

Decision 10-10-010 October 14, 2010

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of 321 Communications, Inc. for a Certificate of Public Convenience and Necessity to Provide Resold and Limited Facilities-Based Local Exchange Services in the State of California.

Application 10-06-014
(Filed June 22, 2010)

DECISION GRANTING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO 321 COMMUNICATIONS, INC.

1. Summary

321 Communications, Inc. is granted a certificate of public convenience and necessity to provide resold and limited facilities-based local exchange telecommunications services in the State of California subject to the terms and conditions set forth below. This application is unopposed. This proceeding is closed.

2. Background

In prior decisions, we have authorized the provision of competitive local exchange service¹ by carriers meeting specified criteria within territories of Pacific Bell Telephone Company dba AT&T California (AT&T), Verizon California, Inc. (Verizon), SureWest Telephone (SureWest), and Citizens

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.

Telecommunications Company of California, Inc. dba Frontier Communications of California (Frontier).

321 Communications, Inc. (Applicant), a Florida corporation authorized to operate in California, filed an application for a CPCN to provide resold and limited facilities-based local exchange telecommunications services in the service territories of AT&T, Verizon, SureWest, and Frontier. Applicant's principal place of business is located at 24814 State Road 54, Lutz, Florida 33549. Applicant's telephone number is (813) 388-3157.

3. California Environmental Quality Act (CEQA)

The CEQA requires the Commission to act as the designated lead agency to assess the potential environmental impact of a project in order to avoid adverse effects, investigate alternatives, and restore or enhance to the fullest extent possible environmental quality. Applicant will provide its service through the use of existing facilities and network elements that it purchases from incumbent local exchange carriers and other facilities-based carriers. Applicant will utilize existing buildings and structures and has no plans for constructing other facilities at this time. Therefore, it is clear that there is no possibility that granting this application will have an adverse impact upon the environment. Applicant must file for additional authority and submit to any necessary CEQA review before it can construct facilities.

4. Financial Qualifications

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

expenses.² An applicant must also demonstrate that it has sufficient additional resources to cover all deposits required by local exchange carriers in order to provide the proposed service.³

Applicant provided copies of financial statements for 321 Communications, Inc., including a Profit & Loss Statement for January through May 2010, an unaudited balance sheet as of May 31, 2010, and a 15-month Certificate of Deposit. These documents demonstrate that Applicant possesses a minimum of \$100,000 of unencumbered cash. Applicant also has the resources to satisfy deposits to other telecommunications carriers that may be required to provide the proposed services. Applicant does not anticipate that the amount of such deposits shall exceed \$25,000.

Since 321 Communications, Inc. has provided documentation that it possesses a minimum of \$100,000 that is reasonably liquid and available, it has demonstrated that it has sufficient funds to meet its start-up expenses and has fulfilled this requirement.

5. Technical Qualifications

To be granted a CPCN for authority to provide local exchange service, an applicant must make a reasonable showing of managerial and technical expertise in telecommunications or a related business. Applicant supplied biographical information on its management that demonstrated that it has sufficient expertise and training to operate as a telecommunications provider.

² The financial requirement for CLECs is contained in Decision (D.) 95-12-056, Appendix C.

³ The requirement for CLEC applicants to demonstrate that they have additional financial resources to meet any deposits required by underlying LECs and/or interexchange carriers (IECs) is set forth in D.95-12-056, Appendix C.

Applicant represents that no one associated with or employed by 321 Communications, Inc. as an affiliate, officer, director, partner, or owner of more than 10% of 321 Communications, Inc. was previously associated with a telecommunications carrier that filed for bankruptcy, was sanctioned by the Federal Communications Commission or any state regulatory agency for failure to comply with any regulatory statute, rule, or order, 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.

6. Tariffs

Commission staff reviewed the draft tariffs of 321 Communications, Inc. for compliance with Commission rules and regulations. The deficiencies are noted in Attachment A to this decision. In its compliance tariff filing, 321 Communications, Inc. 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. 321 Communications, Inc. has complied with this requirement.

8. Expected Customer Base

321 Communications, Inc. provided its estimated customer base for the first and fifth years of operation in its application. Applicant estimates that it will have ten customers by the end of the first year and fifty customers by the end of the fifth year. Therefore, Applicant 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 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.

11. Categorization and Need for Hearing

In Resolution ALJ 176-3257, dated July 8, 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 filed a motion to keep the financial information in the application 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 14.

13. Assignment of Proceeding

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

Findings of Fact

1. Notice of the application appeared on the Daily Calendar on June 29, 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 AT&T, Verizon, SureWest, and Frontier.

3. 321 Communications, Inc. has a minimum of \$100,000 of cash or cash equivalent that is reasonably liquid and readily available to meet its start-up expenses.

4. 321 Communications, Inc. 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.

5. 321 Communications, Inc. possesses sufficient experience, knowledge, and technical expertise to provide telecommunications services.

6. 321 Communications, Inc. submitted a draft of its initial tariff that contained the deficiencies listed in Attachment A to this decision. Except for these deficiencies, 321 Communications, Inc.'s draft tariffs comply with the Commission's requirements.

7. 321 Communications, Inc. will not be constructing facilities except within existing buildings or structures.

8. Public Disclosure of the financial information filed under seal would place Applicant at an unfair business disadvantage.

Conclusions of Law

1. 321 Communications, Inc. has the financial ability to provide the proposed service.
2. 321 Communications, Inc. has sufficient technical expertise to operate as a telecommunications carrier.
3. Public convenience and necessity require that 321 Communications, Inc.'s resold competitive local exchange services be subject to the terms and conditions set forth herein.
4. Since 321 Communications, Inc. will not be constructing any facilities, except within existing buildings or structures, it is clear that there will be no significant effect on the environment.
5. The application should be granted to the extent set forth below.
6. 321 Communications, Inc., once granted a CPCN, should be subject to the applicable Commission rules, decisions, General Orders, and statutes that pertain to California's public utilities.
7. The initial tariff filing of 321 Communications, Inc. should correct the deficiencies noted in its draft tariffs as indicated in Attachment A to this decision.
8. 321 Communications, Inc.'s motion to file its financial information under seal should be granted for two years.
9. The following order should be effective immediately due to the public interest in competitive local exchange services.

O R D E R

IT IS ORDERED that:

1. A certificate of public convenience and necessity is granted to 321 Communications, Inc. to operate as a resold and limited facilities-based provider

of local exchange telecommunications services subject to the terms and conditions set forth below.

2. 321 Communications, Inc. is authorized to provide local exchange service 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. 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. 321 Communications, Inc. is authorized to file tariff schedules for the provision of competitive local exchange services with the deficiencies noted in Attachment A corrected. 321 Communications, Inc. may not offer services until tariffs are on file. 321 Communications, Inc.'s initial filing must be made in accordance with General Order 96-B, the Telecommunication's Industry Rules. 321 Communications, Inc. must comply with its tariffs.

5. The corporate identification number assigned to 321 Communications, Inc., U-7202-C, must be included in the caption of all original filings with this Commission, and in the titles of other pleadings filed in existing cases.

6. In addition to all the requirements applicable to competitive local exchange carriers included in Attachments B, C, and D to this decision, 321 Communications, Inc. is subject to the Consumer Protection Rules contained in General Order 168, and all applicable Commission rules, decisions, General Orders, and statutes that pertain to California public utilities.

7. 321 Communications, 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.

8. 321 Communications, Inc. must annually pay the user fee and public purpose surcharges specified in Attachment B. Per the instructions in Exhibit E to Decision 00-10-028, the Combined California Public Utilities Commission Telephone Surcharge Transmittal Form must be submitted even if the amount due is \$0. Under Public Utilities 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 should report user fees even if the amount due is \$0.

9. Prior to initiating service, 321 Communications, 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.

10. 321 Communications, 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.

11. 321 Communications, 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.

12. 321 Communications, 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.

13. 321 Communications, Inc. is not authorized to construct facilities other than those to be installed in existing buildings and structures.

14. All sealed information shall 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 321 Communications, Inc. believes that further protection of sealed information is needed beyond two years, it may file a motion stating the justification for further withholding of the sealed information from public inspection. This motion shall be filed no later than 30 days before the expiration of the two-year period granted by this order.

15. Application 10-06-014 is closed.

This order is effective today.

Dated October 14, 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 321 Communications, Inc., in A.10-06-014 to be corrected in its initial tariff compliance filing.

1. Schedule 1-T, Sheet 31 – Applicant must update the California Lifeline Telephone Service offer to be consistent with the requirements found at:

<http://www.cpuc.ca.gov/PUC/Telco/Public+Programs/ults.htm>

2. Schedule 2-T, Sheet 27 – Applicant must state the California business address at which the tariffs are available for public inspection or provide a URL address where tariffs are available online (GO96B Section 8.1.3).

(END OF ATTACHMENT A)

ATTACHMENT B

REQUIREMENTS APPLICABLE TO COMPETITIVE LOCAL EXCHANGE CARRIERS

1. Applicant shall file, in this docket, a written acceptance of the certificate granted in this proceeding within 30 days of the effective date of this order.
2. Applicant is subject to the following 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 1.150% 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 0.200% 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 0.180% 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 0.450% 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 0.000% 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. Tariff filings shall reflect all fees and surcharges to which Applicant is subject, as reflected in 2 above.

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

6. 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.

7. 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.

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

9. 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.

10. 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.

11. 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.

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

13. 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.

14. 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.

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

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

17. 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.

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

19. 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 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 Pub. Util. Code §§ 2107 and 2108.

Required information:

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

An original and a machine-readable copy, using Microsoft Word and Excel or a 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.

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 must 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 must 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)