

Decision 10-12-044 December 16, 2010

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of 5LINX Enterprises, Inc. for a Certificate of Public Convenience and Necessity in Order to provide Resold Competitive Local Exchange and Interexchange Service.

Application 10-08-026
(Filed August 25, 2010)

DECISION GRANTING 5LINX ENTERPRISES, INC., A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY IN ORDER TO PROVIDE RESOLD COMPETITIVE LOCAL EXCHANGE AND INTEREXCHANGE SERVICE

1. Summary

5LINX Enterprises Inc., filed an application for a certificate of public convenience and necessity (CPCN) for authority to provide resold competitive local exchange and interexchange services in the service territories of Pacific Bell Telephone Company, d/b/a AT&T California, Verizon California Inc., SureWest Telephone, and Citizens Telecommunications Company of California, Inc., d/b/a Frontier Communications of California and as a non-dominant interexchange carrier throughout California.

By this decision, we grant 5LINX Enterprises, Inc., a CPCN to provide resold local exchange telecommunications services, on the terms and conditions set forth in the ordering paragraphs.

2. Background

On August 25, 2010, 5LINX Enterprises, Inc. (5LINX or Applicant) filed an application with the Commission for a certificate of public convenience and necessity (CPCN) to provide resold competitive local exchange and

interexchange telephone service in the service territories of Pacific Bell Telephone Company, d/b/a AT&T California (AT&T), Verizon California, Inc. (Verizon), SureWest Telephone (SureWest), and Citizens Telecommunications Company of California, Inc., d/b/a Frontier Communications of California (Frontier) throughout the State of California. The Applicant is a Delaware corporation and a new entrant in the California telecommunications market. Its principal address is 275 Kenneth Drive, Suite 100, Rochester, New York 14623.

On October 26, 2010, the Assigned Administrative Law Judge (ALJ) issued a ruling, requesting further information. On October 29, 2010, Applicant filed its response to the ALJ Ruling.

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 the Applicant states that it does not intend to construct any facilities, it can be seen with certainty 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 other than equipment to be installed in existing buildings or structures.

4. Financial Qualifications

Pursuant to Rule 4.B of Decision (D.) 95-12-056, an applicant for a CPCN for authority to provide resold local exchange and interexchange service must demonstrate that it has \$25,000 cash or cash equivalent to meet the firm's start-up expenses. 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.

At Exhibit G (confidential) to the application the Applicant has provided financial statements that demonstrate that it has access to well over \$25,000 cash or cash equivalent. This amount is sufficient to cover start-up expenses and is reasonably liquid and available.

Applicant proposes to offer service within the territories of AT&T, Verizon, Frontier, and SureWest. In its application, 5LINX indicates that it does not currently have any resale or deposit agreements with carriers but anticipates that any deposit (if required) would be no more than \$5,000. In its response to the ALJ's Ruling, Applicant provided a declaration from Jerabeck, its President and Chief Executive Officer. Jerabeck's declaration states that any carrier that the Applicant might purchase resale service from would require a deposit of not more than \$5,000 and that the total deposit required by AT&T, Verizon, Frontier and SureWest would not exceed \$25,000. The declaration states that Applicant has sufficient unencumbered cash funds in its bank account to cover the \$25,000 deposit. Thus, Applicant satisfies our financial qualifications requirements.

5. Managerial and 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 Applicant has provided biographical information on its management in Exhibit F

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

to its application that demonstrates that it has sufficient expertise and training to operate as a telecommunications provider.

Applicant has verified that no one associated with it or employed by it as an affiliate, officer, director, partner, or owner of more than 10% of 5LINX was previously associated with a telecommunications carrier that filed for bankruptcy, or was sanctioned by the Federal Communications Commission or any state regulatory agency for failure to comply with any regulatory statute, rule, or order.

Applicant has also verified that no one associated with or employed by it as an affiliate, officer, director, partner, or owner of more than 10% of 5LINX was previously associated with any telecommunications carrier that 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 Applicant's draft tariffs (Exhibit E) for compliance with Commission rules and regulations. Deficiencies are noted in Attachment A to this decision. In its compliance tariff filing, Applicant must correct these deficiencies as a condition of our approval of its application.

7. Map of 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 In

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

its application (Exhibit D), Applicant provided a map of the location of its proposed service territory, in compliance with this requirement.

8. Expected Customer Base

Applicant provided its estimated customer base for the first and fifth years of operation in Exhibit H (confidential) of its application. The Applicant has complied with this requirement.

9. Motion for Protective Order

Pursuant to Pub. Util. Code §583 and General Order 66-C, Applicant requests that the financial information and estimated customer base,³ submitted in the application for years one and five of its operations in California, be granted confidential treatment and kept under seal. Applicant represents that it is a privately held corporation and, as such, its financial statements, business planning documents, customer base and other related information are confidential and not publicly available. Applicant asserts that release of this information would place it at a competitive disadvantage. We have granted similar requests in the past and will do so here.

10. Request for Treatment as a Nondominant Carrier

Applicant requests treatment as a nondominant 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 nondominant carriers in D.85-01-008, and subsequently modified them in D.85-07-081 and D.85-11-044. We grant Applicant's request for

³ Exhibits G and H.

nondominant carrier status, provided that they follow all rules detailed in the above referenced decisions.

11. Conclusion

We conclude that the application conforms to our rules for certification as a competitive local exchange and interexchange carrier. Accordingly, we grant 5LINX Enterprises, Inc. a CPCN to provide resold local exchange and interexchange telecommunications services in the service territories of AT&T, Verizon, Frontier, and SureWest, subject to compliance with the terms and conditions set forth in the Ordering Paragraphs.

12. Categorization and Need for Hearing

In Resolution ALJ 176-3261, dated September 23, 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. Comments on Proposed Decision

No protests were filed in this proceeding. Therefore, 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.

14. Assignment of Proceeding

Timothy Alan Simon is the assigned Commissioner and W. Anthony Colbert is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. Notice of the application appeared on the Daily Calendar on September 13, 2010. No protests have been filed. A hearing is not required.
2. 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.
3. Applicant 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. Applicant's management possesses sufficient experience, knowledge, and technical expertise to provide local exchange and interexchange services to the public.
5. No one associated with or employed by Applicant as an affiliate, officer, director, partner, or owner of more than 10% was previously associated with a telecommunications carrier that filed for bankruptcy, or was sanctioned by the Federal Communications Commission or any state regulatory agency for failure to comply with any regulatory statute, rule, or order.
6. No one associated with or employed by it as an affiliate, officer, director, partner, or owner of more than 10% of the Applicant was previously associated with any telecommunications carrier that 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.
7. Applicant has provided a map of the location of its proposed service territory.

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

9. Applicant does not propose to construct any facilities.

10. Public disclosure of Applicant's financial and estimated customer base information, filed under seal, would place it at an unfair competitive disadvantage.

Conclusions of Law

1. Applicant should be granted a CPCN to provide resold competitive local exchange and interexchange services in the service territories of AT&T, Verizon, Frontier, and SureWest, subject to the terms and conditions set forth in the Ordering Paragraphs.

2. Applicant has the financial ability to provide the proposed service.

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

4. Applicant should be granted nondominant 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. Since Applicant does not propose to construct any facilities, it can be seen with certainty that granting it authority to provide local exchange services will not have a significant adverse effect upon the environment.

6. Applicant's request to file its financial and estimated customer base information under seal 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 5LINX Enterprises, Inc., to provide resold competitive local exchange and interexchange services in the service territories of Pacific Bell Telephone Company d/b/a AT&T California, Verizon California Inc., Citizens Telecommunications Company of California, Inc, d/b/a/ Frontier Communications Company of California, and SureWest Telephone, subject to the terms and conditions set forth below.

2. The corporate identification number assigned to 5LINX Enterprises, Inc., (U-7208-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.

3. 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, Applicant 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.

4. Applicant is a nondominant carrier, subject to the Commission rules and regulations as detailed in Decision (D.) 85-01-008 and modified in D.85-07-081 and D.85-11-044.

5. Applicant must file, in this docket, a written acceptance of the certificate granted in this proceeding within 30 days of the effective date of this order.

6. Applicant 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 Section 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 must report user fees even if the amount due is \$0.

7. Prior to initiating service, Applicant must provide the Commission's Consumer Affairs Branch with the name and address of its designated contact person(s) for purposes of resolving consumer complaints. This information must be updated if the name or telephone number changes, or at least annually.

8. Applicant must notify the Director of the Communications Division in writing of the date that local exchange service is first rendered to the public, no later than five days after service first begins.

9. Applicant must file an affiliate transaction report with the Director of the Communications Division, in compliance with Decision 93-02-019, on a calendar-year basis with the information contained in Attachment D.

10. Applicant must file an annual report with the Director of the Communications Division, in compliance with General Order 104-A, on a calendar-year basis with the information contained in Attachment C to this decision.

11. Applicant must file a tariff within 12 months of the effective date of this order, or its certificate will be cancelled.

12. Applicant's request to have the financial and estimated customer base information filed with the application kept under seal is granted for two years from the effective date of this decision. 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 5LINX Enterprises, Inc., or as ordered by a court of competent jurisdiction. If 5LINX Enterprises, Inc. believes that it is necessary for this information to remain under seal for longer than two years, 5LINX Enterprises, Inc. may file a motion at least 30 days before the expiration of this limited protective order.

13. Application 10-08-026 is closed.

This order is effective today.

Dated December 16, 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 5LINX Enterprises, Inc., in A.10-08-026 to be corrected in its initial tariff compliance filing.

1. Tariff Sheet Format: CPUC assigned utility ID number (U#) should be included on each sheet in the upper left header along with Company name and address. (General Order 96B, Section 8.4.1)
2. Please provide company California business address at which the tariff is available for inspection or web page URL where tariffs are published on-line (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 1.15% 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 0.00% 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 High Cost Fund-A (Pub. Util. Code § 739.3; D.96-10-066, pp. 3-4, App. B, Rule 1.C; Resolution T-17128, dated December 20, 2007, effective January 1, 2008; 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 Advances 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.

¹ California is divided into 10 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 with the information 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, and has not received written permission from the Communications Division to file or remit late, the Communications Division shall prepare for Commission consideration a resolution that revokes Applicant's CPCN.

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 Director.

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 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 31st of the year following the calendar year for which the annual report is submitted.

Failure to file this information on time may result in a penalty as provided for in §§ 2107 and 2108 of the Public Utilities Code.

Required information:

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

For answers to any questions concerning this report, call (415) 703-2883.

(END OF ATTACHMENT C)

**ATTACHMENT D
CALENDAR YEAR AFFILIATE TRANSACTION REPORT**

1. Each utility 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)