financial information submitted in the application be kept

⁷ D.95-12-056 at Appendix C, Rule 4.E.

⁸ Commission Rule of Practice and Procedure 3.1(j).

under seal. 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.

All sealed information should remain sealed for a period of two years after the effective date of this order. If Applicant believes that further protection of the sealed information is needed beyond the two years, applicant shall comply with the procedure set forth in Ordering Paragraph 7.

12. 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.

13. Assignment of Proceeding

Dian M. Grueneich 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 December 15, 2009. No protests have been filed. A hearing is not required.
2. In prior decisions, the Commission authorized competition in providing interexchange services for carriers meeting specific criteria.
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.

6. Applicant possesses sufficient experience and knowledge to provide telecommunications services.

7. Applicant does not intend to provide "basic service" as defined by D.96-10-066, but intends to provide services on a detariffed basis to the extent permitted by D.07-09-019.

8. As part of its application, Applicant submitted a draft of its initial tariff that contained no deficiencies. Applicant's draft tariff complies with the Commission's requirements.

9. Applicant will not be constructing facilities except within existing building or structures.

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 limited facilities-based and resold competitive local exchange and interexchange services be subject to the terms and conditions set forth herein.

4. Applicant should be authorized to provide services on a detariffed basis to the extent permitted by D.07-09-019.

5. Since Applicant will not be constructing any facilities, except within existing buildings or structures, it can be seen with certainty that there will be no significant effect on the environment.

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

7. 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.

8. Applicant's motion to file the financial information submitted under seal should be granted for two years.

9. Because of the public interest in competitive local exchange and interexchange 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 Agnostic Networks, LLC to operate as a limited facilities-based and resale provider of competitive local exchange services, and interexchange services, subject to the terms and conditions set forth below.

2. Agnostic Networks, LLC 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. Agnostic Networks, LLC is authorized to provide services on a detariffed basis to the extent permitted by General Order 96-B, Telecommunications Industry Rules. Accordingly, Agnostic Networks, LLC must post all detariffed rates, terms, and conditions of service on an internet site pursuant to

General Order 96-B, Telecommunications Industry Rule 5.2. Agnostic Networks, LLC must notify affected customers, for any service not provided under tariff, of higher rates or charges, or more restrictive terms or conditions or withdrawal of service or transfer of ownership or customer base pursuant to General Order 96-B, Telecommunications Industry Rule 5.3.

4. Agnostic Networks, LLC is authorized to file tariff schedules for the provision of competitive local exchange services and interexchange services. Agnostic Networks, LLC may not offer services until tariffs are on file. Agnostic Networks, LLC's initial filing must be made in accordance with General Order 96-B, Telecommunications Industry Rules. Agnostic Networks, LLC must comply with its tariffs.

5. The certificate granted to Agnostic Networks, LLC, 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.

6. The corporate identification number assigned to Agnostic Networks, LLC, U-7180-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.

7. All sealed information will remain sealed for a period of two years after the effective date of this order. After two years, all such information will be made public. If Agnostic Networks, LLC believes that further protection of sealed information is needed beyond two years, Agnostic Networks, LLC may file a motion, no later than 30 days before the expiration of the two-year period granted by this order, stating the justification for further withholding of the sealed information from public inspection.

8. Agnostic Networks, LLC must comply with all applicable rules adopted in the Local Exchange Competitive 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.

9. Agnostic Networks, LLC must comply with the requirements applicable to competitive local exchange carriers and non-dominant interexchange carriers included in Attachment B to this decision.

10. Agnostic Networks, LLC may not construct facilities other than those to be installed in existing building and structures.

11. Application 09-11-021 is closed.

This order is effective today.

Dated April 8, 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 Agnostic Networks, LLC in Application 09-11-021 to be corrected in its initial tariff compliance filing.

No deficiencies noted. Applicant will offer service on a de-tariffed basis and must update its Rules with the web address of its Price Guide.

(END OF ATTACHMENT A)

ATTACHMENT B

REQUIREMENTS APPLICABLE TO COMPETITIVE LOCAL EXCHANGE 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 fee and surcharges that must be regularly remitted per the instructions in Appendix E to Decision (D.) 00-10-028.

The Combined California Public Utilities Commission 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 0.00% 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 Advanced 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. 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. Applicant is a non-dominant interexchange carrier (NDIEC). The effectiveness of its future NDIEC tariffs is subject to the requirements of General Order 96-B and the Telecommunications Industry Rules (D.07-09-019).

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

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

7. 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 must be updated if the name or telephone number changes, or at least annually.

8. 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.

9. Applicant must notify the Director of the Communications Division in writing of the date interLocal Access and Transport Areas (LATA) 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 must keep its books and records in accordance with the Generally Accepted Accounting Principles.

11. 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.

12. Applicant 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.

¹ California is divided into ten 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.

13. Applicant must file an affiliate transactions report with the Director of the Communications Division, in compliance with D.93-02-019, on a calendar-year basis with the information contained in Attachment D to this decision.

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

15. 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.

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 Rule 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 must immediately notify the Communications Division's Bankruptcy Coordinator.

21. 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, 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)