

Decision 05-06-050 June 30, 2005

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of UCN, Inc. For a Certificate of Public Convenience and Necessity to Provide Resold and Limited Facilities-Based Competitive Local Exchange Services.

Application 04-11-012
(Filed November 15, 2004)

O P I N I O N

I. Summary

UCN, Inc., (Applicant) seeks a certificate of public convenience and necessity (CPCN) under Pub. Util. Code § 1001 for authority to provide limited facilities-based and resold local exchange telecommunications services as a competitive local carrier (CLC).^{1 2} By this decision, we grant the requested authority subject to the terms and conditions set forth below.

II. Background

In prior decisions, we authorized the provision of competitive local exchange service within the service territories of Pacific Bell Telephone Company

¹ A CLC is a common carrier that is issue a CPCN to provide local exchange telecommunications service for a geographic area specified by such carrier.

² Applicant currently holds a CPCN (U 5979 C) which authorizes it to provide inter and intralata resold services to business and residential customers in California. In this application, Applicant seeks additional authority in order to offer customers resold and limited facilities-based competitive local exchange services throughout the entire state of California, or to the extent that the facilities of its underlying carriers permit.

(Pacific), Verizon California Inc. (Verizon), SureWest Telephone (SureWest),³ and Citizens Telecommunications Company of California, Inc. (CTC).

Applicant, a Delaware corporation, requests authority to operate as a limited facilities-based and resale provider of local exchange services throughout the state.

Applicant's principal place of business is located in Bluffdale, Utah.

III. Financial Qualifications

To be granted a CPCN for authority to provide facilities-based and resold local exchange service, an applicant 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.⁴ Applicant provided financial documentation that demonstrates that it meets the financial requirements.

IV. Technical Qualifications

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

Applicant represents that no one associated with or employed by Applicant as an affiliate, officer, director, partner, or owner of more than 10% of

³ SureWest was previously known as Roseville Telephone Company.

⁴ The financial standards for certification to operate as a CLC are set forth in Decision (D.) 95-12-056, Appendix C, Rule 4.B.

Applicant 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.

However, Applicant (or its corporate predecessor) has a history of regulatory problems, including revocations of its operating authority, in other states.⁵ Applicant states that during its early years as a small start-up company, it relied on a consultant to handle regulatory compliance matters. According to Applicant, confusion arose regarding the responsibility of the agent to maintain the company's certification status after obtaining operating authority from various states. In 2001, Applicant hired in-house counsel to handle regulatory compliance and shortly thereafter contracted with another outside consultant to assume these responsibilities. Applicant claims that it later learned that its consultant was not effectively handling regulatory compliance issues after several states threatened enforcement proceedings against Applicant.

In order to address these problems, in 2002, Applicant designated a senior officer of the company as Regulatory Compliance Manager, developed a regulatory compliance plan, and retained an outside law firm for the purpose of identifying, tracking, preparing and filing all required regulatory documents for Applicant nationwide. Applicant also states that it has settled its enforcement

⁵ Applicant first began providing resold long distance services in several states in 1997 and 1998 under its previous corporate name, Buyers United International, Inc. (BUII). Many of the regulatory actions were taken against Applicant under its previous corporate name, BUII.

proceedings, paid fines, and regained its operating authority in those states which had previously revoked its operating authority.⁶

⁶ This Commission is aware that Applicant has had the following regulatory compliance issues in other states:

- **Arkansas**: Revocation of Applicant's operating authority in 2000 based on Applicant's failure to file an annual report and to pay charges and a civil sanction. (*See* 2003 Ark. PUC LEXIS 240.) Applicant admits that it continued to provide service in Arkansas for over 2 years after revocation of its operating authority. (*Id.*) In 2003, Applicant reapplied for a CPCN and entered into a stipulation with the Arkansas Public Service Commission. Under the stipulation, Applicant credited or refunded \$2,547 plus interest to its customers; paid \$992 plus interest to the Commission for revenues and interest that could not be refunded or credited to customers; paid a \$2,000 civil sanction to the Commission; paid \$223.97 to the Arkansas Universal Service Fund, and submitted its regulatory compliance plan to the Commission. The Arkansas Public Service Commission subsequently allowed Applicant to obtain a CPCN.
- **Nebraska**: Revocation of intrastate operating authority by the Nebraska Public Service Commission in 2000 based on applicant's failure to file required reports. (*See* 2000 Neb. PUC LEXIS 78.) Applicant states that it entered into a settlement with the Nebraska Public Service Commission in February 2003. As part of this settlement, Applicant paid a \$10,200 civil forfeiture fine and submitted a regulatory compliance plan, in return for the reinstatement of its operating authority.
- **North Carolina**: Cancellation of Applicant's CPCN by the North Carolina Utility Commission based on Applicant's failure to file required reports and to pay applicable fees. (*See* N. C. PUC LEXIS 457.) Applicant claims that it did not receive notice of the cancellation of its CPCN and therefore continued to operate in North Carolina after the cancellation of its CPCN. In 2003, Applicant entered into a consent agreement with the North Carolina Utility Commission, paid a penalty of \$14,327.95, and submitted a regulatory compliance plan to the Commission. In May 2003, the North Carolina Utility Commission again granted Applicant a CPCN.
- **Tennessee**: Revocation of Applicant's operating authority by the Tennessee Regulatory Commission in 2002 based on Applicant's failure to post a surety bond or letter of credit in the amount of \$20,000 with the Commission as required by Tennessee law. Applicant subsequently entered into a settlement

Footnote continued on next page

Applicant claims to currently hold CPCNs or equivalent authority to provide resold interexchange services in all states except Alaska. Applicant also claims to hold CPCNs or equivalent authority to provide resold and limited facilities-based services in a number of other states. According to Applicant, its CPCN or equivalent in each state is now in good standing.

We are troubled by Applicant's history of regulatory problems in other states. However, based on the evidence presented, it appears that Applicant is now operating in compliance with regulatory requirements. Applicant's current CPCN in this state, which authorizes the provision of resold services, is in good standing. As result, we will not deny this application based on Applicant's past regulatory problems.

Applicant must comply with all regulatory requirements in order to retain its CPCN in this state.

V. Tariffs

Commission staff reviewed Applicant'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, Applicant is directed to correct these deficiencies as a condition of our granting approval of its tariffs.

VI. California Environmental Quality Act (CEQA)

The CEQA requires the Commission 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

agreement with the Commission, paid a penalty of \$9,450, and submitted its regulatory compliance plan to the Commission. In 2003, the Tennessee Regulatory Commission reissued a CPCN to Applicant which authorized the provision of resold services.

restored or enhanced to the fullest extent possible. Since Applicant states that it will not be constructing any facilities for the purpose of providing local exchange services, except for equipment to be installed in existing buildings or structures, it can be seen with certainty that there is no possibility that granting this application will have an adverse impact upon the environment. Applicant must file for additional authority, and submit to any necessary CEQA review, before it can construct facilities other than equipment to be installed in existing buildings or structures.

VII. Conclusion

We conclude that the application conforms to our rules for certification as a CLC. Accordingly, we shall grant Applicant a CPCN to provide local exchange service, subject to compliance with the terms and conditions set forth herein.

VIII. Categorization and Need for Hearings

In Resolution ALJ 176-3142, dated November 19, 2004, 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.

IX. Comments on Draft Decision

This is an uncontested matter in which the decision grants the requested relief. Accordingly, pursuant to Pub. Util. Code § 311(g)(2), the otherwise applicable 30-day period for public review and comment is being waived.

X. Assignment of Proceeding

Susan P. Kennedy is the Assigned Commissioner, and Myra J. Prestidge is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. A notice of the filing of the application appeared in the Daily Calendar on November 19, 2004.
2. There were no protests to this application.
3. A hearing is not required.
4. In prior decisions, the Commission authorized competition in providing local exchange telecommunications services within the service territories of Pacific, Verizon, CTC, and SureWest.
5. Applicant has a minimum of \$100,000 of cash or cash equivalent that is reasonably liquid and readily available to meet its start-up expenses.
6. Applicant has sufficient additional cash or cash equivalent to cover any deposits that may be required by other telecommunications carriers in order to provide the proposed service.
7. Applicant's management possesses sufficient experience and knowledge to provide local exchange services to the public.
8. Although Applicant has had past regulatory problems in other states, including revocations of its operating authority, it appears that Applicant is now in compliance with regulatory requirements.
9. Applicant currently holds a CPCN (U-5979-C) which authorizes Applicant to provide resold interLATA and intraLATA services in California.
10. As part of its application, Applicant submitted a draft of its initial tariff that contained the deficiencies identified in Attachment A to this decision. Except for these deficiencies, Applicant's draft tariffs complied with the Commission's requirements.

11. Applicant does not propose to construct any facilities, except for equipment to be installed in existing buildings or structures, in order to provide the proposed service.

Conclusions of Law

1. No protests have been filed.
2. A hearing is not required.
3. Applicant has the financial ability to provide the proposed service.
4. Applicant has made a reasonable showing of technical expertise in, or related to, telecommunications.
5. Public convenience and necessity require the competitive local exchange services to be offered by Applicant, subject to the terms and conditions set forth herein.
6. The application should be granted to the extent set forth below.
7. Applicant, once granted a CPCN, should be subject to the applicable Commission rules, decisions, General Orders, and statutes that pertain to California public utilities.
8. Applicant's initial tariff filing should correct the deficiencies noted in its draft tariffs as indicated in Attachment A to this decision.
9. Since Applicant does not propose to construct any facilities, except for equipment to be installed in existing buildings or structures, it can be seen with certainty that granting it authority to provide local exchange services will not have a significant adverse effect upon the environment.
10. Because of the public interest in competitive local exchange 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 UCN, Inc. (Applicant) to provide limited facilities-based and resold local exchange services in the service areas of Pacific Bell Telephone Company, Verizon California, Inc., SureWest Telephone, and Citizens Telephone Company of California, Inc., subject to the terms and conditions set forth below.

2. The CPCN granted to Applicant in this order is consolidated with Applicant's previously issued CPCN (U-5979-C), which authorizes the provision of resold inter and intra Local Access Transport Areas (LATA) services in this state.

3. Applicant is authorized to file tariff schedules for the provision of competitive local exchange services. Applicant may not offer competitive local exchange services until tariffs are on file. Applicant's initial filing shall be made in accordance with General Order (GO) 96-A, excluding Sections IV, V, and VI, and shall correct the deficiencies noted in Attachment A. The tariff shall be effective not less than one day after approval by the Commission's Telecommunications Division. Applicant shall comply with its tariffs.

4. The certificate granted and the authority to render service under the rates, charges, and rules authorized herein will expire if not exercised within 12 months after the effective date of this order.

5. The corporate identification number assigned to Applicant, U-5979-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.

6. Applicant 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, GOs and statutes that pertain to California public utilities, subject to the exemptions granted in this decision.

7. Applicant shall comply with the requirements applicable to competitive local exchange carriers included in Attachment B to this decision.

8. Applicant is not authorized to construct facilities, except for equipment to be installed in existing buildings or structures.

9. This proceeding is closed.

This order is effective today.

Dated July 5, 2005, at San Francisco, California.

MICHAEL R. PEEVEY
President
GEOFFREY F. BROWN
SUSAN P. KENNEDY
DIAN M. GRUENEICH
Commissioners

Commissioner John A. Bohn, being necessarily absent, did not participate.

ATTACHMENT A

List of deficiencies in tariffs filed by CCG Communications, LLC in Application 04-07-021 to be corrected in its tariff compliance filing.

1. Each rule must begin on a separate page. Please modify the rules in your tariff accordingly.
2. Please add a description and rule for Directories.
3. Sheet 22: Your Company limits its liability to \$10,000 but does not discuss court costs or attorneys fees that may be applicable. Please add, "The nonprevailing party may be liable for reasonable court costs and attorney fees as determined by the CPUC or by the court."
4. Sheets 31 and 36: Please correct your Universal Lifeline Telephone Service information. The Household income limitations should read as follows:

1-2	\$20,600
3	\$24,300
4	\$29,200
Each additional household member	\$ 4.900

5. Sheet 56, Taxes and Surcharges: Please revise to be consistent with Resolution T-16901, December 2, 2004.
6. Please add a description and rule for Demarcation Points.

(END OF ATTACHMENT A)

ATTACHMENT B

REQUIREMENTS APPLICABLE TO COMPETITIVE LOCAL EXCHANGE 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 fee 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 zero.
 - a. The current 1.55% 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-16917, dated February 24, 2005, effective April 1, 2005);
 - b. The current 0.30% 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-16816, dated January 22, 2004, effective February 1, 2004);
 - c. The user fee provided in Pub. Util. Code §§ 431-435, which is 0.11% of gross intrastate revenue (Resolution M-4813);
 - d. The current 0.15% surcharge applicable to all intrastate services except for those excluded by D.94-09-065, as modified by D.95-02-050, to fund the California High Cost Fund-A (Pub. Util. Code § 739.3; D.96-10-066, pp. 3-4, App. B, Rule 1.C; Resolution T-16916, dated February 24, 2005, effective April 1, 2005);
 - e. The current 2.43% 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., Resolution T-16898, dated December 16, 2004, effective January 1, 2005); and

- f. The current 0.16% 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-16833, dated July 8, 2004, effective August 1, 2004).

3. Applicant is a competitive local exchange carrier (CLC). The effectiveness of its future tariffs is subject to the schedules set forth in Appendix C, Section 4.E of D.95-12-056:

“E. CLCs shall be subject to the following tariff and contract filing, revision and service pricing standards:

“(1) Uniform rate reductions for existing tariff services shall become effective on five (5) working days’ notice. Customer notification is not required for rate decreases.

“(2) Uniform major rate increases for existing tariff services shall become effective on thirty (30) days’ notice to the Commission, and shall require bill inserts, or first class mail notice to customers at least 30 days in advance of the pending rate increase.

“(3) Uniform minor rate increases, as defined in D.90-11-029, shall become effective on not less than (5) working days’ notice to the Commission. Customer notification is not required for such minor rate increases.

“(4) Advice letter filings for new services and for all other types of tariff revisions, except changes in text not affecting rates or relocations of text in the tariff schedules, shall become effective on forty (40) days’ notice.

“(5) Advice letter filings revising the text or location of text material which do not result in an increase in any rate or charge shall become effective on not less than five (5) days’ notice to the Commission.”

“(6) Contracts shall be subject to GO 96-A rules for NDIECS, except interconnection contracts.

“(7) CLCs shall file tariffs in accordance with PU Code § 876.”

4. Applicant may deviate from the following provisions of GO 96-A: (a) paragraph II.C.(1)(b), which requires consecutive sheet numbering and prohibits the reuse of sheet numbers; and (b) paragraph II.C.(4), which requires that “a separate sheet or series of sheets should be used for each rule.” Tariff filings incorporating these deviations shall be subject to the approval of the Commission’s Telecommunications Division. Tariff filings shall reflect all fees and surcharges to which Applicant is subject, as reflected in 2 above.

5. Applicant shall file a service area map as part of its initial tariff.

6. 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.

7. Applicant shall notify the Director of the Telecommunications 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.

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

9. 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.

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

11. Applicant shall file an affiliate transaction report with the Director of the Telecommunications Division, in compliance with D.93-02-019, on a calendar year basis using the form contained in Attachment D.

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

13. 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 Telecommunications Division in writing of its compliance.

14. 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 Telecommunications Division shall prepare for Commission consideration a resolution that revokes Applicant's CPCN unless it has received written permission from the Telecommunications Division to file or remit late.

15. Applicant is exempt from General Order 96-A, subsections III.G(1) and (2), and Commission Rule of Practice and Procedure 18(b).

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

17. 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.

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

19. 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 two copies shall be filed with the California Public Utilities Commission, 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 CPCN.
 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;
- 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 tariffed 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)