

Decision 11-12-051 December 15, 2011

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of 360networks (USA) Inc. (U6028C) for Expedited Modification of Decision 06-09-006 to Amend its Certificate of Public Convenience and Necessity to Add Full Facilities-Based Authority.

Application 11-10-029
(Filed October 31, 2011)

OPINION GRANTING MODIFICATION OF CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

1. Summary

360networks (USA), Inc. (U-6028-C) (Applicant) seeks modification of its existing certificate of public convenience and necessity (CPCN) under Public Utilities Code § 1001 to obtain authority to provide full facilities-based local exchange and interexchange telecommunications services in California. We grant the application, subject to the requirements and conditions stated below.

We also authorize Applicant to utilize a procedure for 21-day expedited environmental review by Commission Energy Staff (ED staff), if Applicant wishes to engage in full facilities-based construction activities that involve potential statutory or categorical exemptions from the California Environmental Quality Act (CEQA), as described in the application.

This proceeding is closed.

2. Background

Applicant, a privately-held Nevada corporation, seeks authority to provide full facilities-based local exchange and interexchange services. Applicant's principal place of business is located in Louisville, CO.

In this application, Applicant requests full facilities-based authority to provide local exchange services in the service territories of Pacific Bell Telephone Company, Verizon California Inc., SureWest Telephone,¹ and Citizens Telephone Company and interexchange services statewide.

Applicant currently holds a certificate of public convenience and necessity (CPCN) authorizing the company to provide limited facilities-based and resold local exchange and interexchange services in California.² According to the application, Applicant's business plan has changed so that it now needs full facilities-based authority in order to perform construction activities necessary to serve customers. More specifically, Applicant states that it needs to immediately install a short fiber link from a new customer's location to an incumbent carrier's local office and to an educational institution. A full facilities-based CPCN is required in order for Applicant to lawfully perform this construction.

Applicant also requests authorization to utilize the Commission's expedited 21-day process for environmental review by Energy Division (ED) staff of construction projects that Applicant claims may fall within statutory or categorical exemptions to the California Environmental Quality Act (CEQA). Applicant believes that many of its proposed construction activities will be categorically exempt from CEQA, and notes that the Commission has previously

¹ SureWest Telephone was formerly known as Roseville Telephone Company.

² In Decision (D.) 98-07-057, the Commission previously granted Applicant, then operating under its former name, Pacific Fiber Link, LLC, a CPCN (U-6959-C) authorizing the provision of limited facilities-based interexchange services in California. In D.06-09-006, the Commission subsequently granted Applicant an upgraded CPCN authorizing the provision of limited facilities-based and resold local exchange services in this state.

authorized many of its competitors, which are engaging in similar construction, to utilize the expedited 21-day process for CEQA review.

Applicant states that unless it can promptly obtain a full facilities-based CPCN and authorization to utilize the expedited 21-day process for CEQA review, Applicant will be unable to install the facilities necessary to serve its new customer in a timely manner and may lose this customer to a competitor that has already obtained these authorizations from the Commission.

The requirements for the expanded CPCN authority requested by Applicant here are the same as those previously met by Applicant for its existing limited facilities-based CPCN (U-6028-C), except for the requirements of CEQA as applied to any proposed full facilities-based construction by Applicant.³ Therefore, the only issue before us in this application is whether Applicant's proposed use of the 21-day process for ED staff review of potentially CEQA-exempt construction activities should be approved. Applicant remains subject to the requirements of D.06-09-006 and D.98-07-057, which respectively granted Applicant authority to provide limited facilities-based and resold local exchange services and limited facilities-based interexchange services.

3. Environmental (CEQA) Review

CEQA (Public Resources Code Sections 21000 *et seq.*) applies to discretionary projects to be carried out or approved by public agencies. A basic

³ Applicant has also filed updated financial documents, declarations, and information regarding its management, which demonstrate that Applicant otherwise meets the requirements for a full facilities-based CPCN.

purpose of CEQA is to “inform governmental decision-makers and the public about the potential significant environmental effects of the proposed activities.”⁴

Here, since the Commission must make a discretionary decision on this application without which the proposed project will not proceed, the Commission must act as either a Lead or Responsible Agency under CEQA. The Lead Agency is the public agency with the greatest responsibility for supervising or approving the project as a whole.⁵ The Commission is the Lead Agency for this project under CEQA. CEQA requires that the Commission consider the potential environmental consequences of a project that is subject to its discretionary approval.

According to the application, Applicant anticipates that its construction will primarily consist of: 1) micro-trenching, trenching or boring for the installation of underground conduit for fiber or power; 2) installation of fiber cable in new or existing conduit, and/or on utility poles, and 3) installation of underground access points such as vaults or hand holes. These activities will take place in existing public rights-of-ways and utility easements in heavily developed urban and suburban areas in which previous ground-disturbing construction has occurred.

⁴ *Title 14 of the California Code of Regulations (hereafter CEQA Guidelines), Section 15002.*

⁵ *CEQA Guidelines, Section 15051(b).*

Applicant contends that these activities may fall within categorical exemptions to CEQA, including but not limited to:

- CEQA Guidelines § 15303, Class 3 (d) and 3 (e):
Construction and location of limited numbers of new, small facilities or structures; installation of small new equipment and facilities in small structures; and the conversion of existing small structures from one use to another where only minor modifications are made in the exterior of the structure.
- CEQA Guidelines § 15304, Class 4 (a), 4 (c), and 4 (f):
Minor public or private alterations in the condition of land, water, and/or vegetation which do not involve removal of healthy, mature, scenic trees except for forestry and agricultural purposes, and the filling of earth into previously excavated land with material compatible with the natural features of the site, and minor trenching and backfilling where the surface is restored.
- CEQA Guidelines § 15332, Class 32 (a) - (e): Small scale in-fill development that meets specified criteria.

We have previously granted other carriers authority to rely upon the expedited 21-day process for CEQA review by ED staff to determine if proposed construction projects are exempt from CEQA.⁶ Applicant's proposed construction activities, as described in the application, are limited and may, in some circumstances, fall within CEQA exemptions.

By this decision, we make the expedited 21-day process for CEQA review by ED staff available to Applicant, for full facilities-based projects, as described

⁶ See, e.g., *ClearLinx Network Corporation (D.06-04-063)*, *New Path Networks, LLC (D.06-04-030)*, *CA-CLEC LLC (D.06-04-067)*, *Sunesys, Inc. (D.06-06-047)*, *NextG Networks of California, Inc. (D.07-04-045)*, *Broadband Associates International (D.07-08-026)*, *Trillion*

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in the application, which Applicant claims are categorically or statutorily exempt from CEQA. The Commission, as Lead Agency, must evaluate the availability of any claimed exemptions and direct any additional CEQA review that may be necessary.

If Applicant wishes to engage in full facilities-based construction activities and believes that these activities are exempt from CEQA, Applicant shall first apply to the Commission Energy Division staff for a determination of exemption from CEQA using the following procedure:

A. Required Information From Applicant. Applicant will provide the Commission Energy Division with:

1. A detailed description of the proposed project, including:
 - a) Customer(s) to be served;
 - b) The precise location of the proposed construction project; and
 - c) Regional and local site maps.
2. A description of the environmental setting, including at a minimum:
 - a) Cultural, historical, and paleontological resources;
 - b) Biological resources; and
 - c) Current land use and zoning.
3. A construction work plan, including:
 - a) Commission Preconstruction Survey Checklist – Archaeological Resources;
 - b) Commission Preconstruction Survey Checklist – Biological Resources;

Partners, Inc. (D.07-11-028), Freedom Telecommunications, Inc. (D.09-11-021), Central Valley Telecom, LLC (D. 11-07-019).

- c) A detailed schedule of construction activities, including site restoration activities;
 - d) A description of construction/installation techniques;
 - e) A list of other agencies contacted with respect to siting, land use planning, and environmental resource issues, including contact information; and
 - f) A list of permits required for the proposed project.
4. A statement of the CEQA exemption(s) claimed to apply to the proposed project; and
 5. Documentation and evidence sufficient to support a finding that the claimed CEQA exemption(s) apply to the project.
 6. A proof of service showing that Applicant has served a copy of the above information on the city and county in which the project, if approved, will be constructed.
- B. Review by Commission Energy Division. The Commission Energy Division will then review the submittal and notify Applicant of either its approval or its denial of Applicant's claim for exemption from CEQA review no later than 21 days after the date on which Applicant's submittal is complete.
- C. Approval of Claimed CEQA Exemption(s)/Notice to Proceed. If the Commission Energy Division approves Applicant's claimed CEQA exemption(s), the staff will prepare a Notice to Proceed (NTP) and file a Notice of Exemption with the State Clearinghouse, Office of Planning and Research.
- D. Disapproval of Claimed CEQA Exemption(s). If the Commission Energy Division disapproves Applicant's claimed CEQA exemptions, ED staff will issue to Applicant a letter which states the specific reasons that the claimed CEQA exemptions do not apply to the proposed project.

If the Commission Energy Division disapproves Applicant's claimed CEQA exemption(s), Applicant shall either re-design the specific project and

facilities and then reapply for a finding of exemption from CEQA, or shall file a formal application with the Commission seeking the requisite approval and undergo full CEQA review, before commencing any full facilities-based construction activities.

Applicant shall not engage in any construction activity relating to a pending CEQA exemption request before receiving an NTP from ED staff. Applicant may follow the above procedures unless and until the Commission adopts different requirements for CEQA review, which are applicable to Applicant, in Rulemaking (R.) 06-10-006 or a subsequent proceeding.

We grant Applicant authorization to utilize the above procedure only for certain projects as described in the application, to be constructed in existing public rights-of-way and utility easements in developed urban or suburban areas. Other types of full facilities-based construction may require a different level of CEQA review. Therefore, if Applicant wishes to pursue full facilities-based construction projects other than as described in the application, Applicant shall file for additional authority from the Commission and shall undergo any required CEQA review before commencing construction.

In addition, Applicant states that its proposed construction activities will involve construction of reasonably short extensions. Accordingly, we limit Applicant's future requests for CEQA exemptions for such facilities-based construction projects to no more than five miles. For projects exceeding five miles, Applicant shall file a formal application and shall undergo any required CEQA review.

4. Conclusion

We conclude that the application conforms to our rules for authority to provide full facilities-based local exchange and interexchange

telecommunications services, and that it is appropriate for Applicant to utilize the 21-day process for expedited CEQA review by ED staff of potentially CEQA-exempt construction projects as described in the application.

Accordingly, we approve the application subject to the terms and conditions set forth herein.

5. Request to File Under Seal

Applicant requests that confidential financial information filed pursuant to this application be filed under seal. We have granted similar requests in the past, and we grant Applicant's request here.

6. Categorization and Need for Hearings

In Resolution ALJ 176-3285 dated December 1, 2011, the Commission preliminarily categorized this proceeding as ratesetting, and preliminarily determined that hearings were not necessary. No protests have been received.⁷

⁷ Applicant originally filed a Petition for Modification (Petition) of D.06-04-020, seeking to upgrade its CPCN to full facilities-based authority and authorization to utilize the 21-day expedited process for ED staff review of potentially CEQA-exempt projects. Notice of the filing of the Petition was posted on the Commission's Daily Calendar on October 31, 2011. However, the correct procedure in this case is for Applicant to file a new application, rather than a Petition. Therefore, on November 30, 2011, pursuant to a ruling of the assigned ALJ, the Petition was re-docketed as Application 11-10-029, effective on the date of filing the Petition, October 31, 2011.

On December 5, 2011, the assigned ALJ issued a ruling which granted Applicant's motion for expedited consideration of the application and shortened the protest period to five days. Under Rule 2.6(a) of the Commission Rules of Practice and Procedure (Rules), applications are generally subject to a 30-day protest period, which commences on the date that notice of the filing of the application is first posted on the Commission Daily Calendar.

By November 30, 2011, when notice of the filing of the application was posted on the Commission Daily Calendar, the 30-day period during which responses to the Petition may be filed pursuant to Rule 16.4(f), had already expired, and no responses were filed. The application seeks exactly the same relief as sought in the Petition. We therefore

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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.

7. 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 Public Utilities Code § 311(g) (2), the otherwise applicable 30-day period for public review and comment is waived.

8. Assignment of Proceeding

Michael R. Peevey is the assigned Commissioner and Myra J. Prestidge is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. Notice of this application appeared in the Daily Calendar effective October 31, 2011.
2. No protests were filed.
3. Hearings are not required.
4. Applicant seeks expansion of its existing CPCN to obtain authorization to provide full facilities-based local exchange and interexchange services.
5. The Commission is the Lead Agency for this project under CEQA.
6. By this application, Applicant is not seeking authorization for any specific construction project.

find that, under the unique circumstances of this case, the shortened protest period for the application gave sufficient public notice of the filing of the application and allowed adequate time for interested parties to file a protest.

7. Applicant proposed to utilize the Commission's 21-day process for expedited environmental review by ED staff for its full facilities-based projects that are potentially exempt from CEQA.

8. Applicant states that unless the Commission promptly grants the relief sought in this application, Applicant cannot construct facilities needed to serve a new customer and may therefore lose the customer to another carrier.

9. Applicant anticipates that its full facilities-based construction activities will primarily consist of: a) micro-trenching, trenching or boring for the installation of underground conduit for fiber or power; b) installation of fiber cable in new or existing conduit, and/or on utility poles, and c) installation of underground access points such as vaults or hand holes.

10. Applicant states that its full facilities-based construction activities will take place in existing public rights-of-ways and utility easements in heavily developed urban and suburban areas in which previous ground-disturbing construction has occurred.

11. Applicant states that its full facilities-based construction activities may fall within categorical exemptions to CEQA, including but not limited to: a) CEQA Guidelines § 15303, Class 3 (d) and 3 (e): Construction and location of limited numbers of new, small facilities or structures; installation of small new equipment and facilities in small structures; and the conversion of existing small structures from one use to another where only minor modifications are made in the exterior of the structure; b) CEQA Guidelines § 15304, Class 4 (a), 4 (c), and 4 (f): Minor public or private alterations in the condition of land, water, and/or vegetation which do not involve removal of healthy, mature, scenic trees, except for forestry and agricultural purposes, and the filling of earth into previously excavated land with material compatible with the natural features of the site, and

minor trenching and backfilling where the surface is restored; and c) CEQA Guidelines § 15332, Class 32 (a) – (e): Small scale in-fill development that meets specified criteria.

12. The Commission has previously authorized other carriers to utilize the 21-day expedited process for environmental review by ED staff for potentially CEQA-exempt construction projects.

13. Applicant's proposed facilities-based project activities, as described in the application, are of a limited nature and may, in some circumstances, fall within statutory or categorical exemptions to CEQA.

14. Applicant's utilization of the expedited 21-day process for environmental review by ED staff of proposed construction projects that are potentially exempt from CEQA, as described in the application, is adequate for the Commission's purposes as the CEQA Lead Agency and is in the public interest.

15. Applicant has filed no changes to its existing tariffs which were previously approved in D.06-04-020.

16. Applicant has met the requirements for issuance of a CPCN authorizing the provision of full facilities-based local exchange and interexchange services.

Conclusions of Law

1. Except for the requirement for additional environmental (CEQA) review, the requirements for a full facilities-based CPCN are generally the same as for a limited facilities-based CPCN.

2. Applicant's description of its future construction projects and proposed utilization of the 21-day expedited process for environmental review by ED staff of potentially CEQA-exempt projects, as described in the application, meet the requirements of CEQA, based on the specific facts of this case.

3. The 21-day process for expedited environmental review by ED staff of potentially CEQA-exempt projects is appropriate for certain construction activities as described in the application. If Applicant proposes construction activities other than as described in the application, a different level of CEQA review may be required.

4. Applicant should be granted a full facilities-based CPCN, subject to the requirement that Applicant comply with the expedited 21-day process for the ED staff review of potentially CEQA-exempt projects, as described in the application, and shall apply for Commission approval and undergo any required CEQA review for other full facilities-based projects.

5. It is appropriate to require Applicant to file a formal application and to undergo any required CEQA review for extensions or other full facilities-based projects that exceed five miles in length.

6. Public convenience and necessity require Applicant's full facilities-based local exchange and interexchange services to be offered to the public subject to the terms and conditions set forth herein.

7. Under the unique circumstances of this case, the shortened protest period of five days allowed sufficient time for interested parties to file a protest, and was necessary to expedite our consideration of this application.

8. The application should be approved.

9. Upon approval of the application, Applicant should be subject to the applicable Commission rules, decisions, General Orders, and statutes that pertain to California public utilities.

10. Applicant should remain subject to the requirements of D.06-04-020 and D.98-07-057, its licensing decisions.

11. Applicant's request to file its financial information under seal should be granted, to the extent set forth below.

12. Because of the public interest in competitive local exchange and interexchange services, the following order should be effective immediately.

O R D E R

IT IS ORDERED that:

1. A certificate of public convenience and necessity (CPCN) is granted to 360networks (USA) Inc., (Applicant) to operate as a full facilities-based provider of local exchange services in the service territories of Pacific Bell Telephone Company, Verizon California Inc., SureWest Telephone, and Citizens Telephone Company and interexchange services statewide, subject to the terms and conditions set forth below. This authorization expands Applicant's existing CPCN (U-6028-C), which authorized Applicant to provide limited facilities-based and resold local exchange and interexchange services in this state.

2. 360networks (USA), Inc., is authorized to construct the facilities addressed in this decision only upon receiving prior Commission approval and undergoing any required environmental review.

3. The staff of the Commission Energy Division is authorized to review, process, and act upon 360networks (USA), Inc.'s requests for a determination that its full facilities-based construction activities, as described in the application, are exempt from the requirements of the California Environmental Quality Act.

4. If 360networks (USA), Inc. (Applicant) wishes to engage in full facilities-based construction activities as described in the application and believes that these activities are exempt from the California Environmental Quality Act

(CEQA), Applicant shall first apply to the Commission Energy Division staff for a determination of exemption from CEQA using the following procedure:

A. Required Information From Applicant. Applicant shall provide the Commission Energy Division with:

- 1) A detailed description of the proposed project, including:
 - a) Customer(s) to be served;
 - b) The precise location of the proposed construction project; and
 - c) Regional and local site maps.
- 2) A description of the environmental setting, including at a minimum:
 - a) Cultural, historical, and paleontological resources;
 - b) Biological resources; and
 - c) Current land use and zoning.
- 3) A construction work plan, including:
 - a) Commission Preconstruction Survey Checklist – Archaeological Resources;
 - b) Commission Preconstruction Survey Checklist – Biological Resources;
 - c) A detailed schedule of construction activities, including site restoration activities;
 - d) A description of construction/installation techniques;
 - e) A list of other agencies contacted with respect to siting, land use planning, and environmental resource issues, including contact information; and
 - f) A list of permits required for the proposed project.

- 4) A statement of the CEQA exemption(s) claimed to apply to the proposed project; and
 - 5) Documentation and evidence sufficient to support a finding that the claimed CEQA exemption(s) apply to the project.
 - 6) A proof of service showing that Applicant has served a copy of the above information on the city and county in which the project, if approved, will be constructed.
- B. Review by Commission Energy Division. The Commission Energy Division shall review the submittal and notify Applicant of either its approval or its denial of Applicant's claim for exemption from CEQA review no later than 21 days after the date on which Applicant's submittal is complete.
- C. Approval of Claimed CEQA Exemption(s)/Notice to Proceed. If the Commission Energy Division approves Applicant's claimed CEQA exemption(s), the staff shall prepare a Notice to Proceed (NTP) and file a Notice of Exemption with the State Clearinghouse, Office of Planning and Research.
- D. Disapproval of Claimed CEQA Exemption(s). If the Commission Energy Division disapproves Applicant's claimed CEQA exemptions, ED staff shall issue to Applicant a letter which states the specific reasons that the claimed CEQA exemptions do not apply to the proposed project.

If the Commission Energy Division disapproves Applicant's claimed CEQA exemption(s), Applicant shall either re-design the specific project and facilities and then reapply for a finding of exemption from CEQA, or shall file a formal application with the Commission seeking the requisite approval and undergo full CEQA review, before commencing any full facilities-based construction activities.

5. The procedure stated in Ordering Paragraph 4 above for expedited 21-day environmental review by Commission Energy Division staff of potentially CEQA-exempt construction projects applies only to certain construction activities as described in Application 11-10-029. If 360networks (USA), Inc. (Applicant) wishes to perform other full facilities-based construction activities, Applicant shall first apply for Commission authorization and undergo any required environmental review before commencing construction.

6. If 360networks (USA), Inc. (Applicant) wishes to construct any facilities that exceed five miles in length, Applicant shall file a formal application with the Commission and undergo any required environmental review before commencing construction.

7. 360networks (USA), Inc. shall not engage in any full facilities-based construction activity that Applicant believes is exempt from the California Environmental Quality Act, before receiving a Notice to Proceed from the Commission Energy Division, pursuant to the procedure stated in Ordering Paragraph 4 above.

8. 360networks (USA), Inc. (Applicant) remains subject to the requirements of Decision (D.) 06-04-020, which granted Applicant a certificate of public convenience and necessity (CPCN) authorizing the company to provide limited facilities-based and resold local exchange services, and D.98-07-057, which granted Applicant a CPCN authorizing the company to provide limited facilities-based interexchange services in California.

9. The certificate granted and the authority to render service under the rates, charges, and rules authorized in 360networks (USA), Inc.'s previously approved tariffs will expire if not exercised within 12 months after the effective date of this order.

10. The corporate identification number assigned to 360networks (USA), Inc., (U-6028-C), shall be included in the caption of all original filings with this Commission, and in the titles of other pleadings filed in existing cases.

11. 360networks (USA), Inc. shall comply with all applicable rules adopted in the Local Exchange Competition proceeding (Rulemaking 95-04-043/ Investigation 95-04-044), as well as all other applicable Commission rules, decisions, general orders, and statutes that pertain to California public utilities, subject to the exemptions granted in this decision.

12. 360networks (USA), Inc. shall comply with the requirements applicable to competitive local exchange carriers and interexchange carriers included in Attachments B, C, and D to this decision.

13. 360networks (USA), Inc.'s (Applicant) financial statements and information filed in this proceeding shall be filed under seal and shall remain under seal for a period of two years after the date of this order. During this two-year period, the information filed as Exhibits 2, 3, and 4 to the application shall remain under seal and shall not be viewed by any person other than the Assigned Commissioner, the assigned Administrative Law Judge (ALJ), the Chief ALJ, the Assistant Chief ALJ, or the ALJ then designated as the Law and Motion Judge, except as agreed to in writing by Applicant or as ordered by a court of competent jurisdiction. If Applicant believes that it is necessary for this information to remain under seal for longer than two years, Applicant shall file a new motion at least 30 days before the expiration of this limited protective order.

14. Application 11-10-029 is closed.

This order is effective today.

Dated December 15, 2011, at San Francisco, California.

MICHAEL R. PEEVEY

President

TIMOTHY ALAN SIMON

MICHEL PETER FLORIO

CATHERINE J.K. SANDOVAL

MARK J. FERRON

Commissioners

ATTACHMENT A

List of deficiencies filed by 360networks (USA) Inc., (Applicant) in Application 11-10-029 and to be corrected in its Tariff Compliance filing:

(Intentionally left blank. Applicant is operating pursuant to its tariffs as previously approved in Decision 06-09-006.)

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 Deaf and Disabled Telecommunications Program (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);
- 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, at 3-4, App. B, Rule 1.C (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-17311, dated March 24, 2011, effective May 1, 2011);
- f. The current 0.140% 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); Resolution T-17343, dated September 22, 2011, effective November 1, 2011; 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, at 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. 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.
4. 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.
5. 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.⁸

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

7. 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.

8. 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.

9. 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.

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

11. 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.

12. 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

⁸ 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.

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.

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

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

15. 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.

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

17. 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)