

Decision 10-07-033 July 29, 2010

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of G-FIVE Communications, LLC for a Certificate of Public Convenience and Necessity to Provide Resold Local Exchange Services in the State of California.

Application 10-05-008
(Filed May 4, 2010)

DECISION GRANTING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO G-FIVE COMMUNICATIONS, LLC.

1. Summary

G-FIVE Communications, LLC is granted a certificate of public convenience and necessity pursuant to Pub. Util. Code § 1001 to provide resold competitive local exchange services in the State of California, subject to the terms and conditions set forth below. The application is unopposed. This proceeding is closed.

2. Background

In prior decisions, we have authorized the provision of competitive local exchange service,¹ by carriers meeting specified criteria, within the service territories of Pacific Bell Telephone Company dba AT&T California (AT&T), Verizon California Inc. (Verizon), Citizens Telecommunications Company of

¹ 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.

California, Inc. dba Frontier Communications of California (Frontier), and SureWest Telephone (SureWest).

G-FIVE Communications, LLC (Applicant), a California corporation, seeks authority to provide resold local exchange services within AT&T, Verizon, SureWest, and Frontier's service territories. Applicant's principal place of business is located at 4554-C Caterpillar Road, Redding, California 96049. Applicant's telephone number is (800) 644-3483.

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

4. Financial Qualifications

To be granted an application for registration, an applicant for authority to provide resold local exchange services must demonstrate that it has a minimum of \$25,000 of cash or cash equivalent to meet the firm's start-up expenses.² An

² The financial requirement for non-dominant interexchange carriers (NDIEC) is contained in Decision (D.) 91-10-041.

applicant must also demonstrate that it has sufficient additional resources to cover all deposits required by local exchange carriers (LECs) and/or interexchange carriers (IECs) in order to provide the proposed service.³

Applicant provided a series of bank statements covering a period of several months and an unaudited balance sheet demonstrating that it has sufficient cash to satisfy the financial requirements.

5. Technical Qualifications

To be granted a CPCN for authority to provide local exchange service, applicants are required to make a reasonable showing of technical expertise in telecommunications or a related business.⁴ Applicant submitted resumes for its key management team,⁵ which demonstrate 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 investigations for similar violations; or was sanctioned by the Federal Communications

³ For NDIECs, the requirement is found in D.93-05-010.

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

⁵ Information was provided for Robert Berg, Ronald McPherson, Karen McBee, Glinda Peterson, and Jonathan Weins.

Commission or any state regulatory agency for failure to comply with any regulatory statute, rule or order.

6. Tariffs

Commission staff reviewed Applicant's draft tariffs for compliance with Commission rules and regulations. The deficiencies are noted in Attachment A to this decision. Applicant must correct these deficiencies in its tariff compliance filing as a condition of our approval of its tariffs.

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.⁶ Applicant complied with this requirement.

8. Expected Customer Base

As required, applicant provided its estimated customer base for the first and fifth years of operation in its application.⁷

9. Conclusion

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

10. Comments on Proposed Decision

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.

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

⁷ Commission Rule of Practice and Procedure 3.1(j).

11. Categorization and Need for Hearing

In Resolution ALJ 176-3254 dated May 20, 2010, 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.

12. 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 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.

13. 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 in the Daily Calendar on May 11, 2010. A hearing is not required.

2. In prior decisions, the Commission authorized competition by carriers meeting specified criteria in providing local exchange telecommunications services within the service territories of Pacific Bell, Verizon, SureWest and Frontier.

3. Applicant has a minimum of \$25,000 of cash or cash equivalent that is reasonably liquid and readily available to meet its start-up expenses.

4. 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.

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

6. As part of its application, Applicant submitted a draft of its initial tariff that contained the deficiencies identified in Attachment A to this decision. Except for those deficiencies, its draft tariffs complied with the Commission's requirements.

7. Applicant will not be constructing any facilities.

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

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 service, authorized herein, be subject to the terms and conditions set forth herein.

4. Since Applicant will not be constructing any facilities, 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 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. 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 G-FIVE Communications, LLC to operate as a resale provider of competitive local exchange services, subject to the terms and conditions set forth below.

2. G-FIVE Communications, LLC is authorized to file tariff schedules for the provision of competitive local services with the deficiencies noted in Attachment A corrected. G-FIVE Communications, LLC may not offer services until tariffs are on file. The initial filing of G-FIVE Communications, LLC must be made in accordance with General Order 96-B and the Telecommunications Industry Rules (Decision 08-09-019). G-FIVE Communications, LLC must comply with its tariffs.

3. 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.

4. The corporate identification number assigned to G-FIVE Communications, LLC, U-7198-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.

5. In addition to the requirements applicable to competitive local exchange carriers and interexchange carriers included in Attachments B, C, and D to this decision, G-FIVE Communications, LLC must comply with the Commission's rules and regulations for nondominant interexchange carriers set forth in Decision 93-05-010 and Decision 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.

6. G-FIVE Communications, LLC is not authorized to construct facilities.

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 shall be made public. If G-FIVE Communications, LLC believes that further protection of sealed information is needed beyond two years, G-FIVE Communications, 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. Application 10-05-008 is closed.

This order is effective today.

Dated July 29, 2010, at San Francisco, California.

MICHAEL R. PEEVEY

President

DIAN M. GRUENEICH

JOHN A. BOHN

TIMOTHY ALAN SIMON

NANCY E. RYAN

Commissioners

Attachment A
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List of deficiencies in draft tariff submitted by G-FIVE Communications, LLC, in A.10-05-008 to be corrected in its initial tariff compliance filing.

1. Tariff Sheet Format: The CPUC assigned utility ID number (U#) must be included on each sheet in the upper left header along with Company name and address. (General Order 96B, Section 8.4.1)

(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 fees and surcharges that must be regularly remitted. Per the instructions in Appendix 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 0.110% 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-17259, dated April 8, 2010 effective May 1, 2010);
- 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 charges 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 96-B and the Telecommunications Industry Rules (D.07-09-019).

4. Applicant is a nondominant 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 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 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 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 Public Utilities (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 CPCN unless it has received written permission from the Communications Division to file or remit late.

17. Applicant is exempt from Commission 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 not later than 30 days from the date of this order.

(END OF ATTACHMENT B)

ATTACHMENT C ANNUAL REPORT

An original paper copy, and a machine-readable electronic copy, on a CD or floppy disk using Microsoft Word or a compatible format, shall be filed with the California Public Utilities Commission, 505 Van Ness Avenue, Room 3107, San Francisco, CA 94102-3298. The filing shall be made 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 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. The number and date of the Commission decision granting the Utility's CPCN.
7. Date operations were begun.
8. Description of other business activities in which the utility is engaged.
9. A list of all affiliated companies and their relationship to the utility. State if affiliate is:
 - 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) 703-1923.

(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)