

Decision 11-04-019 April 14, 2011

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of Common Point LLC for a Certificate of Public Convenience and Necessity to Provide Limited Facilities-Based and Resold Competitive Local Exchange, Access, and Interexchange Service throughout California.

Application 10-10-021
(Filed October 26, 2010)

**DECISION GRANTING COMMON POINT LLC
A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO PROVIDE
LIMITED FACILITIES-BASED AND RESOLD COMPETITIVE LOCAL
EXCHANGE, ACCESS, AND INTEREXCHANGE TELECOMMUNICATIONS
SERVICE THROUGHOUT CALIFORNIA**

1. Summary

Common Point LLC, filed an application for a certificate of public convenience and necessity for authority to provide limited facilities-based and resold competitive local exchange, access, and interexchange telecommunications service in all the service territories of Pacific Bell Telephone 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, throughout the State of California.

By this decision, we grant Common Point LLC a certificate of public convenience and necessity to provide limited facilities-based and resold competitive local exchange, access, and interexchange telecommunications services, on the terms and conditions set forth in the Ordering Paragraphs.

2. Background

On October 26, 2010, Common Point LLC (Common Point or Applicant), filed an application for a certificate of public convenience and necessity (CPCN) to provide limited facilities-based and resold competitive local exchange, access, and interexchange telecommunications 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 Company of California (Frontier). Common Point has no current plans to construct any new facilities in California. To the extent that Common Point would engage in construction it would be in existing rights of way or utility easements, or in existing buildings owned or controlled by Common Point. Applicant is an Illinois limited liability company with its principal place of business located at 3130 Pleasant Run, Springfield, IL 62707.¹

3. California Environmental Quality Act (CEQA)

CEQA requires the Commission to 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. Applicant will provide its service through the use of existing facilities and network elements of other carriers and/or through its own facilities, installed within existing buildings and structures, and has no other plans for constructing other facilities at this time. To

¹ Twenty-five percent of Common Point is owned by Associated Network Partners, Inc. (ANPI). In Decision (D.)11-01-018 the Commission approved the indirect transfer of control of ANPI and Zone Telecom, Inc. to ANZ Communications, LLC.

the extent that Common Point would engage in construction it would be in existing rights of way or utility easements, or in existing buildings owned or controlled by Common Point. Since Common Point 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.²

4. 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 services must demonstrate that it has \$100,000 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.

In (confidential) Exhibits B and D to the application, Applicant has provided its financial statements and a guarantee of its obligations by its parent corporation, ANPI. The statements and guarantee demonstrate that Common

² It should be noted that the Commission adopted General Order (GO) 170 on December 16, 2010 in D.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. Common Point will be subject to the GO 170 when it is implemented by the Commission. Upon implementation, GO 170 will eliminate the Limited Facilities-based authority designation that identifies types of construction activities a carrier may undertake pursuant to their CPCN. However, GO 170 will not require any additional filings to be made by Common Point or additional authority to be granted by the Commission for the types of construction activities currently proposed by Common Point.

Point has access to \$150,000 in cash, which is an amount sufficient to cover start-up expenses and is reasonably liquid and available.

Common Point proposes to offer service within the territories of AT&T, Verizon, SureWest and Frontier. The initial application was silent on the additional resources the Applicant possessed in order to comply with the deposits required by other telecommunications carriers in order to provide service in California. In its response to the Administrative Law Judge's (ALJ) Ruling, the Applicant has confirmed that the additional \$50,000 in funding provided by the ANPI guarantee would be available to cover any deposit requirements. We find that Common Point has demonstrated that it has sufficient funds to pay any required deposits, and thus, fulfills the Commission's deposit requirement.

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.³ Common Point has supplied biographical information on its management, in its application, that demonstrated that it has sufficient expertise and training to operate as a telecommunications provider.

In a supplemental response, Common Point verified that no one associated with or employed by Common Point as an affiliate, officer, director, partner, or owner of more than 10% of Common Point was previously associated with a telecommunications carrier that filed for bankruptcy, or was sanctioned by the

³ D.95-12-056 at Appendix C, Rule 4.A.

Federal Communications Commission or any state regulatory agency for failure to comply with any regulatory statute, rule, or order.

Common Point also verified that no one associated with or employed by it as an affiliate, officer, director, partner, or owner of more than 10% of Common Point 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.

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

6. Tariffs

Commission staff reviewed Common Point'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, Common Point 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.⁴ In Section K, of the instant application, Common Point incorporates by reference the service territory maps of AT&T, Verizon, SureWest and Frontier. This is an adequate response and is in compliance with this requirement.

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

8. Expected Customer Base

Common Point provided its estimated customer base for the first and fifth years of operation in Exhibit G to the application. Therefore, Common Point has complied with this requirement.

9. Request to File Under Seal

Pursuant to Rule 11.4, Common Point has filed a motion for leave to file Exhibits B through I to the application as confidential materials under seal. Applicant represents that the information is sensitive, and disclosure could place it at an unfair business disadvantage. We have granted similar requests in the past, and do so here.

10. Conclusion

We conclude that the application conforms to our rules for certification as a competitive local exchange and interexchange carrier. Accordingly, we grant Common Point a CPCN to provide limited facilities-based and resold competitive local exchange, access, and interexchange telecommunications service in the service territories of AT&T, Verizon, SureWest, and Frontier, subject to compliance with the terms and conditions set forth in the Ordering Paragraphs.

11. Categorization and Need for Hearings

In Resolution ALJ 176-3264, dated November 11, 2010 the Commission preliminarily categorized this application as ratesetting, and preliminarily determined that hearings were not necessary. No protests have been received. There is no apparent reason why the application should not be granted. Given these developments, a public hearing is not necessary, and it is not necessary to disturb the preliminary determinations.

12. Waiver of Comment Period

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.

13. Assignment of Proceeding

Timothy Alan Simon is the assigned Commissioner and W. Anthony Colbert is the assigned ALJ in this proceeding.

Findings of Fact

1. Notice of the application appeared on the Daily Calendar on November 2, 2010. No protests have been filed. A hearing is not required.

2. Common Point seeks authorization to provide limited facilities-based and resold competitive local exchange, access, and interexchange telecommunications service in the service territories of AT&T, Verizon, SureWest, and Frontier.

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

4. Common Point has sufficient additional cash or cash equivalent to cover deposits that may be required by other telecommunications carriers in order to provide the proposed service.

5. Common Point's management possesses sufficient experience, knowledge, and technical expertise to provide local exchange and interexchange services to the public.

6. No one associated with or employed by Common Point as an affiliate, officer, director, partner, or owner of more than 10% of Common Point 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.

7. No one associated with or employed by it as an affiliate, officer, director, partner, or owner of more than 10% of Common Point 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.

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

9. Common Point has incorporated by reference the service territory maps of AT&T, Verizon, SureWest, and Frontier as the location of its proposed service territory.

10. Common Point provided an estimate of its customer base for the first and fifth years of operation.

11. Common Point does not propose to construct any facilities.

12. Common Point has filed a motion for leave to file Exhibits B through I to the application as confidential materials under seal.

13. Granting this application will have no adverse impact on the environment.

Conclusions of Law

1. Common Point should be granted a CPCN to provide limited facilities-based and resold competitive local exchange, access, and interexchange telecommunications service in all the service territories of AT&T, Verizon,

SureWest, and Frontier, subject to the terms and conditions set forth in the Ordering Paragraphs.

2. Common Point has the financial ability to provide the proposed service.

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

6. Since Common Point does not propose to construct any facilities, it can be seen with certainty that granting it authority to provide local exchange service will not have a significant adverse effect upon the environment.

7. Common Point's motion to file materials under seal should be granted, materials under seal should not be made accessible or disclosed to anyone other than the Commission and its staff, except upon further order or ruling of the Commission, the assigned Commissioner, the assigned ALJ, or the ALJ then designated as Law and Motion Judge.

O R D E R

IT IS ORDERED that:

1. A certificate of public convenience and necessity is granted to Common Point LLC to provide limited facilities-based and resold competitive local exchange, access, and interexchange telecommunications service in all the service territories of Pacific Bell Telephone 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, throughout the State of California, subject to the terms and conditions set forth below.

2. Common Point LLC may not offer competitive local exchange, interexchange services, and switched access service until tariffs are filed with and authorized by this Commission, in accordance with General Order 96-B and has corrected for deficiencies set forth in Attachment A.

3. The corporate identification number assigned to Common Point LLC, U7211C, 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. Common Point LLC 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. Common Point 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. This filing does not reopen the proceeding.

6. Common Point LLC 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, Common Point 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. Common Point 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. Common Point 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 with the information contained in Attachment D.

10. Common Point, 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. Common Point LLC 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.

12. Common Point, LLC must comply with the Consumer Protection Rules contained in General Order 168.

13. 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, Common Point LLC is subject to all applicable Commission rules, decisions, General Orders, and statutes that pertain to California public utilities.

14. Common Point LLC's motion to file materials under seal is granted, materials under seal shall not be made accessible or disclosed to anyone other

than the Commission and its staff, except upon further order or ruling of the Commission, the assigned Commissioner, the assigned Administrative Law Judge (ALJ), or the ALJ then designated as Law and Motion Judge.

15. Application 10-10-021 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