

Decision 11-04-009 April 14, 2011

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

Application of NobelBiz VoIP Services, Inc. for a Certificate of Public Convenience and Necessity to Provide Limited Facilities-Based and Resale Competitive Local Exchange Services within the California Service Areas of AT&T, Verizon, SureWest, and Citizens.

Application 10-04-003  
(Filed April 5, 2010)

**DECISION ADOPTING SETTLEMENT AGREEMENT AND GRANTING APPLICATION OF NOBELBIZ VOIP SERVICES, INC. FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY IN ORDER TO PROVIDE LIMITED FACILITIES-BASED AND RESOLD LOCAL EXCHANGE SERVICE**

**1. Summary**

This decision adopts the proposed Settlement Agreement between the Consumer Protection and Safety Division and NobelBiz VoIP Services, Inc., and grants a Certificate of Public Convenience and Necessity to NobelBiz VoIP Services, Inc., to provide limited facilities-based and resold competitive local exchange service within the California Service Areas 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 Communication Company of California. Among other things, the Settlement Agreement requires NobelBiz VoIP Services, Inc. to file an amended application (which it has done), pay a penalty of \$12,000 to the General Fund, and comply fully with all applicable regulatory and legal requirements.

## 2. Background

On April 5, 2010, NobelBiz VoIP Services, Inc. (NBVS), a Delaware corporation, filed an application for a certificate of public convenience and necessity (CPCN) to provide limited facilities-based and resold competitive local exchange telecommunications services 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 Communication Company of California (Citizens). NBVS requests authority to provide competitive local exchange carrier services through the use of one or more of its own switches and through the resale of other providers' services, including local transport and termination. NBVS proposes to provide voice and data communications services, mainly to business customers. NBVS' principal place of business is located at 5857 Owens Avenue, Suite 202, Carlsbad, CA 92008.

On May 7, 2010, the Commissions Consumer Protection and Safety Division (CPSD) filed a protest to Application (A.) 10-04-003 (Protest). NBVS replied to the Protest on June 1, 2010. NBVS and CPSD are the only parties to this proceeding.

On July 23, 2010, a prehearing conference (PHC) was held in San Francisco to establish the service list for the proceeding, discuss the scope of the proceeding, and develop a procedural timetable for the management of the proceeding. On August 4, 2010, the assigned Commissioner issued a *Scoping Memo and Ruling of Assigned Commissioner* (Scoping Memo), which in part required that evidentiary hearings were necessary, but that a second PHC would be held after briefs were filed in order to assess whether evidentiary hearings would still be necessary.

NBVS and CPSD each filed Opening Briefs on November 1, 2010 and Reply Briefs on November 15, 2010. On November 18, 2010, NBVS and CPSD requested, via e-mail, a continuance of the second PHC in order to discuss possible settlement. This request was granted by the assigned Administrative Law Judge (ALJ) via e-mail on the same day. We confirm this ruling herein.

On January 25, 2011, NBVS filed *Amended Application of NobelBiz VoIP Services, Inc.* (Amended Application), which addressed the regulatory matters that had not been disclosed in NBVS' original application, and had been at the heart of CPSD's Protest. On February 11, 2011, CPSD and NBVS filed a *Joint Parties Motion for Commission Adoption of Settlement* (Motion).<sup>1</sup>

### **3. Issues Raised by CPSD in its Protest**

CPSD argued that A.10-04-003 was incomplete, and that NBVS had violated Rule 1.1<sup>2</sup> of the Commission's Rules of Practice and Procedure.<sup>3</sup> In assessing whether a CPCN should be granted, the Commission reviews a number of criteria, such as whether the applicant or an affiliate have been sanctioned by a regulatory agency, as well as the fitness of the applicants management team to manage the entity applying for the CPCN. CPSD asserted that NBVS had failed to disclose multiple regulatory sanctions issued against its

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<sup>1</sup> The settlement, which was attached to the Motion is referred to throughout this decision as "Settlement Agreement."

<sup>2</sup> Rule 1.1 states "Any person who signs a pleading or brief, enters an appearance, offers testimony at a hearing, or transacts business with the Commission, by such act represents that he or she is authorized to do so and agrees to comply with the laws of this State; to maintain the respect due to the Commission, members of the Commission and its Administrative Law Judges; and never to mislead the Commission or its staff by an artifice or false statement of fact or law."

affiliate, NobelTel, LLC<sup>4</sup> by the Federal Communications Commission (FCC), this Commission, and regulatory entities in other states. CPSD also stated that it had concerns regarding the fitness of NBVS' management team to manage NBVS according to California's rules and regulations. Since NBVS and NobelTel, LLC share the same management team, sanctions against and the behavior of one entity reflect on the other. CPSD recommended that the application be denied, or alternatively, that an evidentiary hearing be held to determine the NBVS management team's fitness to manage its California operations and whether NBVS should pay a fine for violating Rule 1.1. CPSD requested that, if the Commission decides to grant NBVS' application, NBVS be required to comply with the applicable Public Utilities Code Sections, supplement its application with information regarding the fitness of its management team, pay all appropriate user fees, and collect the applicable universal service surcharges.

NBVS replied that it did not intend to obscure its relationship with or deceive the Commission regarding NobelTel, LLC. NBVS stated that it did not believe the Commission should follow CPSD's recommendations, and that NBVS would provide any further information or documentation required by the Commission.

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<sup>3</sup> All statutory references are to the Commissions Rules of Practice and Procedure unless otherwise noted.

<sup>4</sup> NobelTel LLC is a separately owned facilities-based interexchange carrier that provides long distance domestic and international telecommunications services in California and the rest of the country. NobelTel LLC holds a CPCN from the Commission as a limited facilities-based interexchange and competitive local exchange carrier. NBVS' management team is also responsible for the operations of NobelTel, LLC.

#### **4. Resolution of Protested Issues through a Settlement Agreement**

CPSD and NBVS have resolved the issues of concern via their proposed Settlement Agreement, which includes NBVS's commitment to file an amended application with more complete disclosures (already filed with the Commission on January 25, 2011) and requires NBVS to pay a penalty of \$12,000. CPSD agreed to withdraw its protest upon adoption by the Commission of the Settlement Agreement.

We review this uncontested settlement pursuant to Rule 12.1(d), which requires that, prior to approval, the Commission must find a settlement "reasonable in light of the whole record, consistent with the law, and in the public interest."

CPSD and NBVS are the only parties to A.10-04-003, and represent the only affected interests. Nothing in the Settlement Agreement contravenes any statutory provisions or prior Commission decisions. NBVS's application, the Protest, Reply, Amended Application, and Motion and attached Settlement Agreement, provide sufficient information for the Commission to assess the reasonableness of the Settlement Agreement. Nothing in the Settlement Agreement contravenes the law; NBVS accepts the authority of the Commission, and agrees that it will meet its regulatory and legal obligations and responsibilities in California. Although NBVS maintains that its failure to comply with our regulations was inadvertent, it acknowledges that it did fail to comply, and as a result, it will pay a fine to the General Fund.

The Settlement Agreement resolves a potentially time-consuming and disruptive dispute and avoids future litigation. The benefits to the public, including the payment to the General Fund, and avoidance of litigation, clearly

outweigh the benefits of continued litigation with its associated cost and uncertainty of outcome.

We conclude that the Settlement Agreement is reasonable in light of the record as a whole, consistent with the law, and in the public interest.

Accordingly, we adopt the Settlement Agreement.

## **5. Requirements for Certification as a Limited Facilities-Based and Resold Competitive Local Exchange Carrier**

As discussed in Section 3 of this decision, the Commission reviews a number of criteria in assessing whether a CPCN should be granted. In addition to reviewing whether the applicant or an affiliate have been sanctioned by a regulatory agency, and the fitness of the applicant's management team to manage the entity applying for the CPCN, the Commission also assesses the applicant's compliance with the California Environmental Quality Act (CEQA), the financial qualifications required by Decision (D.) 95-12-056, whether the proposed tariffs filed with its application are in compliance with Commission rules and regulations, whether the applicant provided a map of its proposed service territory, and what the expected number of customers are as of its first and fifth years of operation.

### **5.1. CEQA**

CEQA requires the Commission act as the designated lead agency to assess the potential environmental impact of a project so that adverse effects are avoided, alternatives are investigated, and environmental quality is restored or enhanced to the fullest extent possible. Since NBVS does not intend to construct

any facilities, the granting of this application will not have an adverse impact upon the environment.<sup>5</sup>

## **5.2. Financial Qualifications**

Pursuant to Rule 4.B of D. 95-12-056, an applicant for a CPCN for authority to provide limited facilities-based and resold local exchange and interexchange service must demonstrate that it has \$100,000 cash or cash equivalent to meet the firm's start-up expenses. The 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 D to the Amended Application, NBVS provided a recent bank statement, demonstrating that it has access to \$100,000 cash or cash equivalent, an amount sufficient to cover start-up expenses that is reasonably liquid and available.

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<sup>5</sup> It should be noted that the Commission adopted General Order (GO) 170 on December 16, 2010 in Decision 10-12-056. GO 170 implements the Commission's responsibilities pursuant to CEQA to review possible environmental impacts of construction projects consisting of any new telephone or telegraph line; or the repair, replacement, modification, alteration, or addition to an existing telephone or telegraph line in the State of California. NobelBiz will be subject to the GO when it is implemented by the Commission. Upon implementation, the GO will eliminate the Limited Facilities based authority designation, which identifies types of construction activities a carrier may undertake pursuant to their CPCN. However, the GO will not require any additional filings to be made by NobelBiz additional authority to be granted by the Commission for the types of construction activities currently proposed by NobelBiz.

NBVS proposes to offer service within the territories of AT&T, Verizon, SureWest, and Citizens. If deposits are required by these providers in the future, NBVS has demonstrated that it has sufficient funds to pay deposits, based on its own bank statement shown in Exhibit D to the Amended Application.

### **5.3. 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.<sup>6</sup> In Exhibit C to its Amended Application, NBVS supplied biographical information of its management that demonstrated that it has sufficient expertise and training to operate as a telecommunications provider.

In Section 4 of its Amended Application, NBVS verified that, except as noted below, no one associated with or employed by NBVS as an affiliate, officer, director, partner, or owner of more than 10% of NBVS was previously associated with a telecommunications carrier that: 1) filed for bankruptcy; 2) was sanctioned by the Federal Communications Commission or any state regulatory agency for failure to comply with any regulatory statute, rule, or order; or 3) 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.

In its Amended Application, NBVS disclosed that its affiliate, NobelTel, LLC, which shares a management team with NBVS, has committed several

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<sup>6</sup> D.95-12-056 at Appendix C, Rule 4.A.

infractions by failing to: file reports, certificates, and worksheets with regulatory bodies when due; comply with applicable regulations; and pay required fees.

The regulatory bodies include the FCC, the Commission, the Washington Utilities and Transportation Commission, the Florida Public Service Commission, the Public Service Commission of Nebraska, and the Nebraska Telecommunications Infrastructure and Public Safety Department. We find that the terms of the Settlement Agreement discussed in Sections 3 and 4 of this decision, resolve CPSD's concerns regarding these violations.

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

#### **5.4. Tariffs**

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

#### **5.5. 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 in which it proposes to serve.<sup>7</sup> In Exhibit B to its Amended Application, NBVS provided a map of the service territories it proposes to provide service in.

#### **5.6. Expected Customer Base**

NBVS provided its estimated customer base for the first and fifth years of operation in Exhibit F of its Amended Application. Therefore, NBVS has complied with this requirement.

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<sup>7</sup> D.95-12-056 at Appendix C, Rule 4.E.

### **5.7. Conclusion**

We conclude that the Amended Application conforms to our rules for certification as a competitive local exchange carrier. Accordingly, we grant NBVS a CPCN to provide limited facilities-based and resold competitive local exchange telecommunications service in the service territories of AT&T, Verizon, SureWest, and Citizens, subject to compliance with the terms and conditions set forth in the Settlement Agreement and the Ordering Paragraphs of this decision.

### **6. Categorization and Need for Hearings**

In Resolution ALJ 176-3251, dated April 8, 2010, the Commission preliminarily categorized this application as ratesetting, and preliminarily determined that hearings were not necessary. Because there was no objection to the ratesetting categorization, it was confirmed in the Scoping Memo. The preliminary determination that there was no need for hearings was changed to a need for hearings in the Scoping Memo. As an all-party settlement was reached to which the assigned ALJ had no questions, we herein change the determination in the Scoping Memo that hearings would be necessary to no hearings necessary. As discussed in Section 2 of this decision, we confirm the assigned ALJ's ruling which granted CPSD's and NBVS's request to continue the second PHC in order to discuss possible settlement.

### **7. 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 Pub. Util. 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.

## **8. 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. NBVS filed A.10-04-003 on April 5, 2011, seeking authorization of a CPCN to provide limited facilities-based and resold local exchange service in the service territories of AT&T, Verizon, SureWest, and Citizens.

2. Notice of A.10-04-003 appeared on the Daily Calendar on April 7, 2010.

3. CPSD filed a protest to the application on May 7, 2010, to which NBVS filed a reply on June 1, 2010.

4. The Scoping Memo was issued on August 4, 2010, which in part preliminarily determined that evidentiary hearings were necessary, but that a second PHC would be held after briefs were filed in order to assess whether evidentiary hearings would still be necessary.

5. On November 18, 2011, CPSD and NBVS requested a continuance of the second PHC in order to discuss possible settlement, which the assigned ALJ granted via e-mail on the same day.

6. NBVS filed an Amended Application on January 25, 2011.

7. CPSD and NBVS filed a Motion for adoption of the Settlement Agreement on February 11, 2011.

8. NobelBiz, LLC is an affiliate of NBVS.

9. NobelBiz, LLC and NBVS share the same management team.

10. Except as noted in its Amended Application, no one associated with or employed by NBVS as an affiliate, officer, director, partner, or owner of more than 10% of NBVS was previously associated with a telecommunications carrier that: 1) filed for bankruptcy; 2) was sanctioned by the Federal Communications

Commission or any state regulatory agency for failure to comply with any regulatory statute, rule, or order; or 3) 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.

11. NBVS' management possesses sufficient experience, knowledge, and technical expertise to provide local exchange services to the public.

12. The proposed Settlement Agreement by and between CPSD and NBVS resolves all issues raised by CPSD's protest in this proceeding.

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

14. NBVS 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.

15. Except for the deficiencies identified in Attachment A to this decision, NBVS' draft tariffs comply with the Commission's requirements.

16. NBVS provided a map of the location of its proposed service territory.

17. NBVS provided an estimate of its customer base for the first and fifth year of operation.

### **Conclusions of Law**

1. The Settlement Agreement is reasonable in light of the record as a whole, consistent with the law and in the public interest.

2. NBVS should be granted a CPCN to provide limited facilities-based and resold local exchange telecommunications service in the service territories of

AT&T, Verizon, SureWest, and Citizens, subject to the terms and conditions set forth in the Settlement Agreement and Ordering Paragraphs herein.

3. NBVS should pay a fine of \$12,000 to the General Fund of the State of California within 30 days of the date of issuance of this decision.

4. We should confirm the assigned ALJ ruling requested by CPSD and NBVS that the second PHC be continued in order for the parties to discuss possible settlement.

5. As an all-party settlement was reached to which the assigned ALJ had no questions, we should change the determination in the Scoping Memo that evidentiary hearings would be necessary to no evidentiary hearings necessary.

6. NBVS, once granted a CPCN, should be subject to all applicable Commission rules, decisions, General Orders, and statutes that pertain to California public utilities.

7. Once granted a CPCN, NBVS should be subject to the applicable Commission rules, decisions, General Orders, and statutes that pertain to California public utilities.

8. NBVS' initial tariff filing should correct the tariff deficiencies shown in Attachment A to this decision.

## **O R D E R**

**IT IS ORDERED** that:

1. The all-party Settlement Agreement between the Consumer Protection and Safety Division and NobelBiz VoIP Services, Inc. is adopted.

2. A certificate of public convenience and necessity is granted to NobelBiz VoIP Services, Inc., to provide limited facilities-based and resold local exchange telecommunications service 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., subject to the terms and conditions of the Settlement Agreement and set out herein.

3. NobelBiz VoIP Services, Inc. must pay to the General Fund of the State of California the sum of \$12,000, within 30 days of the date of issuance of this decision. This fine must be paid by check or money order payable to the California Public Utilities Commission and mailed or delivered to the Commission's Fiscal Office at 505 Van Ness Avenue, Room 3000, San Francisco, CA 94102. Write on the face of the check or money order "for deposit to the General Fund per Decision 11-04-009."

4. The determination in the *Scoping Memo and Ruling of the Assigned Commissioner* that evidentiary hearings would be necessary is changed to no evidentiary hearings necessary.

5. NobelBiz VoIP Services, Inc., once granted a CPCN, should be subject to all applicable Commission rules, decisions, General Orders, and statutes that pertain to California public utilities.

6. NobelBiz VoIP Services, Inc. must not offer competitive local exchange 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.

7. NobelBiz VoIP Services, 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. This filing does not reopen the proceeding.

8. The corporate identification number assigned to NobelBiz VoIP Services, Inc., U-7212-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.

9. In addition to all the requirements applicable to competitive local exchange carriers included in Attachments B, C, and D to this decision, NobelBiz VoIP Services, 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.

10. NobelBiz VoIP Services, Inc. must annually pay the user fee and public purpose surcharges specified in Attachment B to this decision. 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.

11. Prior to initiating service, NobelBiz VoIP Services, 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.

12. NobelBiz VoIP Services, 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.

13. NobelBiz VoIP Services, 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 B to this decision.

14. NobelBiz VoIP Services, 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 C.

15. NobelBiz VoIP Services, Inc. must file a tariff within 12 months of the effective date of this order, or its certificate of public convenience and necessity will be cancelled.

16. Application 10-04-003 is closed.

This order is effective today.

Dated April 14, 2011, at San Francisco, California.

MICHAEL R. PEEVEY

President

TIMOTHY ALAN SIMON

MICHEL PETER FLORIO

CATHERINE J.K. SANDOVAL

MARK FERRON

Commissioners

## ATTACHMENT A

List of deficiencies in the draft tariff submitted by Nobelbiz VoIP Services, Inc., in A.10-04-003 to be corrected in its initial tariff compliance filing:

1. Tariff Sheet Format: The CPUC assigned utility ID number of U-7212-C must be included on each tariff sheet in the upper left header along with Company name and address. (General Order 96B, Section 8.4.1);
2. Add the procedure the customer may use to request amortization of unpaid charges that is in compliance with Decision 95-07-054, Appendix B, Rule 6.B.(2).5; and
3. Revise the Universal Lifeline Telephone Service income eligibility provisions, so that they are consistent with the requirements at <http://www.cpuc.ca.gov/PUC/Telco/Public+Programs/ults.htm>

**(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 either 0.180% of gross intrastate revenue (Resolution M-4819), dated June 7, 2007, effective July 1, 2007 or \$100, whichever is greater (per D.10-09-017);
- 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-17299, dated November 19, 2010, effective December 1, 2010;
- e. The current 0.300% 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.<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 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.

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)**