

Decision 10-08-014 August 12, 2010

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

Application of CVC CLEC, LLC for Authority to Operate as a Provider of Limited Facilities Based Local Exchange and Interexchange Telecommunications Service within the State of California.

Application 09-07-004  
(Filed July 6, 2009)

**DECISION GRANTING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO PROVIDE LIMITED FACILITIES-BASED LOCAL EXCHANGE AND INTEREXCHANGE TELECOMMUNICATIONS SERVICES**

**1. Summary of Decision**

CVC CLEC, LLC is granted a certificate of public convenience and necessity to provide limited facilities-based local exchange and interexchange telecommunications services within the State of California, subject to the terms and conditions set forth in the Order. The application is unopposed. This proceeding is closed.

**2. Background**

In prior decisions, we have authorized the provision of competitive local exchange service,<sup>1</sup> by carriers meeting specified criteria, within the service territories of Pacific Bell Telephone Company dba AT&T California (AT&T),

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<sup>1</sup> 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 services for a geographic area specified by such carrier.

Verizon California Inc. (Verizon), Citizens Telecommunications Company of California, Inc. dba Frontier Communications of California (Frontier), and SureWest Telephone (SureWest).<sup>2</sup>

**2.1. Applicant**

CVC CLEC, LLC (CVC) is a limited liability company organized in Arizona. Its principal place of business is 2922 South Roosevelt Street, Tempe, Arizona 85282.

**2.2. Project Proposal**

CVC seeks authority to provide limited facilities-based local telecommunications services and interexchange services by purchasing unbundled network elements from the Incumbent Local Exchange Carrier in combination with use of its own limited facilities, and by using voice over internet protocol, at least in part, for the provision of telecommunication services. CVC will not construct any new facilities, and will not extend any existing facilities in California to provide these services. It will provide these services in conjunction with its switching facility, which is located in Dallas, Texas.

**3. Financial Qualifications**

To be granted a CPCN, an applicant for authority to provide facilities-based local exchange and/or interexchange services must demonstrate that it has a minimum of \$100,000 of cash or cash equivalent to meet its start-up expenses. An applicant must also demonstrate that it has sufficient additional resources to

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<sup>2</sup> SureWest was formerly known as Roseville Telephone Company.

cover all deposits required by local exchange carriers and/or interexchange carriers (IECs) in order to provide the proposed service.<sup>3</sup>

CVC's application includes a showing that it has cash on hand sufficient to satisfy our requirement for a showing of financial fitness.

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

An applicant for local exchange and interexchange authority is required to make a reasonable showing of technical and managerial expertise in telecommunications or a related business. CVC's application includes the resumes of Thomas Wish, its Managing Partner, and Jennifer Gilliland, its Chief Operations Officer. Each of these individuals has five years of telecommunications experience, and both have prior experience in voice over internet protocol operations. Wish has 20 years of network engineering experience, and Gilliland has experience in wholesale carrier business development and knowledge of communications products and services. The resumes of these individuals reflect experience sufficient to satisfy our requirement for making a showing of technical expertise to provide the services for which CVC seeks authority.

#### **5. Fitness**

Gilliland, on behalf of CVC, represents that (i) neither CVC, nor any affiliate, officer, director, partner, or owner of more than 10% of CVC, or any person acting in that capacity whether or not formally appointed, has been sanctioned by the Federal Communications Commission or any state regulatory

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<sup>3</sup> The financial requirements for CLECs are set forth in Decision (D.) 95-12-056, Appendix C. The financial requirements for Non-Dominant Interexchange Carriers are found in D.91-10-041 and D.93-05-010.

agency for failure to comply with any regulatory statute, rule, or order; and (ii) neither the applicant, nor any affiliate, officer, director, partner, or owner of more than 10% of CVC, or any person acting in that capacity whether or not formally appointed, held one of those positions with a telecommunications carrier that filed for bankruptcy, or has been found either criminally or civilly liable by a court of appropriate jurisdiction for violation of Section 17000 et seq. of the California Business and Professions Code, or for any actions which involved misrepresentations to consumers, or is currently under investigation for similar violations.

## **6. Tariffs**

Commission staff reviewed CVC's draft tariffs for compliance with Commission rules and regulations. The deficiencies to be corrected by CVC are set forth in Attachment A.

## **7. California Environmental Quality Act**

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. CVC has no plan for constructing facilities at this time. CVC 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. CVC must file for additional authority, and submit to any required CEQA review, before it can construct facilities.

## **8. Discussion**

The application satisfies our requirements for demonstrating financial, managerial, and technical fitness for certification as a limited facilities-based competitive local and interexchange carrier. Accordingly, we will approve the application subject to the terms and conditions set forth in the Order.

## **9. Categorization and Need for Hearing**

In Resolution ALJ 176-3237, dated July 9, 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**

Pursuant to Rule 14.6(b) of the Commission's Rules of Practice and Procedure, all parties stipulated to waive the 30-day public review and comment period required by Section 311 of the Public Utilities Code and the opportunity to file comments on the proposed decision.

## **11. Assignment of Proceeding**

John A. Bohn is the assigned Commissioner and Victor D. Ryerson is the assigned Administrative Law Judge in this proceeding.

### **Findings of Fact**

1. Notice of the application appeared in the Daily Calendar on July 8, 2009.
2. No protests have been filed.
3. A hearing is not required.

4. CVC is a limited liability company organized in Arizona. Its principal place of business is 2922 South Roosevelt Street, Tempe, Arizona 85282.

5. CVC intends to provide limited facilities-based local telecommunications services and interexchange services by purchasing unbundled network elements from the Incumbent Local Exchange Carrier in combination with use of its own limited facilities, and by using voice over internet protocol, at least in part, for the provision of telecommunication services.

6. 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 Frontier.

7. 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.

8. CVC has sufficient cash or cash equivalent to cover any deposits that may be required by other telecommunications carriers in order to provide the proposed service.

9. CVC's management possesses sufficient relevant industry experience and knowledge to provide the telecommunications services described in the application.

10. As part of its application, CVC submitted a draft of its initial tariff that contained the deficiencies noted in Attachment A to this decision. Except for these deficiencies, CVC's draft tariffs complies with the Commission's requirements.

11. CVC will not be constructing facilities.

### **Conclusions of Law**

1. The application demonstrates that CVC is financially, managerially, and technically fit for certification as a limited facilities-based competitive local

exchange and interexchange carrier in accordance with applicable requirements of the Commission.

2. Public convenience and necessity require CVC's limited facilities-based services, subject to the terms and conditions set forth in the Order.

3. Since CVC will not be constructing any facilities pursuant to the CPCN granted herein other than those within or on existing facilities, it can be seen with certainty that granting the application, subject to the terms and conditions set forth in the Order, will have no significant effect on the environment.

4. The application should be granted to the extent set forth in the Order.

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

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

7. 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 CVC CLEC, LLC for authority to provide limited facilities-based local exchange and interexchange telecommunications services as a competitive local carrier subject to the terms and conditions set forth below.

2. CVC CLEC, LLC is authorized to provide local exchange services in the service territories of Pacific Bell Telephone Company dba AT&T California,

Verizon California Inc., SureWest Telephone, and Citizens Telecommunications Company of California, Inc. dba Frontier Communications of California.

3. CVC CLEC, LLC (CVC) is authorized to file tariff schedules for the provisions of competitive local exchange services in the form indicated by the draft tariff included with the Application, as corrected by Commission staff in Attachment A. The final tariff schedules must be reviewed and approved by Commission staff as to form and content before they are permitted to be filed, and CVC may not offer services until tariffs are on file. CVC's initial filing shall be made in accordance with General Order 96-B, (D.07-01-024) and the Telecommunications Industry Rules (D.07-09-019) as a Tier II advice letter. The tariff shall be effective not less than one day after tariff approval by the Commission's Communication Division. CVC shall 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 CVC CLEC, LLC, U-7168-C, shall be included in the caption of all original filings with this Commission, and in the titles of other pleadings filed in existing cases.

6. CVC CLEC, LLC shall 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 interexchange carriers set forth in Decision (D.) 93-05-010 and D.90-08-032, as well as other applicable Commission's rules, decisions, General Orders, and statutes that pertain to California Public Utilities, subject to the exemptions granted in this decision.

7. CVC CLEC, LLC shall comply with the requirements applicable to competitive local exchange carriers included in Attachment B to this decision.

8. CVC CLEC, LLC (CVC) is not authorized to construct facilities, except for the installation of those in or on existing buildings or structures, until CVC undergoes any required environmental review and applies for and obtains full facilities-based authority, under the procedure adopted by the Commission in D.06-04-030 in *Application for NewPath Networks, LLC for a Modification of its Certificate of Public Convenience and Necessity in Order to Provide Competitive Local Exchange, Access and Non-Dominant Interexchange Services* (April 13, 2006).

9. Application 09-07-004 is closed.

This order is effective today.

Dated August 12, 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 CVC CLEC, LLC in A.09-07-004 to be corrected in its initial tariff compliance filing:

1. For the entire tariff, please follow guideline for Form and Construction of Tariff Schedules as outlined in General Order No. 96-B, Section 8.4.
2. Application for Service: Please add procedure for customer to obtain service, see Decision (D.) 95-07-054, Appendix B, Rule 2.
3. Special Information Required on Forms: Please add notices to customers required to appear on contracts, bills, and deposit receipts, see D.05-07-054, Appendix B, Rule 3.
4. Establishment and Re-establishment of Credit: Please include information on establish/re-establish credit, see D.95-07-054, Appendix B, Rule 4.
5. Notices: Please see D.95-07-054, Appendix B, Rule 6, for the requirements of providing notices to customer.
6. Issuance and Payment of Bills: Please see D.95-07-054, Appendix B, Rule 9 for procedure on issuance and payment of bills.
7. Disputed Bills: Please add procedure for disputed bills, see D.95-07-054, Appendix B, Rule 8.
8. Discontinuance/Restoration of Service: Please see D.95-07-054, Appendix B, Rule 10, for procedure and limitations of discontinuance of service by the carrier.
9. Limits of Liability: Must adopt either Pacific Bell's or Verizon's limits of liability. Please change the limits of the Company's liability from \$1,000 to \$10,000.
10. Demarcation Points: Please have own demarcation tariff or adopt another carrier's tariff.
11. Access to 911 Service: for residential services, 911 service cannot be disconnected for non-payment. Please see D.95-07-054, Appendix B, Rule 10.C.
12. Please specify the type of service being provided – business or residential.
13. Prorating of Bills: Please add procedure for proration of bills, see D.95-07-054, Appendix B, Rule 7.

**(END OF ATTACHMENT A)**

## ATTACHMENT B

### REQUIREMENTS APPLICABLE TO COMPETITIVE LOCAL EXCHANGE CARRIERS

1. CVC CLEC, LLC (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 29, 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 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 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.<sup>1</sup>

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.

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<sup>1</sup> 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.

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.

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 no later than 30 days from the date of this order.

**(END OF ATTACHMENT B)**

**ATTACHMENT C  
ANNUAL REPORT**

An original copy and a machine readable copy using Microsoft Word or compatible format shall be filed with the California Public Utilities Commission, State Office Building, 505 Van Ness Avenue, Room 3107, San Francisco, CA 94102-3298, no later than March 31 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 Sections 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.

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)**