

Decision 09-04-012 April 16, 2009

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

In the Matter of the Application of Empire Unified Communications LLC for a Certificate of Public Convenience and Necessity for Authority 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 Telecommunications Company of California, Inc. and Limited Facilities-Based and Resold interexchange telecommunications services statewide.

Application 09-02-001  
(Filed February 3, 2009)

**DECISION GRANTING EMPIRE UNIFIED COMMUNICATIONS LLC,  
A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY**

**1. Summary**

Empire Unified Communications LLC seeks a certificate of public convenience and necessity under Pub. Util. Code § 1001 for authority to provide limited facilities-based and resold local exchange, and interexchange telecommunications services. By this decision, we grant the requested authority subject to the terms and conditions set forth below.

**2. Background**

In prior decisions, we authorized the provision of competitive interexchange services by carriers meeting specified criteria. In addition, we authorized the provision of competitive local exchange service, by carriers meeting specified criteria, within the service territories of Pacific Bell Telephone Company (Pacific Bell), Citizens Telecommunications Company of California,

Inc. (CTC), SureWest Telephone (SureWest), and Verizon California Inc. (Verizon).

Empire Unified Communications LLC (Applicant), a Nevada limited liability company, seeks authority to provide limited facilities-based and resold interexchange services statewide as a nondominant interexchange carrier (NDIEC), and limited facilities-based and resold local exchange services as a competitive local carrier (CLC) throughout the Pacific Bell, CTC, SureWest and Verizon service territories.

Applicant's principal place of business is located at 1 West Main Street, Suite 650, Rochester, NY 14614.

### **3. Financial Qualifications**

To be granted a Certificate of Public Convenience and Necessity (CPCN), an applicant for authority to provide limited facilities-based and resold local exchange and/or interexchange services must demonstrate that it has a minimum of \$100,000 cash or cash equivalent to meet the firm's start-up expenses.<sup>1</sup> An applicant must also demonstrate that it has sufficient additional resources to cover all deposits required by local exchange carriers (LECs) and/or interexchange carriers (IECs) in order to provide the proposed service.<sup>2</sup> Applicant represented that it is engaged in negotiating interconnection agreements and has not yet determined the amount of deposits that other

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<sup>1</sup> The financial requirement for CLCs is contained in Decision (D.) 95-12-056, Appendix C. The financial requirement for NDIECs is contained in D.91-10-041.

<sup>2</sup> The requirement for CLC applicants to demonstrate that they have additional financial resources to meet any deposits required by underlying LECs and/or IECs is set forth in D.95-12-056, Appendix C. For NDIECs, the requirement is found in D.93-05-010.

telecommunications carriers may require in order for Applicant to provide the proposed service. Applicant represents that it has a cash equivalent sufficient to cover any such deposits that could reasonably be required. Applicant provided financial documents under motion to seal that demonstrate that it has sufficient cash to satisfy the financial requirement.

#### **4. Technical Qualifications**

Applicants for NDIEC and CLC authority are required to make a reasonable showing of technical expertise in telecommunications or a related business. Applicant submitted biographical information on its management that demonstrates that it possesses sufficient experience and knowledge 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 Applicant was previously associated with any telecommunication carrier that filed for bankruptcy, or was sanctioned by the Federal Communications Commission (FCC) or any state regulatory agency for failure to comply with any regulatory statute, rule or order.

After having made that representation, the President of Applicant, Adam Glynn, became aware that an affiliate of Applicant, Gafachi, Inc., had received a citation from the FCC for an apparent failure to make an annual compliance certification concerning customer proprietary network information as required by federal regulations (47 C.F.R. § 64.2009(e)). Applicant disclosed the citation to us promptly. We find that the citation of the affiliate in this instance does not disqualify the Applicant in this proceeding but are requiring that the resolution of the citation be reported to us in writing.

## **5. Tariffs**

Applicant states it will serve only business customers and therefore will not provide basic service (local exchange service to residential customers) as that term has been defined by the Commission. Applicant will provide highly specialized telecommunications services on an individual customer basis, and did not submit a proposed tariff with its application. Applicant states it will provide information concerning its rates, terms, and conditions of service on its internet website.

Applicant's request is consistent with Commission requirements for detariffing contained in Decision (D.) 07-09-018. Applicant will be required to include all Commission fees and surcharge in its contracts; these contracts shall adhere to the consumer protection rules established in D.98-08-031.

## **6. California Environmental Quality Act (CEQA)**

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 restored or enhanced to the fullest extent possible. Applicant will not be constructing any facilities, other than equipment to be installed in existing buildings or structures, for the purpose of providing interexchange or local exchange services.

Therefore, it can be seen with certainty that there is no possibility that granting this application will have an adverse effect upon the environment. Applicant must file for additional authority, and submit to any required CEQA review, before it can construct facilities other than equipment to be installed in existing buildings or structures.

## **7. Request File Under Seal**

Applicant requests that the financial information filed with the application be kept under seal. The financial information consists of a parent corporation guaranty letter, financial statements of a parent corporation including statements of accounts, and a representation of the expected customer base. Applicant represents that the information is proprietary and sensitive. The information, if revealed, would place Applicant at an unfair business disadvantage. We have granted similar requests in the past and will do so here.

## **8. Conclusion**

We conclude that the application conforms to our rules for authority to provide competitive local exchange and interexchange telecommunications services. Accordingly, we shall approve the application subject to the terms and conditions set forth herein.

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

In Resolution ALJ 176-3229, dated February 20, 2009, the Commission preliminarily categorized this application as ratesetting, and preliminarily determined that hearings were not necessary. On March 10, 2009, a protest was filed by the Commission's Consumer Protection and Safety Division (Protestant),<sup>3</sup> citing a personal bankruptcy of the President of Applicant in 2000 and alleging a failure to provide names of officers and directors. Applicant filed a reply to the protest on March 16, 2009,<sup>4</sup> acknowledging the personal bankruptcy but disputing its relevancy. Applicant's reply, while denying

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<sup>3</sup> Protest of the Consumer Protection and Safety Division to the Application of Empire Unified Communications LLC.

<sup>4</sup> Reply of Empire Unified Communications LLC to Protest of Consumer Protection and Safety Division.

Protestant's claim that the Application was incomplete, disclosed additional information about Applicant's President and other entities with which he was affiliated. On March 20, 2009, Protestant moved to withdraw its protest.<sup>5</sup>

Protestant's motion is hereby granted. 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.

#### **10. Comments on Proposed Decision**

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(c)(2) of the Commission's Rules of Practice and Procedure, the otherwise applicable 30-day period for public review and comment is waived.

#### **11. Assignment of Proceeding**

Rachelle B. Chong is the assigned Commissioner and Gary Weatherford is the assigned Administrative Law Judge in this proceeding.

#### **Findings of Fact**

1. Notice of the application appeared in the Daily Calendar on February 9, 2009.
2. A protest was filed on March 10, 2009, by the Commission's Consumer Protection and Safety Division (Protestant) and replied to by the Applicant on March 16, 2009. Protestant moved the withdrawal of the protest on March 20, 2009.
3. A hearing is not required.

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<sup>5</sup> Motion for Withdrawal of the Protest of the Consumer Protection and Safety Division.

4. In prior decisions, the Commission authorized competition in providing interexchange services for carriers meeting specified criteria.

5. In prior decisions, the Commission authorized competition, by carriers meeting specified criteria, in providing local exchange telecommunications services within the service territories of Pacific Bell, CTC, SureWest, and Verizon.

6. 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.

7. 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.

8. Applicant possesses sufficient experience and knowledge to provide telecommunications services.

9. After filing its application, Applicant promptly reported a citation issued by the FCC against an affiliate of the Applicant.

10. In its application, Applicant stated it would serve only business customers by individual case basis contracts, and proposes to be tariffed pursuant to the requirements established in D.07-09-018. Applicant's contracts should include all applicable Commission fees and surcharges, and should adhere to the consumer protection guidelines established in D.98-08-031. Applicant should post information concerning its rates, terms, and conditions of service on its internet website.

11. Applicant will not be constructing facilities, other than equipment to be installed in existing buildings or structures.

12. Public disclosure of the financial information filed under seal would place Applicant at an unfair business disadvantage.

### **Conclusions of Law**

1. Applicant has the financial ability to provide the proposed service.
2. Applicant has sufficient technical expertise to operate as a telecommunications carrier.
3. Applicant should not be disqualified by the FCC citation issued to an affiliate.
4. Public convenience and necessity require that Applicant's competitive local exchange and interexchange services be subject to the terms and conditions set forth herein.
5. Since Applicant will not be constructing any facilities, other than equipment to be installed in existing buildings or structures, it can be seen with certainty that there will be no significant effect on the environment.
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 is eligible to be detariffed under the guidelines established in D.07-09-018. Applicant should post information on its internet website concerning its rates, terms, and conditions of service. Contracts should include applicable Commission fees and surcharges and adhere to the consumer protection guidelines established in D.98-08-031.
9. Applicant's request to file its financial information under seal should be granted for two years.
10. 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 is granted to Empire Unified Communications LCC (Applicant) to operate as a limited facilities-based and resale provider of competitive local exchange services, and interexchange services, subject to the terms and conditions set forth below.

2. Applicant is authorized to provide local exchange service in the service territories of Pacific Bell Telephone Company, Citizens Telecommunications Company of California, Inc., SureWest Telephone, and Verizon California Inc.

3. Applicant shall notify the Commission in writing of the resolution of the Federal Communications Commission citation against Applicant's affiliate, Gafachi, Inc., within 60 days of that resolution.

4. Applicant is authorized to be detariffed and to provide service by individual case basis contracts. Contracts should include applicable Commission fees and surcharges and adhere to consumer protection guidelines established in Decision (D.) 98-08-031. Applicant shall post information concerning its rates, terms, and conditions of service on its internet website.

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

6. The corporate identification number assigned to Applicant, U7141C, shall be included in the caption of all original filings with this Commission, and in the titles of other pleadings filed in existing cases.

7. Applicant shall comply with all applicable rules adopted in the Local Exchange Competition proceeding (Rulemaking 95-04-043/ Investigation 95-04-044), the Commission's rules and regulations for

nondominant interexchange carriers (NDIECs) set forth in D.93-05-010 and D.90-08-032, 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.

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

9. Applicant is not authorized to construct facilities, other than equipment to be installed in existing buildings or structures.

10. Applicant's request to have the financial information filed with the application kept under seal is granted for two years from the effective date of this decision. During that period the information shall not be made accessible or disclosed to anyone other than the Commission staff except on the 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.

11. If Applicant believes that further protection of the information kept under seal is needed, it may file a motion stating the justification for further withholding of the information from public inspection, or for such other relief as the Commission's rules may then provide. This motion shall be filed no later than one month before the expiration date.

12. Application 09-02-001 is closed.

This order is effective today.

Dated April 16, 2009, at San Francisco, California.

MICHAEL R. PEEVEY  
President  
DIAN M. GRUENEICH

JOHN A. BOHN  
RACHELLE B. CHONG  
TIMOTHY ALAN SIMON  
Commissioners

**ATTACHMENT A**

**(NOT APPLICABLE TO THIS PROCEEDING)**

## ATTACHMENT B

### REQUIREMENTS APPLICABLE TO COMPETITIVE LOCAL EXCHANGE CARRIERS AND INTEREXCHANGE CARRIERS

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

2. Applicant is subject to the following fees and surcharges that must be regularly remitted. Per the instructions in Appendix E to Decision (D.) 00-10-028, the Combined California PUC Telephone Surcharge Transmittal Form must be submitted even if the amount due is \$0.

- a. The current 1.15% surcharge applicable to all intrastate services except for those excluded by D.94-09-065, as modified by D.95-02-050, to fund the Universal Lifeline Telephone Service Trust Administrative Committee Fund (Pub. Util. Code § 879; Resolution T-17071, dated March 1, 2007, effective April 1, 2007);
- b. The current 0.20% surcharge applicable to all intrastate services except for those excluded by D.94-09-065, as modified by D.95-02-050, to fund the California Relay Service and Communications Devices Fund (Pub. Util. Code § 2881; D.98-12-073 and Resolution T-17127, dated December 20, 2007, effective January 1, 2008);
- c. The user fee provided in Pub. Util. Code §§ 431-435, which is 0.18% of gross intrastate revenue (Resolution M-4819), dated June 7, 2007, effective July 1, 2007;
- d. The current 0.13% 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);
- e. The current 0.25% 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);

- f. The current 0.25% 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 26, 2008, effective June 1, 2008).

Note: These fees change periodically. In compliance with Resolution T-16901, December 2, 2004, you 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 bills until further revised.

3. Applicant is a competitive local exchange carrier (CLC). 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. Contracts 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.

13. 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.

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 hard copy, and a machine-readable electronic copy, on a CD or floppy disk using Microsoft Word or a compatible format, shall be filed with the California Public Utilities Commission, 505 Van Ness Avenue, Room 3107, San Francisco, CA 94102-3298. The filing shall be made 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 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. The number and date of the Commission decision granting the Utility's CPCN.
7. Date operations were begun.
8. Description of other business activities in which the utility is engaged.
9. A list of all affiliated companies and their relationship to the utility. State if affiliate is:
  - 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 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 D.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)**