

Decision 10-11-022 November 19, 2010

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of BRT Company, LLC d/b/a Big River Telephone Company, LLC for a Certificate of Public Convenience and Necessity to provide Limited Facilities-based and Resold Competitive Local Exchange and Non-Dominant Interexchange Services.

Application 10-06-016
(Filed June 24, 2010)

DECISION GRANTING BRT COMPANY, LLC d/b/a BIG RIVER TELEPHONE COMPANY, LLC A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY IN ORDER TO PROVIDE RESOLD AND LIMITED-FACILITIES BASED LOCAL EXCHANGE SERVICE AND NON-DOMINANT INTEREXCHANGE SERVICE

1. Summary

BRT Company, LLC d/b/a Big River Telephone Company, LLC filed an application for a certificate of public convenience and necessity for authority to provide resold and limited facilities-based local exchange telecommunications services in the service territories of Pacific Bell Telephone d/b/a AT&T California, Verizon California Inc., Citizens Telecommunications Company of California, Inc., and SureWest Communications, and non-dominant interexchange services in California.

By this decision, we grant BRT Company, LLC d/b/a Big River Telephone Company, LLC a certificate of public convenience and necessity to provide resold and limited facilities-based local exchange and interexchange

telecommunications services in California, on the terms and conditions set forth in the Ordering Paragraphs.

2. Background

On June 24, 2010, BRT Company, LLC d/b/a Big River Telephone Company, LLC (BRT), (a Delaware corporation authorized to operate in California as a foreign corporation), filed an application for a certificate of public convenience and necessity (CPCN) to provide resold and limited facilities-based local exchange telecommunications services in the service territories of Pacific Bell Telephone d/b/a AT&T California (AT&T), Verizon California Inc. (Verizon), Citizens Telecommunications Company of California, Inc. (Citizens), and SureWest Communications (SureWest), and non dominant interexchange telecommunications services in California. On June 24, 2010, BRT also filed a motion for leave to file under seal its Attachments F and G to the application. Notice of Application (A.) 10-06-016 appeared on the Commission's Daily Calendar on July 2, 2010.

On August 5, 2010, the assigned Administrative Law Judge (ALJ) issued *Administrative Law Judge Ruling Requiring Applicant to File a Response to Information Request Within 10 Days*, to which BRT filed a response on August 17, 2010.

BRT's principal place of business is located at 24 S. Minnesota, Cape Girardeau, Missouri 63703. BRT proposes to provide services via leased local network facilities of cable TV companies it may partner with, dedicated private line transmission services for point-to-point and point-to-multipoint communications within local areas in California to and from BRT's Private Switched Network, and leased transport facilities from incumbent local exchange carriers statewide.

3. California Environmental Quality Act (CEQA)

The CEQA requires the Commission act as the designated lead agency to assess the potential environmental impact of a project in order that adverse effects are avoided, alternatives are investigated, and environmental quality is restored or enhanced to the fullest extent possible. Since BRT states that it does not intend to construct any new facilities except those using existing conduits, ducts, rights-of-way and facilities of other telecommunications service providers, it can be seen with certainty that there is no possibility that granting this application will have an adverse impact upon the environment. Before it can construct facilities other than equipment to be installed in existing buildings or structures, BRT must file for additional authority, and submit to any necessary CEQA review.

4. Financial Qualifications

Pursuant to Rule 4.B of D.95-12-056, an applicant for a CPCN for authority to provide facilities-based local exchange service must demonstrate that it has \$100,000 cash or cash equivalent to meet the firm's start-up expenses. An applicant must also demonstrate that it has sufficient additional resources to cover all deposits required by other telecommunications carriers in order to provide service in California.

In Attachment G to the application and attached to its response, BRT provided bank statements showing that \$100,000 plus an amount equal to any deposits that may be required by local exchange companies would be available to BRT. BRT has therefore demonstrated that it has sufficient funds to meet its start-up expenses and any deposits that may be required by service providers, and has fulfilled this requirement.

5. Technical Qualifications

To be granted a CPCN for authority to provide local exchange and interexchange service, an applicant must make a reasonable showing of managerial and technical expertise in telecommunications or a related business.¹ BRT supplied biographical information on its management in Attachment C to its application that demonstrated that it has sufficient expertise and training to operate as a telecommunications provider.

In its response, BRT also verified that no one associated with or employed by BRT as an affiliate, officer, director, partner, or owner of more than 10% of BRT 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.

For the above reasons, we find that BRT is in compliance with the technical requirements of D.95-12-056.

6. Tariffs

Commission staff reviewed BRT's draft tariffs for compliance with Commission rules and regulations. The deficiencies are noted in Attachment A

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

to this decision. In its compliance tariff filing, BRT shall correct these deficiencies as a condition of our approval of its application.

7. Map of Service Territory

To be granted a CPCN for authority to provide local exchange service, an applicant must provide a map of the service territories it proposes to serve.² BRT provided a map of the location of its proposed service territory in Attachment E to its application, in compliance with this requirement.

8. Expected Customer Base

BRT provided its estimated customer base for the first and fifth years of operation in Attachment F of its application, in compliance with the requirement to do so.

9. Request for Treatment as a Non-dominant Carrier

BRT requests treatment as a non-dominant carrier, which would include exemption from the requirements of Pub. Util. Code §§ 816-830 concerning stocks and security and § 851 concerning the encumbrance and transfer of utility property. The Commission detailed its rules regarding exemption of non-dominant carriers in D.85-01-008, and subsequently modified those rules in D.85-07-081 and D.85-11-044. We grant BRT's request for non-dominant carrier status, provided that they follow all rules detailed in the above referenced decisions.

10. Conclusion

We conclude that the application conforms to our rules for certification as a competitive local exchange and interexchange carrier. Accordingly, we grant

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

BRT a CPCN to provide limited facilities-based and resold local exchange telecommunications service in the service territory of AT&T, Verizon, Citizens, and SureWest, and non-dominant interexchange service in California, subject to compliance with the terms and conditions set forth in the Ordering Paragraphs.

11. Request to File Under Seal

Pursuant to Rule 11.4 of the Commission's Rules of Practice and Procedure, BRT has filed a motion for leave to file Attachments F and G to the application as confidential materials under seal. Attachment F includes estimates of the number of customers BRT expects to have in its first and fifth year, and Attachment G includes BRT's bank statement. BRT represents that the information is sensitive, and disclosure could place BRT at an unfair business disadvantage. We have granted similar requests in the past and do so here.

12. Categorization and Need for Hearings

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.

13. 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 14.6(c)(2) of the Commission's Rules of Practice and Procedure, the otherwise applicable 30-day period for public review and comment is waived.

14. Assignment of Proceeding

Timothy Alan Simon is the assigned Commissioner and Seaneen M. Wilson is the assigned ALJ in this proceeding.

Findings of Fact

1. Notice of the application appeared on the Daily Calendar on July 2, 2010. No protests have been filed. A hearing is not required.
2. BRT has a minimum of \$100,000 of cash or cash equivalent that is reasonably liquid and readily available to meet its start-up expenses.
3. BRT has sufficient additional cash or cash equivalent to cover deposits that may be required by other telecommunications carriers in order to provide the proposed service.
4. BRT's management possesses sufficient experience, knowledge, and technical expertise to provide local exchange services to the public.
5. No one associated with or employed by BRT as an affiliate, officer, director, partner, or owner of more than 10% of BRT 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. Except for the deficiencies identified in Attachment A to this decision, BRT's draft tariffs comply with the Commission's requirements.
7. BRT provided a map of the location of its proposed service territory.

8. BRT provided an estimate of its customer base for the first and fifth year of operation.

9. Pursuant to Rule 11.4, BRT filed a motion for leave to file confidential materials under seal, including Attachments F and G to the application.

Conclusions of Law

1. BRT should be granted a CPCN to provide resold and limited facilities based local exchange telecommunications service in the service territories of AT&T, Verizon, Citizens, and SureWest and non-dominant interexchange service in California, subject to the terms and conditions set forth in the Ordering Paragraphs.

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

3. BRT's initial tariff filing should correct the tariff deficiencies shown in Attachment A to this decision.

4. BRT should be granted non-dominant carrier status, subject to Commission rules and regulations as detailed in D.85-01-008 and modified in D.85-07-081 and D.85-11-044.

5. BRT's motion to file under seal its Attachments F and G to the application should be granted for two years.

O R D E R

IT IS ORDERED that:

1. A certificate of public convenience and necessity is granted to BRT Company, LLC d/b/a Big River Telephone Company, LLC, to provide resold and limited facilities-based local exchange telecommunications services in the

territories of Pacific Bell Telephone d/b/a AT&T California, Verizon California Inc., Citizens Telecommunications Company of California, Inc., and SureWest Communications and non-dominant interexchange service in California, subject to the terms and conditions set forth below.

2. BRT Company, LLC d/b/a Big River Telephone Company, LLC may not offer services until tariffs are filed with and authorized by this Commission, in accordance with General Order 96-B and as corrected for deficiencies set forth in Attachment A.

3. The corporate identification number assigned to BRT Company, LLC d/b/a Big River Telephone Company, LLC, U-7204-C, must be included in the caption of all original filings with this Commission, and in the titles of other pleadings filed in existing cases.

4. In addition to all the requirements applicable to competitive local exchange carriers and interexchange carriers included in Attachments B, C, and D to this decision, BRT Company, LLC d/b/a Big River Telephone Company, LLC 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.

5. BRT Company, LLC d/b/a Big River Telephone Company, LLC 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.

6. BRT Company, LLC d/b/a Big River Telephone Company, LLC must annually pay the user fee and public purpose surcharges specified in Attachment B. Per the instructions in Attachment 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 Pub.

Util. Code § 405, carriers that are in default of reporting and submitting user fees for a period of 30 days or more will be subject to penalties including suspension or revocation of their authority to operate in California. Therefore, carriers should report user fees even if the amount due is \$0.

7. Prior to initiating service, BRT Company, LLC d/b/a Big River Telephone Company, LLC 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. BRT Company, LLC d/b/a Big River Telephone Company, LLC 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. BRT Company, LLC d/b/a Big River Telephone Company, LLC 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.

10. BRT Company, LLC d/b/a Big River Telephone Company, LLC 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.

11. BRT Company, LLC d/b/a Big River Telephone Company, LLC must file a tariff within 12 months of the effective date of this order, or its certificate will be cancelled.

12. BRT Company, LLC d/b/a Big River Telephone Company, LLC motion to file under seal its Attachments F and G is granted. The information will remain

under seal for a period of two years after the date of this order. During this two-year period, this information will remain under seal and may not be viewed by any person other than the assigned Commissioner, the assigned Administrative Law Judge, the Assistant Chief Administrative Law Judge, or the Chief Administrative Law Judge, except as agreed to in writing by BRT Company, LLC d/b/a Big River Telephone Company, LLC or as ordered by a court of competent jurisdiction. If BRT Company, LLC d/b/a Big River Telephone Company, LLC believes that it is necessary for this information to remain under seal for longer than two years, BRT Company, LLC d/b/a Big River Telephone Company, LLC may file a new motion at least 30 days before the expiration of this limited protective order.

13. Application 10-06-016 is closed.

This order is effective today.

Dated November 19, 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 BRT Company, LLC d/b/a Big River Telephone Company, LLC in A.10-06-016 to be corrected in its initial tariff compliance filing:

1. Limitation of Liability – Must adopt either AT&T California’s or Verizon California Inc.’s limits of liability rule.
2. Add the procedure the customer may use to request amortization of unpaid charges that is in compliance to Decision 95-07-054, Appendix B, Rule 6.B.(2).5.
3. Fees and Surcharges: Your tariff must conform with the tariff provision for fees and surcharges in AT&T California tariffs pursuant to Resolution T-16901.
4. Add an offer for Lifeline Telephone Service consistent with requirements at <http://www.cpuc.ca.gov/PUC/Telco/Public+Programs/ults.htm>.
5. State your California company address or web URL at which the tariff is available for public inspection (GO 96B, Section 8.1.3).

(END OF ATTACHMENT A)

ATTACHMENT B

REQUIREMENTS APPLICABLE TO COMPETITIVE LOCAL EXCHANGE CARRIERS AND INTEREXCHANGE 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. 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.³

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.

³ 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 Director of the Communications Division.

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 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 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)