

Decision 13-05-035 May 23, 2013

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

Order Instituting Rulemaking to Revise  
the Certification Process for Telephone  
Corporations and the Registration Process  
for Wireless Carriers.

Rulemaking 11-11-006  
(Filed November 10, 2011)

**DECISION ADDRESSING REVISIONS TO THE  
CERTIFICATION PROCESSES FOR TELEPHONE  
CORPORATIONS SEEKING OR HOLDING CERTIFICATES  
OF PUBLIC CONVENIENCE AND NECESSITY, AND WIRELESS  
CARRIERS SEEKING OR HOLDING REGISTRATION**

## TABLE OF CONTENTS

Title	Page
DECISION ADDRESSING REVISIONS TO THE CERTIFICATION PROCESSES FOR TELEPHONE CORPORATIONS SEEKING OR HOLDING CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY, AND WIRELESS CARRIERS SEEKING OR HOLDING REGISTRATION .....	1
1. Summary.....	2
2. Background .....	4
3. Scope of OIR.....	8
4. Should the Commission Revise the Process for Telephone Corporations Seeking or Holding Certificates of Public Convenience and Necessity and Wireless Carriers Seeking or Holding Registration? .....	10
5. Should the Commission Require a Performance Bond for CPCN and Wireless Carriers?.....	16
6. Should the Commission Require a Standardized Applicant Fitness Checklist for CPCN Applicants and a More Extensive Information Form for Wireless Carriers? .....	33
7. Should the Commission Increase the Application Fee for Applicants Seeking CPCN Certification, and WIR Registration? .....	40
8. Should the Commission Adjust the Terms of Payment of the CPUC Reimbursement Fee Required for CPCN Holders, and for Wireless Registrants? .....	42
9. Should the Commission Make Other Changes in the Requirements for Processing CPCN Applications and Wireless Registrations? .....	44
10. Motions .....	45
11. Comments on Proposed Decision.....	46
12. Assignment of Proceeding.....	47
Findings of Fact .....	47
Conclusions of Law.....	50
ORDER .....	55
ATTACHMENT A                      Requirements for CPCN Application	
ATTACHMENT B                      Sworn Affidavit	
ATTACHMENT C                      CPCN Checklist	
ATTACHMENT D                      Wireless Registration Application	
ATTACHMENT E                      Sworn Affidavit for Wireless Registrant	

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**1. Summary**

This decision (Decision) adopts revisions to the certification processes for telephone corporations seeking or holding Certificates of Public Convenience and Necessity (CPCN), and wireless carriers seeking or holding Wireless Identification Registration (WIR). The Decision:

- Requires all applicants seeking or holding a CPCN and wireless carriers seeking or holding a WIR to post a bond to facilitate the collection of fines, fees, surcharges, taxes, penalties, and restitution. Initially, the bond amount for existing CPCN holders and wireless registrants shall be set at \$25,000, until the Commission can determine a reasonable performance bond amount based upon intrastate revenue and/or consumer protection considerations to be determined during Phase II of this rulemaking. The bond amount for new applicants granted a CPCN or wireless carriers granted a WIR that have not yet reported annual intrastate revenues to the Commission is \$25,000;
- Exempts Uniform Regulatory Framework and General Rate Case Incumbent Local Exchange Carriers where they serve as Carriers of Last Resort and their wholly owned/majority owned affiliates, and Cox Communications where it serves as the Carrier of Last Resort, from the requirement to obtain a performance bond;
- Requires CPCN applicants and wireless registrants to provide resumes of all key officers, directors, and owners of 10% or more of outstanding shares, listing all previous employment held by these individuals, and to provide information on prior or current known investigations by

governmental agencies, and any settlement agreements, voluntary payments, or any other type of monetary forfeitures;

- Requires applicants seeking to transfer licenses or registration to verify compliance with Commission reporting, fee, and surcharge transmittals;
- Increases the application fee for new and transferred CPCN authority from \$75 to \$500, pending appropriate legislative action;
- Requires wireless registrants to pay a \$250 fee for new and transferred wireless registration; and
- Establishes a minimum user fee of \$100 for CPCN holders and WIR carriers, to be paid annually, including those reporting no intrastate revenues. As a result, all telephone corporations holding a CPCN and all wireless registrants must pay an annual user fee based on the Commission-established rate in effect at that time (currently set at 0.18% of gross intrastate revenue) or \$100, whichever is greater.

The Decision does not adopt the proposal to require an annual license fee or a fee for withdrawal of authority.

The changes to the certification processes for telephone corporations seeking or holding CPCNs, and wireless carriers seeking registration, this Decision adopts should reduce the likelihood that enforcement actions against these carriers will be necessary, and, when enforcement actions against a carrier are necessary, should improve the Commission's ability to collect fines, penalties, and bring about restitution.

## **2. Background**

The Commission initiated this Order Instituting Rulemaking (OIR) to revise the processes for telephone corporations<sup>1</sup> seeking or holding Certificates of Public Convenience and Necessity (CPCN), and wireless carriers seeking or holding a Wireless Identification Registration (WIR).<sup>2</sup> CPCN authority is obtained through a formal application process pursuant to Pub. Util. Code § 1001, while non-dominant interexchange carriers (NDIECs) are allowed to utilize a streamlined registration process to obtain authority to operate in California.<sup>3</sup> Recently, in D.10-09-017, as modified by D.11-09-026,<sup>4</sup> the California Public Utilities Commission (Commission or CPUC) adopted the following revisions to the compliance requirements for new applicants seeking registration and existing NDIEC registrants:<sup>5</sup>

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<sup>1</sup> Pub. Util. Code § 234.

<sup>2</sup> Telephone corporations seeking CPCN authority may include Incumbent Local Exchange Carriers (ILECs), Small General Rate Case Local Exchange Carriers (Small GRC LECs), other ILECs, Competitive Local Exchange Carriers (CLECs), and NDIEC (non-registrants or carriers that did not utilize the process established by Pub. Util. Code § 1013).

<sup>3</sup> Decision (D.) 97-06-107 initially established the registration process.

<sup>4</sup> D.11-09-026, clarified that the performance bond required by Public Utilities Code Section 1013(f) could be used to facilitate the collection of taxes or fees or both in addition to fines, penalties, or restitution.

<sup>5</sup> D.10-09-017 revised the registration requirements. The Commission made all telecommunications corporations respondents in Rulemaking (R.) 09-07-009, noting that the changes proposed might be extended in the future to other competitive telecommunications providers.

- Performance Bonds<sup>6</sup> – All NDIEC registration licensees are required to post a bond in order to obtain or retain authority to provide telecommunications services as an NDIEC, and to secure the payment of any monetary sanction (i.e. fines, penalties, restitution) imposed in any enforcement proceeding brought under § 1013(f) of the Pub. Util. Code against any NDIEC.<sup>7</sup> The bond amount must equal 10% of gross intrastate revenues reported to the Commission during the preceding calendar year or \$25,000, whichever is greater. For new registrants who have not previously reported intrastate earnings, the bond requirement is \$25,000;
- Background Review of Applicants – All new NDIEC registration licensees must submit as part of the application process, resumes of all key officers and owners of 10% or more of outstanding shares that indicate sufficient managerial and technical experiences; disclose prior or current known investigations by any governmental agency, and any settlements with any regulatory agency over its business conduct or practices, disclose voluntary payments made by an applicant or its principals to resolve action by regulatory agencies, attorneys general, or courts, or any other type of monetary forfeitures;
- Application Fee – All NDIEC registration licensees (including new and transferred registration licensees) must pay an application fee set at \$250; and
- Annual User Fee – All NDIEC registration licensees must pay a minimum annual user fee of \$100 or 0.18% of gross intrastate

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<sup>6</sup> “Performance bond” is defined in this rulemaking as a commercial surety or financial guarantee bond, which is issued by an insurance company or a bank, for the purpose of facilitating collection of any monetary sanction (i.e., tax, surcharge, fee, fine, penalty and restitution).

<sup>7</sup> By D.11-09-026 the Commission modified D.10-09-017 to require that the performance bond also secure the payment of taxes or fees or both pursuant to Pub. Util. Code § 1013(e). The overall dollar amount of the required bond was not changed.

revenue,<sup>8</sup> whichever is greater, for registration licensees, including those licensees reporting no intrastate revenues.

The Commission revised registration requirements to address concerns raised by the State Controller's 2007 Audit Report (Audit Report)<sup>9</sup> concerning carrier fitness and financial responsibility. The Audit Report found that the Commission had failed to collect millions of dollars in fines and restitution from California utilities. The Commission gives great weight to the concerns and recommendations expressed in the Audit Report. Many of those concerns are applicable to telecommunications corporations holding or seeking authority to operate pursuant to a CPCN or seeking a WIR as a wireless reseller. The Audit Report recommended, among other things, that the Commission conduct more stringent background and financial viability reviews of individuals or companies applying for licenses from the Commission.

The OIR sought comments on proposals to require a performance bond as a requirement for CPCN holders and/or for WIR carriers, implementation of a standardized applicant fitness checklist for new CPCN applicants and WIR registrants, an increase in the application and user fees, and imposition of the same application fee on WIR registrants. The OIR also invited parties to propose any other appropriate changes to the requirements for processing CPCN applications or WIR information.

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<sup>8</sup> The current fee is 0.18% but is adjusted periodically by the Commission pursuant to Pub. Util. Code § 431.

<sup>9</sup> John Chiang, California State Controller, "California Public Utilities Commission – Report of Review, Fines and Restitution Accounting and Collection," August 2007. This report is available on the State Controller's website, at [http://www.sco.ca.gov/files-AUD/specreport\\_cpuc\\_fines\\_rpt.pdf](http://www.sco.ca.gov/files-AUD/specreport_cpuc_fines_rpt.pdf).

On January 13, 2012, comments were filed by the California Association of Competitive Telecommunications Companies (CALTEL), Division of Ratepayer Advocates (DRA), The Utility Reform Network (TURN), California Cable & Telecommunications Association (California Cable), MetroPCS California, LLC (MetroPCS), tw telecom of California (TWTC), SureWest Telephone, SureWest Long Distance, SureWest Televideo (SureWest), CTIA- The Wireless Association (CTIA), the AT&T Companies (AT&T),<sup>10</sup> the Verizon Companies (Verizon),<sup>11</sup> and joint comments were filed by the Small LECs.<sup>12</sup> On January 27, 2012, TWTC, Nova Cellular West, Inc. (Nova), Nexus

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<sup>10</sup> The AT&T Companies include Pacific Bell Company d/b/a AT&T California (U1001C); AT&T Communications of California (U5002C); TCG San Francisco (U5454C); TCG Los Angeles, Inc. (U5462C); TCG San Diego (U5389C); and AT&T Mobility LLC (New Cingular Wireless PCS, LLC (U3060C); AT&T Mobility Wireless Operations Holdings, Inc. f/k/a CaGal Cellular Communications (U3021C); Santa Barbara Cellular Systems LTD. (U3015C); and New Cingular Wireless PCS, LLC f/k/a/ Visalia Cellular Telephone Company (U3014C).

<sup>11</sup> For this filing, The Verizon Companies include Verizon California Inc. (U1002C); MCI Communications Services, Inc., d/b/a Verizon Business Services (U5378C); MCImetro Access Transmission Services d/b/a Verizon Access Transmission Services (U5253C); TTI National, Inc., d/b/a Verizon Business Services (U5403C); Teleconnect Long Distance Services & Systems Company, d/b/a Telecom\*USA (U5152C); Verizon Enterprise Solutions LLC (U5658C); Verizon Long Distance LLC (U5732C), Verizon Select Services Inc. (U5494C); Cellco Partnership (U3001C); California RSA No. 4 Limited Partnership (U3038C); Fresno MSA Limited Partnership (U3005C); GTE Mobilnet of California Limited Partnership (U3002C) GTE Mobilnet of Santa Barbara Limited Partnership (U3011C); Los Angeles SMSA Limited Partnership (U3003C); Modoc RSA Limited Partnership (U3032C); Sacramento Valley Limited Partnership (U3004C); Verizon Wireless (VAW) LLC (U3029C); and WWC License L.L.C. (U3025C).

<sup>12</sup> The Small LECs include Calaveras Telephone Company (U1004C); Cal-Ore Telephone Company (U1006C); Ducor Telephone Company (U1007C); Foresthill Telephone Company (U1009C); Happy Valley Telephone Company (U1010C); Hornitos Telephone Company (U1011C); Kerman Telephone Company (U1012C); Pinnacles

*Footnote continued on next page*



Communications, AT&T, CALTEL, DRA, California Cable, MetroPCS, and TURN filed reply comments.

### **3. Scope of OIR**

The preliminary scoping memo contained in R.11-11-006 issued by the Commission on November 18, 2011, described four broad categories of issues that will be addressed in this proceeding. These categories are:

1. Should a performance bond requirement be established for CPCN certificate holders and/or for WIR registration holders and, if so, what size of bond should be required and what should be the terms and conditions? Are there alternatives to a performance bond that provide the same level of protection?
2. Should a standardized applicant fitness checklist be devised for new CPCN applicants seeking certification and Wireless Carriers seeking registration? If so, what should the requirements be for each?
3. Should the application fee for CPCN authority be increased from the current fee of \$75? If so, by how much? Should the same fee be charged to Wireless Carriers seeking WIR registration authority? Should a filing fee be required for the sale, assignment or transfer of an existing certificate/registration to another company? Should a separate filing fee be required for requests for expansions of authority or just for the initial filing? If so, what should the amounts be?
4. Should the terms of payment of the Public Utilities Commission (CPUC) Reimbursement Fee (User Fee) as required for CPCN certificate holders, pursuant to Pub.

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Telephone Co. (U1013C); The Ponderosa Telephone Co. (U1014C); Sierra Telephone Company, Inc. (U1016C); The Siskiyou Telephone Company (U1017C); Volcano Telephone (U1019C); and Winterhaven Telephone Company (U1021C).

Util. Code § 431, and for Wireless Registrants, be modified so that certificated and registered providers pay a minimum annual assessment, or a percentage of gross intrastate revenues, whichever is greater?

We affirm these four broad categories of issues as the scope of work in this proceeding.

The Commission also invited parties to comment on whether other changes, such as implementation of an annual licensing fee or a fee to withdraw service, should be made in the requirements for processing CPCN applications or wireless registrations. DRA recommends increasing the information applicants need to provide, including adding the requirement to provide résumés of the applicant's principals and directors, in order for the Commission to effectively conduct proper due diligence. We agree with DRA's recommendation to require additional information from applicants for CPCN certificates and wireless registration. This issue will be addressed in our discussion of a standardized checklist for CPCN applicants and wireless registration information.

TURN proposes that the scope of the OIR be expanded to include registration requirements for Voice over Internet Protocol (VoIP) carriers. TURN believes that there are policy justifications for expanding this rulemaking to include VoIP carriers. TURN argues that adding requirements for VoIP carriers to provide basic information to the Commission provides both consumer protection and administrative convenience to the Commission. TURN maintains that the importance of a robust and effective requirement to register and provide information to the Commission by VoIP providers is growing as VoIP carriers are increasingly marketing themselves as a replacement for basic residential

service and thereby gaining a diverse customer base, many of whom are more vulnerable than in the past with traditional service providers.

We decline to expand this OIR to include registration requirements for carriers providing service using VoIP. During the pendency of this Rulemaking, the Legislature considered and ultimately passed legislation that changes the Commission's regulatory duties with respect to VoIP enabled services. The Governor approved Senate Bill (SB) 1161 on September 28, 2012, adding Section 710 to the P.U. Code. Over 100 VoIP carriers currently hold CPCNs. While we agree that the Commission may need to create some process for carriers providing service using VoIP in order to collect basic information that would enable the Commission to protect consumers and fulfill obligations under SB 1161, the Commission needs to more fully determine the extent of its regulatory duties. In order to examine the Commission's regulatory obligations and duties with respect to carriers providing service using VoIP in light of this recent legislation, we will convene a workshop during Phase II of this Rulemaking to consider whether a registration requirement should be extended to carriers providing service using VoIP, not already having CPCNs, in light of current market conditions, relevant consumer issues, and the regulatory status of such providers.

**4. Should the Commission Revise the Process for Telephone Corporations Seeking or Holding Certificates of Public Convenience and Necessity and Wireless Carriers Seeking or Holding Registration?**

Prior to discussing the specific proposals set forth in the OIR, we first address challenges to the need to revise the operating authority requirements for telephone corporations to qualify for a CPCN under Pub. Util. Code § 1001, and telecommunications corporations who are also Commercial Mobile Radio

Services (CMRS) providers to qualify for WIR pursuant to D.94-10-031 and D.95-10-032.

DRA and TURN support the OIR's proposals to improve the application process for telephone corporations seeking CPCN authority and wireless carriers seeking registration. Both believe that a more thorough background review will protect customers from fraud, poor service and improper business practices. TURN states that a stricter review process will also make it easier for the Commission to monitor surcharge collection and remittance, investigate service quality complaints, and enforce current service quality metrics. DRA supports the OIR's desire to better protect the state's ratepayers by equalizing the standard for CPCN applicants and wireless registrants on par with that for NDIECs.

CTIA and CALTEL contend that the OIR is based on stale data and further contend that there is no need or basis to revise either the CPCN application or wireless registration processes. AT&T argues that the OIR is unnecessary because there is no evidence that defaults by existing CPCN holders and wireless registrants are so widespread that a bond requirement is warranted. The Small LECs, SureWest, MetroPCS, Verizon, and AT&T argue that the OIR fails to show how the concerns expressed by the Audit Report are applicable to wireless carriers, existing holders of telephone CPCNs with a good history of service, certificated competitive local exchange carriers, uniform regulatory framework carriers, or cost-of-service-rate-of-return regulated utilities.

DRA disagrees. DRA argues that the Commission should disregard these comments because they are contrary to the goals of the OIR to raise standards for applicants, protect consumers from unscrupulous carriers and improve the Commission's ability to collect fines, fees, and provide for restitution. TURN

believes that the carriers' arguments supporting the status quo are self-serving and over-reaching.

CALTEL contends that the OIR failed to show evidence of risk or collection problems with CLECs. Several of the parties filing comments were concerned that any benefit of the changes proposed in the OIR would be overshadowed by the burden they would impose on applicants seeking a CPCN, existing CPCN holders as well as wireless carriers seeking or holding a WIR.

The Audit Report clearly documented the issues, which the OIR seeks to address. These include the need to more "adequately review the background of applicants for licenses to operate as telecommunications providers," to improve the Commission's ability to collect fines, and gain restitution from "telecommunications companies."<sup>13</sup> The Audit Report did not, as suggested by some comments, focus on a particular type of telecommunications provider or application process as the cause of the Commission's difficulty in collecting fines and restitution.<sup>14</sup> And relevant here, the Audit Report addressed the application and licensing processes as a whole for telecommunications corporations seeking authority to operate in California. The fact that the Audit Report highlighted specific problems with the registration process does not mean the concerns expressed are not applicable to the CPCN application and wireless registration processes.

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<sup>13</sup> Audit Report at 4 and Audit Recommendation 1 at 12. The Audit Report cited a CPCN holder, Accutel, as an example supporting its conclusion regarding the need to improve the Commission's licensing process for telecommunications providers.

<sup>14</sup> The Audit Report focused on the Commission's collection of fines and restitution across the varied utilities it regulates, telephone corporations being only one of these utilities.

In addition to addressing the concerns raised by the Audit Report, this rulemaking seeks to equalize the standards for CPCN applicants and wireless registrants in order to better protect ratepayers. The newly revised registration process, a process designed to be less rigorous than a formal application, now has a higher application fee, requires additional information, and requires each NDIEC carrier to obtain an ongoing performance bond.

By contrast, the CPCN application process does not require applicants to comprehensively disclose prior or pending problems, the application fee is nominal, and CPCN holders are not required to obtain a performance bond. As a result, NDIECs, who are eligible for registration, now choose the formal CPCN application process over the registration route because of the perception that the CPCN application process has less onerous requirements than the registration process adopted in D.10-09-017. Existing registration holders are also seeking to migrate to CPCNs for the same reason.

The Audit Report states that the Commission has little leverage to collect fines or restitution from companies that engage in fraudulent or inappropriate practices and cease to operate or file for bankruptcy after the Commission initiates investigations or shortly after the Commission imposes fines.<sup>15</sup> The Audit Report found that the intervening time required to conduct an investigation of, and to impose fines on, or require restitution from, a carrier provides violators ample opportunity to evade sanctions and to hide or shield ill-gotten assets from recovery.

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<sup>15</sup> Audit Report at 7.

The OIR proposes revisions to the application process for telephone corporations seeking a CPCN and wireless carriers seeking a WIR to reduce the potential for fraud or other inappropriate practices. Obtaining additional relevant data from both applicants and registrants during the application and registration processes and establishing other requirements proposed in the OIR should reduce the likelihood that subsequent enforcement actions against a carrier will be necessary. Such revisions should, when enforcement actions against a carrier are necessary, improve the Commission's ability to collect fines, assess penalties, taxes and bring about restitution.

In light of the problems identified in the Audit Report and experienced by the Commission, it is unreasonable to refrain from action at this time. The Commission does not need to make a showing of recent failures to collect fines, fees, surcharges, taxes, penalties or effect restitution, in order to justify revising the CPCN application and WIR processes.

We agree with the Audit Report that, once an investigation is launched, it is "inherently difficult" in many cases – particularly those involving less established carriers – to ensure the collection of fines or payment of restitution.<sup>16</sup> The Commission should not encounter difficulty or incur needless expense recovering fines, surcharges, taxes, penalties, and fees and should have a reasonable expectation that customers will be reimbursed or compensated in cases of bankruptcy or fraud. Therefore, it is reasonable and prudent to take steps now, both to reduce the need for future enforcement actions, and to

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<sup>16</sup> Audit Report at 7.

increase the likelihood of successfully collecting fines or bringing about restitution once an enforcement action is initiated.

CTIA, AT&T, and MetroPCS assert that the Commission must carefully consider the varying jurisdictional limitations over different types of telecommunications carriers. Specifically, CTIA warns the Commission that the Omnibus Budget Reconciliation Act of 1993 (1993 Budget Act), which amended § 332(c)(3)(A) and exempts wireless carriers from the certification and market entry requirements, prevents the Commission from imposing new requirements on wireless carriers if they function as a barrier to entry. MetroPCS contends the bonding proposal squarely places conditions on, and regulates a carrier's entry. DRA disagrees and contends that the Commission has jurisdiction over the "terms and conditions" of wireless carriers and a duty to protect consumers of wireless carriers. DRA asserts that wireless carriers are subject to rules and regulations governing consumer protection issues, including cramming.

Comments that the Commission may not impose additional information requirements or impose a bond requirement misstate the law. As stated in the OIR, the Commission opened an investigation into the cellular industry shortly after the passage of the 1993 Budget Act "to develop a comprehensive regulatory framework consistent with the Federal Budget Act and our own statutory responsibilities."<sup>17</sup> The California Court of Appeals subsequently confirmed the

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<sup>17</sup> Order Instituting Investigation 93-12-007, Investigation on the Commission's Own Motion into Mobile Telephone Service and Wireless Communications, 1993 Cal. PUC LEXIS 836.



Commission's jurisdiction over wireless terms and conditions.<sup>18</sup> As a result of the Commission's authority to regulate terms and conditions of wireless carriers and our interest in protection of California consumers, the Commission has the need for and the ability to require additional information and a demonstration of financial responsibility.

The Commission has not made any substantial revisions to either the application process for obtaining a CPCN or the registration process for wireless carriers in over a decade. It is within the Commission's authority to make and apply changes that it determines to be appropriate to those carriers under its jurisdiction.

#### **5. Should the Commission Require a Performance Bond for CPCN and Wireless Carriers?**

Performance Bonds are surety bonds issued by an insurance company or a bank to guarantee satisfactory completion of a project by a contractor. The Commission previously defined the term "performance bond" as a mechanism to recover taxes or fees, or both, as well as advance deposits.<sup>19</sup> As discussed earlier, the Commission recently required NDIEC registrants to obtain a performance bond as a mechanism to facilitate collection of fines, penalties and restitution.<sup>20</sup> For the purposes of this rulemaking, a performance bond is defined as a "commercial surety bond" whose purpose is to guarantee performance by the principal of the obligation or undertaking described in the bond.

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<sup>18</sup> Pacific Bell Wireless (Cingular) v. CPUC, (2005) 140 Cal.App.4th 718, 738; cf. MetroPCS v. FCC (DC Cir. 2011) 2011 U.S. App Lexis 9922 (affirming state jurisdiction to resolve CMRS-wireline interconnection disputes).

<sup>19</sup> Pub. Util. Code § 1013(e).

<sup>20</sup> Pub. Util. Code § 1013(f).

Performance bonds can significantly improve the Commission's ability to collect fines, penalties and taxes, surcharges, fees, and restitution for customers for advances or deposits. Several other states impose a bond requirement on telephone service providers, and the Vermont Public Service Commission imposes a bond requirement on new wireless providers in that state.<sup>21</sup> The Commission now requires NDIEC registration holders to obtain a performance bond.<sup>22</sup> The OIR sought comments on the size of bond, terms and conditions of the bond, amount of the bond, whether the bond should be continuous, and whether the Commission should allow for alternatives to the posting of a bond.

SureWest, the Small LECs, TWTC, CALTEL, AT&T, and Verizon oppose a performance bond requirement for CPCN holders and wireless registrants. AT&T instead proposes that the Commission conduct the appropriate due diligence at the application stage and exempt existing carriers from any bond requirement. TWTC argues that successful carriers, with good track records, should not be burdened with requirements designed to protect the public from "scofflaws" or inexperienced carriers. CALTEL contends that, given the current economic situation, many of its small members will be unable to obtain a continuous performance bond, and such a requirement could force these members to exit the market.

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<sup>21</sup> The states imposing a bond on wireline service providers include Connecticut, Delaware, Georgia, North Dakota, Oklahoma, and Tennessee. Vermont Public Service Board, "Order Denying Motion to Amend Certificate of Public Good" in CPG No. 942-CM (June 6, 2012) (imposing a bond requirement on new wireless service providers).

<sup>22</sup> D.10-09-017 requires NDIEC registrants to obtain a performance bond equal to or greater than 10 percent of intrastate revenues reported on the Commission's User Fee Statement during the preceding calendar year or \$25,000, whichever is greater.

MetroPCS, Nova, Nexus and CTIA do not support establishing a performance bond requirement for wireless registrants. MetroPCS contends that its customers are not at risk of incurring charges for unauthorized services or products because it only offers customers prepaid wireless services without long-term contracts. Both MetroPCS and CTIA argue that the Commission lacks the jurisdiction to require wireless carriers to obtain a performance bond because such a requirement is overly restrictive and functions as a direct regulation of entry into California.

DRA and TURN support the requirement for a performance bond for both CPCN applicants and wireless registrants. Both contend that the same considerations discussed by the Commission in D.10-09-017 and D.11-09-026, including guarding against financial instability of the carrier, access to financial remedies for harm or payments of fees also apply here. DRA agrees with the OIR's conclusion that it defies logic to have the entry route intended to be less rigorous and less burdensome to the applicant (i.e., registration) to have more comprehensive financial fitness requirements than the formal CPCN application process. DRA further argues that the Commission will not be able to deter unscrupulous carriers from operating in this state if applicants who normally would have applied for NDIEC registrations are encouraged to apply for CPCNs because the requirements are less stringent.

CPCN authority is obtained through a formal application process pursuant to Pub. Util. Code § 1001.<sup>23</sup> Prior to the recent revisions made by D.10-09-017, the

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<sup>23</sup> CPCN application certification requirements are contained in D.95-07-045, Appendix A at 4. (R.95-04-043 and Investigation 95-04-044 OIR on the Commission's Own Motion into Competition for Local Exchange Service).

fundamental information required of CPCN applicants was similar to that required from NDIEC registrants. However, the CPCN application's formal process consists of a more detailed review better able to identify potential problems in the application and offers more flexibility in addressing applicants with special circumstances who don't fit within the scope of the registration template. Background checks are conducted, but the lack of initial information makes a complete and successful background check challenging.

As a result, we find that even though the CPCN application process is a more formal process, it does not enhance the Commission's ability to collect fines or effect restitution. Additionally, the prospect of having a CPCN revoked has not, in the Commission's experience, proven to be a sufficient deterrent to an unscrupulous carrier engaged in fraudulent practices that may cease operations or file bankruptcy before the Commission is able to collect fines or bring about restitution.

Complaints of unauthorized charges, also known as "cramming" are on the rise in California. The Consumer Affairs Branch (Consumer Affairs) reported 1075 complaints of cramming were lodged in 2005. In 2010, Consumer Affairs reported 2,784 complaints of cramming from wireline, wireless and VoIP customers. Cramming is not limited solely to wireline customers. The increase in cramming complaints led the Commission to open an investigation which resulted in new cramming rules applicable to all telecommunications carriers, including resellers and wireless service providers.<sup>24</sup>

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<sup>24</sup> See D.10-10-034.

Contrary to some of the comments filed, the examples cited in the Audit Report identified problem providers that are CPCN holders.<sup>25</sup> The Commission has been revoking CPCN authority and wireless registrations for carriers that have not paid taxes, fees, fines, penalties or restitution. In December 2010, the Commission revoked 43 operating authorities held by telephone corporations for failing to comply with the California Public Utilities Reimbursement Account Fee filing and reporting requirements of Pub. Util. Code § 401 through 435.<sup>26</sup> On April 19, 2012, the Commission revoked operating authorities held by one hundred and six (106) telephone carriers.<sup>27</sup>

Although wireless carriers accurately commented that the Federal Communications Commission (FCC) regulates facilities-based wireless carriers, we disagree with the conclusion that the Commission lacks the ability to require wireless carriers to obtain a performance bond. Wireless carriers are “telephone corporations” and therefore public utilities under Pub. Util. Code §§ 216, 233, 234.<sup>28</sup> Although the 1993 Budget Act preempted state regulation of

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<sup>25</sup> The Commission noted in footnote 7 to D.10-09-017 that the instances cited by the Audit Report did not involve a carrier that obtained authority through the CPCN application process. However, upon subsequent review, this determination appears to be incorrect.

<sup>26</sup> Resolution (Res.) T-17300.

<sup>27</sup> The Commission initially notified 169 carriers of its intent to revoke operating authority in Draft Resolution T-17359. Only 63 carriers became compliant before the Commission issued its final resolution. See Res. T-17359.

<sup>28</sup> Pub. Util. Code § 216 defines "public utility" to include "telephone corporation;" § 234 defines "telephone corporation" to include any corporation controlling, operating, or managing a "telephone line" for compensation; and § 233 defines "telephone line" to include any "fixtures" or "personal property" operated or managed "in connection with or to facilitate communication by telephone, whether such communication is had with or without the use of transmission wires." See also D.04-09-062, Slip Op. at 54-59,

*Footnote continued on next page*

wireless carriers' rates and market "entry," Congress left to the states the ability to regulate the terms and conditions of wireless service in order to protect consumers.<sup>29</sup> Indeed, Congress allowed the states considerable latitude to handle billing disputes and other matters ancillary to consumer protection.<sup>30</sup>

As DRA correctly asserted in reply comments, the FCC explicitly stated it does not intend to preempt state regulation, which does not prohibit or impede entry while serving legitimate state interests. A performance bond, such as that

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passim (referring to Cingular Wireless as "utility" and applying Public Utilities Code), *aff'd Pacific Bell Wireless (Cingular) v. CPUC*, (2005) 140 Cal.App.4th 718, 738.

<sup>29</sup> 47 USC § 332(c)(3)(A) of the Communications Act provides that "...no state or local government shall have any authority to regulate the entry of or the rates charged by any Commercial Mobile Service or any Private Mobile Service, except this paragraph shall not prohibit a state from regulating the other terms and conditions of Commercial Mobile Service."

<sup>30</sup> Codified at 47 USC § 332(c)(3)(A). The legislative history of this provision of the Communications Act indicates what Congress meant by the language "other terms and conditions":

It is the intent of the Committee that the State still will be able to regulate the terms and conditions of these services [CMRS]. By "terms and conditions" the Committee intends to include such matters as customer billing information and packaging and billing disputes and other such consumer protection matters; facility siting issues (e.g., zoning); transfers of control; bundling of services and equipment; and the requirement that carriers make capacity available on a wholesale basis and such other matters as fall within the State's lawful authority. This list is intended to be illustrative only and not meant to preclude other matters generally understood to fall under "terms and conditions."

(House Report No. 103-111 at 251.) The FCC also confirmed the CPUC's jurisdiction over "other terms and conditions" when it stated that it anticipated that the CPUC would continue to conduct appropriate complaint proceedings and to monitor the structure, conduct, and performance of CMRS providers. (See May 19, 1995 FCC Order Denying the CPUC's petition to continue to regulate CMRS rates.)

considered here, serves a legitimate state interest to protect consumers. As DRA noted, the FCC specifically cited the imposition of a bond or escrow account as an example of legitimate regulation that the states could impose for the purpose of effectuating a state's interest in protecting consumers and stated that such a requirement would be a legitimate form of entry the states had the ability to impose.<sup>31</sup>

The carriers, in comments on the Proposed Decision, argued strenuously that the bond requirement which we impose today constitutes an impermissible barrier to entry.<sup>32</sup> The Court in *Bastien*, however, based its holding on the conclusion that plaintiff's complaint "would directly alter the federal regulation of tower construction, location and coverage, quality of service and hence rates for service," areas reserved to the FCC.<sup>33</sup> Later decisions have found that state (and municipal) conditions, registration requirements and fees were not a regulation of market entry but rather necessary to protect the public interest.<sup>34</sup> Competitively neutral and modest bond requirements should not pose a barrier

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<sup>31</sup> See ¶ 28, Preemption of State Entry Regulation in the Public Land Mobile Service, FCC 86-112, Report and Order, (1986) 1986 FCC LEXIS 3749.

<sup>32</sup> See, e.g., CTIA Comments at 4, citing *Bastien v. AT&T Wireless Services*, 205 F.3d 983, 989 (7th Cir. 2000).

<sup>33</sup> *Id.*

<sup>34</sup> See, e.g., *WCC Holding v. Sopkin* (10<sup>th</sup> Cir. 2007) 488 F.3d 1262, 1271 (approving conditions imposed "on a competitively neutral basis"); *AT&T Communications of the Pacific Northwest, Inc. v. City of Eugene* (Or. App. 2001) 35 P.3d 1029, 1048-51 (finding municipal registration and fee requirements did not constitute a barrier to entry). The *City of Eugene* case cites FCC precedent for this proposition: *Matter of Petition of Pittencrieff Communications, Inc.* (1997) 13 FCC Rcd 1735, 1737, *aff'd*, sub nom. *Cellular Telecommunications Industry v. F.C.C.* (DC Cir 1999) 355 U.S. App. D.C. 32, 168 F.3d 1332.

to entry for financially responsible carriers wishing to operate in California, nor are they legally barred.

Subsequent to the passage of the 1993 Budget Act, this Commission developed a comprehensive regulatory framework consistent with the 1993 Budget Act and our own responsibilities.<sup>35</sup> Wireless telecommunications carriers in California are subject to registration requirements established by D.94-10-031, as modified by D.94-12-042 and D.95-10-032. The Commission established the registration process to assist the Commission when it needs to locate responsible officers and employees of these utilities, monitor consumer protection issues, and monitor cellular rates.

The Commission has exercised its authority to regulate the terms and conditions of wireless service to protect consumers.<sup>36</sup> Because Congress left to the states the ability to regulate terms and conditions of wireless carriers, and because the Commission has a legitimate interest in protecting California consumers, it is reasonable for the Commission to require wireless carriers to obtain a performance bond. We note that other states are imposing a bonding requirement on wireless carriers. As noted above, the Vermont Public Service

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<sup>35</sup> 1993 Cal. PUC LEXIS 836.

<sup>36</sup> See D.01-07-030; D.96-12-071, Investigation on the Commission's Own Motion into Mobile Telephone Service and Wireless Communications (1996) 70 CPUC2d 61, 72-73 [stating that "we still remain concerned that the terms and conditions of service offered by each CMRS provider continue to provide adequate protection to consumers"].

CMRS refers to Commercial Mobile Radio Service, and includes Cellular Services, Personal Communications Services (PCS), Wide-Area Specialized Mobile Radio Services, Radio Telephone Utilities services, and many other wireless services. (D.96-12-071, supra, 70 CPUC2d 61, 65.) The terms "CMRS" and "wireless" are commonly used interchangeably with "cellular."



Board imposed a bonding requirement on new wireless entrants to Vermont. In a recent decision the Vermont Public Service Board explained:

The Board imposed the bonding requirement on new entrants to the Vermont market out of concern that providers requiring payment in advance of receipt of service might go out of business, making it difficult for consumers to claim refunds for these prepaid services.<sup>37</sup>

Requiring the procurement of a performance bond, as a condition for exercising CPCN authority or WIR, is consistent with the authority granted the Commission pursuant to Pub. Util. Code §§ 701 and 709. Based on the Commission's experience, we conclude that the risk of default is at least as great in the case of CPCN holders and wireless registrants as those holding NDIEC registration. We therefore establish a performance bond requirement on all CPCN holders and wireless registrants, unless specifically exempted by this decision, to protect California consumers and to facilitate the collection of fines, fees, taxes, surcharges, penalties, and restitution.

The OIR also sought comment on whether certain carriers should be exempt from a performance bond requirement. Several parties filed comments arguing that certain types of carriers or certain types of services should be exempt from the performance bond requirement. Neither TURN nor DRA support a bond requirement that adjusts for the utility type or the technology used to offer service because they maintain that the impact to customers from poor business practices is the same regardless of the service provided or the technology used.

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<sup>37</sup> Vermont Public Service Board, "Order Denying Motion to Amend Certificate of Public Good" in CPG No. 942-CM (June 6, 2012).

SureWest and the Small LECs argue that the Commission should exempt small LECs and their affiliates from any bond requirement because the limited benefit of such bonds is outweighed by their substantial cost. The Small LECs contend that they are highly regulated cost-of-service and rate-of-return utilities serving as Carriers of Last Resort (COLR) in their territories. As a result, these Small LECs have substantial physical facilities, local personnel in place to meet the needs of their subscribers, and regular and ongoing interactions with the Commission. Such regular contact and infrastructure, the Small LECs argue, should assure the Commission of their ability to collect fines, taxes, and penalties. Finally, the Small LECs worry that the cost of obtaining a performance bond will be passed through to ratepayers as a part of the general rate case and California High Cost Fund-A processes.

Subsequent to mailing the proposed decision in this rulemaking for public comment, several parties filed comments responding to the OIR's request for comment on the appropriate bond amount, alternatives to any bond requirement, and whether additional carriers should be exempt from such a requirement. Although the OIR specifically sought this information at the outset and parties had time to raise these issues earlier, they chose to provide very little information if any. The Commission sought party comments specifically so that it could thoughtfully craft appropriate regulatory requirements. DRA correctly notes that comments to the proposed decision should be limited to errors of fact or law.

Although parties are late in seeking to provide information, the Commission believes the amount of the performance bond should be based on relevant evidence and information. As a result, the Commission will open a Phase II to this rulemaking to hold a workshop to more fully craft the

performance bond requirement for CPCN holders and wireless registrants. A performance bond will be required of CPCN holders and wireless carriers unless specifically exempted by this decision or subsequent to Phase II of this rulemaking.

The Commission adopted specific criteria to ensure that a COLR had a stake in the outcome, that a COLR would be unlikely to abandon its customers, and that the carrier was committed to promoting universal service. These criteria protect a COLR's customers.<sup>38</sup> In addition, as a COLR, the URF and GRC ILECs, and Cox Communications a designated COLR, must at a minimum, notify the Commission before ceasing operation.<sup>39</sup> Specifically, a COLR, which is not the only COLR in a Geographic Service Area, must file an advice letter with the Commission to notify the Commission that it will no longer meet COLR obligations.<sup>40</sup> A COLR which is the only COLR in a Geographic Service Area must file with the Commission an application to withdraw as a COLR and seek full Commission approval before ceasing operation. The COLR must then continue to provide service until the Commission grants the application or a new COLR has been designated.<sup>41</sup> Thus, a performance bond is not needed to ensure the Commission's ability to protect consumers or facilitate collection prior to a

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<sup>38</sup> D.96-10-066 at 191.

<sup>39</sup> See D.96-10-066, Appendix A, Rule 6.D6 which provides that a COLR must file an advice letter with the Commission to notify the Commission that it will no longer meet COLR obligations. COLR who are the only COLR in a Geographic Service Area must file an application with the Commission to withdraw as a COLR and continue to provide service until the application is granted or a new COLR has been designated.

<sup>40</sup> See D.96-10-066, Appendix A, Rule 6.D6.

<sup>41</sup> *Ibid.*

URF or GRC ILEC COLR ceasing operations. Based on the same criteria, wholly-owned and majority-owned (51% or more) subsidiaries or affiliates of the URC or GRC ILEC COLRs or their corporate parent or holding company are exempt from the requirement to carry a performance bond.

We decline, however, to adopt an exemption for established carriers with a history of regulatory compliance as suggested by TWTC and SureWest. That a carrier has a successful history of regulatory compliance is encouraging, but does not, in and of itself, provide protection to consumers. Additionally, DRA correctly concludes that such a proposal would lead to a confusing system where some carriers retain a bond requirement while others do not. Such a system would be burdensome for the Commission to track and California consumers would lose the protection the performance bond affords if the requirement were to sunset after a set period of time.

Comments addressing the specific bond requirements were limited. DRA agrees with the OIR suggestion that the performance bond requirements, including the minimum bond amount, should be the same as those adopted in D.10-09-017 as modified by D.11-09-026. DRA agrees with the OIR's reasoning that carriers will not be able to utilize loopholes in the system if the bond amount is the same for CPCN holders, wireless registrants, and NDIEC registrants. To the extent that any bond requirement is imposed, SureWest recommends that the bond requirement be limited to a maximum amount of \$500,000.

Although the NDIEC registrants are required to post performance bonds to facilitate the collection of fines, surcharges, penalties, taxes, fees, and restitution, this requirement was only recently adopted. In establishing the performance bond requirement for NDIEC registrants, the Commission reasoned that the bond should bear some relationship to the level of fines and penalties the

Commission may impose. Fines and penalties the Commission imposes depend on a number of factors, including: 1) severity of the offense, 2) conduct of the utility in detecting, preventing and rectifying a violation, 3) financial resources of the carrier and the need to deter future violations, 4) the totality of the circumstances in furtherance of the public interest, and 5) precedent.<sup>42</sup>

Some of these factors correspond, in part, to the amount of revenues collected. For example, the severity of the offense includes the economic harm (i.e., the amount of expense which was imposed upon the victims), and any unlawful benefits the carrier gained. Because the bond we require CPCN holders and wireless registrants to obtain is to facilitate the collection of fines, penalties, taxes, fees and restitution to customers, it is reasonable that the size of the bond required should bear some relationship to the fines, penalties, surcharges, restitution, taxes, and fees that may potentially be imposed. For example, the purpose of restitution is to return to victims funds the carrier collected unlawfully, and the amount of restitution the Commission may require is likely to be related to the amount of revenues the carrier collected. As noted, however, in D.10-09-017, the Commission does not have an established procedure for determining the bond amount.

Initially, we will require all CPCN holders or wireless registrants, unless specifically exempted by this decision, to post a bond at the minimum bond requirement level of \$25,000. Although it is reasonable that the amount of the bond should be related to a carriers reported annual intrastate revenues, comments filed during the public comment period for the proposed decision ask

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<sup>42</sup> See D.98-12-075.

the Commission to further explore how the amount of the performance bond required of carriers should be determined.

After consideration of these requests, the Commission will hold a workshop during Phase II of this rulemaking to consider performance bond issues the parties raised in comments and determine the amount of the performance bond required by carriers in lieu of or in addition to the minimum amount ordered here. By requiring carriers to obtain the minimum bond amount in the interim, we address the concerns of the Audit Report and ensure that funds will be available to cover at least some portion of any fines, penalties, surcharges, restitution, taxes or fees that may be imposed while not unduly burdening carriers. We further conclude that it is appropriate to establish the same minimum bond amount of \$25,000 for all existing CPCN holders and wireless registrants as is required of NDIEC registrants, with the exceptions noted above.

Unless specifically exempted by this decision, we shall require all wireless registrants and CPCN holders to obtain a performance bond of at least \$25,000, pursuant to this decision. Within 90 days after the effective date of this Decision, each existing CPCN holder and existing wireless registrant must submit a Tier-1 Advice letter to the Director of the Communications Division containing a copy of the executed performance bond.

Applicants seeking CPCN authority and wireless carriers seeking a WIR that have not previously reported revenues to the Commission or submitted surcharges shall be required to obtain a performance bond in the amount of \$25,000 for the first year. New Applicants seeking CPCN authority who have not previously reported revenues to the Commission and new wireless registrants must attest to the amount of the bond that will be obtained, that the bond will be

executed within 5 days of the effective date of the issuance of a registration for wireless carriers or within 5 days of written acceptance of CPCN authority, that the required performance bond shall be in effect during all periods of operation, and lists the California Public Utilities Commission as the obligee. Applicants seeking a CPCN must include the required attestation and information in their application for authority. Upon written acceptance of CPCN authority, the new CPCN licensee must submit a Tier-1 advice letter to the Director of the Communications Division, pursuant to General Order 96-B, Telecommunication Industry Rule No. 2,<sup>43</sup> containing a copy of the license holder's executed bond. Wireless registrants must provide this information by registered letter to the Communications Division Director within 5 days of the effective date of registration.

CPCN holders and wireless registrants required by this decision to obtain a performance bond must not allow the performance bond to lapse during any period of operation. CPCN holders must also continue to possess the requisite legal, technical, and financial qualifications during all periods of operation. Not later than March 31 of each year, all CPCN holders and wireless registrants who are required by this decision to hold a performance bond must submit a Tier 1 advice letter to the Director of the Communications Division containing a copy of its executed performance bond.<sup>44</sup> In all cases, the required bond must be a

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<sup>43</sup> See D.07-09-019.

<sup>44</sup> In some cases, a wireless registrant or CPCN holder may be required to provide the Director of the Communications Division a copy of its executed performance bond more than once in a year. For example, a new registration licensee granted authority on June 1 is required to provide the Director of the Communications Division a copy of its executed bond by June 6, and by March 31 of the following year.

continuous bond (i.e., there is no termination date on the bond) issued by a corporate surety company authorized to transact surety business in California, and the Commission must be listed as the obligee on the bond.

A CPCN holder or wireless registrant will be deemed delinquent if it is more than ninety days late in submitting to the Director of the Communications Division, an Information Only advice letter containing a copy of its executed bond. However, the Communications Division may grant a one-time extension of 60-days upon written request before a license holder is deemed delinquent. All requests for additional time must provide an explanation that demonstrates good cause for the additional time requested.

The Communications Division will prepare for Commission consideration a resolution revoking the authority of any CPCN holder or wireless registrant that is more than 120 days late in providing the Director of the Communications Division a copy of its executed performance bond, and to which the Communications Division Director has not granted an extension of time.

DRA suggests that the Commission conduct a periodic review of the bond amount to ensure that these amounts are sufficient to enable the Commission to collect fines, penalties, surcharges, restitution, taxes and fees and delegate to the Communication Division the authority to raise the bond amounts should they prove to be insufficient. We agree with DRA that it would be prudent for the Commission to periodically review the bond amount to determine if it is sufficient to enable the Commission to protect consumers. The Communications Division should review the bond amount at least every three years, but may do so more frequently. We decline DRA's suggestion to delegate the authority to raise the bond amount to the Communication's Division alone. If the Communications Division determines that the performance bond amount set by



this Decision is not sufficient to cover fines, fees, taxes, penalties and restitution, then the Communications Division shall prepare a resolution for Commission consideration to change the amount of the performance bond requirement.

The OIR also sought comments on whether there were alternatives to a performance bond that would provide the same level of protection as a performance bond. However, comments filed in this rulemaking omitted discussion of alternatives to the performance bond. CTIA criticized the Commission for taking a one-size-fits-all approach but did not suggest alternatives. Similarly, AT&T suggests that the Commission rely on a stringent background check to protect consumers rather than impose a performance bond. TURN and DRA support consideration of alternatives to a performance bond but only if the alternatives provide equal or better protection than a performance bond. DRA observes that § 1013(e) allows the Commission to order companies to hold customer advances or deposits in an escrow or trust rather than obtain a performance bond.

In seeking comments on an alternative to a performance bond, the OIR gave the example of letters of credit as one possible alternative, but received no comments suggesting alternatives or discussing the merits or lack thereof of letters of credit from parties to this proceeding. There is no evidence in the record that letters of credit will facilitate the Commission's ability to collect fines, fees, penalties, taxes and restitution. No other alternatives to a performance bond were proposed.

The Commission will open a Phase II of this rulemaking to allow parties to provide input into how and under what circumstances the maximum amount of the performance bond required by this decision should be set, whether any class of carriers should be exempt and the basis for such an exemption, and whether

there are alternatives to a performance bond that meet the Commission's consumer protection goals. The assigned Administrative Law Judge (ALJ) will schedule a workshop within 90 days after the effective date of this decision to thoroughly evaluate this issue.

**6. Should the Commission Require a Standardized Applicant Fitness Checklist for CPCN Applicants and a More Extensive Information Form for Wireless Carriers?**

CLEC and NDIEC certification requirements were initially established in D.95-07-054.<sup>45</sup> That decision authorized the grant of a CPCN to any applicant possessing the requisite managerial qualifications, financial resources, and technical competence to provide local exchange telephone service. D.95-07-054 focused primarily on the financial standards for applicants rather than on ethical or legal fitness of the applicants.<sup>46</sup>

The Commission established wireless registration requirements in D.94-10-031, as modified by D.94-12-042, and in D.95-10-032, for all CMRS wireless providers. All wireless providers in California, including resellers of wireless service, merely have to file a Wireless Information Registration with the Commission containing contact information in lieu of a formal application.

The Audit Report concluded that the Commission's collection ability is hampered because the Commission inadequately reviews the background and financial viability of applicants for licenses to operate as telecommunications providers.<sup>47</sup> Several parties argue that the Audit Report's concerns are limited

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<sup>45</sup> D.95-07-054 was part of the Commission's local competition docket.

<sup>46</sup> The Commission set out the requirements for a CPCN in D.95-07-054 at Part 4, Appendix A.

<sup>47</sup> Audit Report at 8.

only to the streamlined registration process for NDIECs. As a result, these same parties maintain that the Commission therefore lacks any basis to modify the CPCN application process or wireless registration process. We disagree. As noted earlier, the Audit Report sought to identify problems encountered by the Commission in collecting fees and penalties across the varied utilities it regulates.<sup>48</sup> The Audit Report identified the application process for telecommunications providers as problematic and highlighted the streamlined registration process as an example. The Audit Report did not suggest the Commission limit its efforts to improve collection only to the NDIEC registration process. Ultimately, the Audit Report concluded that Commission's ability to collect is hindered, in part, because of the minimal information provided to the Commission from applicants seeking authority to operate. As relevant here, the Audit Report suggested that the Commission conduct more stringent background and financial viability reviews of individuals and companies applying for licenses to operate as telecommunications providers.<sup>49</sup>

NDIEC carriers seeking registration are now required to submit as part of the NDIEC registration process, resumes of all key officers and owners of 10% or more of outstanding shares that indicate sufficient managerial and technical experiences. In addition, new NDIEC registrants must disclose prior or current known investigations by any governmental agency, any settlements with any regulatory agency over its business conduct or practices, and voluntary payments made by a registrant or its principals to resolve action by a regulatory agency, attorneys general, or courts, or any other type of monetary forfeitures,

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<sup>48</sup> Audit Report at 1, 4-5.

<sup>49</sup> Audit Report, Recommendations at 12.

disclose any type of settlement of claims brought against applicants or applicant's principals by any regulatory body, agency, district attorney, states' attorney general, Department of Justice or other enforcement agency, whether such settlement is monetary or conduct based. This information is in addition to currently required information concerning adjudications by those bodies, and judgments or settlements entered into in civil courts related to claims of fraud, non-disclosure or unfair, deceptive, and/or illegal business or consumer practices.

The OIR sought comment on whether the enhanced informational and background review requirements adopted in D.10-09-017, as modified by D.11-09-026, should be extended to applications for CPCN authority and wireless registration. The OIR specifically requested comment on whether it is reasonable to extend the standardized informational checklists recently adopted in D.10-09-017 to applicants seeking a CPCN and to wireless carriers seeking a WIR. Attachment A to the OIR proposed a standardized informational checklist for CPCN applications and proposed a standardized Wireless Registration application for parties to review and comment upon.

The Small LECs did not object to the standardized informational requirements and believe that the standards for obtaining operating authority should be clear and consistent and applicants should have fair notice of these requirements. Although CALTEL believes that the carrier fitness and financial responsibility risks of NDIECs and CLECs are very different, they ultimately concluded that the revisions adopted in the NDIEC proceeding were reasonable and, if extended to the CPCN process, would likely assist the Commission in gathering better information.

Although AT&T took no position on extending enhanced informational requirements to CPCN applicants, it disagrees with the Commission's proposal to require applicants disclose settlements or voluntary payments made to resolve pending legal action. AT&T argues that such information would be of little value to the Commission. AT&T disagrees with the Commission's proposal to require additional information from wireless registrants because the FCC already collects information as part of its licensing process.

CTIA argues that requiring wireless registration applicants to provide additional information such as the resumes of officers and directors or require them to disclose settlement agreements or voluntary payment made to a regulatory body lack nexus to the Commission's expressed consumer protection concern. CTIA contends DRA's proposal to require disclosure of any settlement agreements or voluntary payments made to resolve pending legal action should be dismissed by the Commission because such a requirement is a form of impermissible entry regulation of wireless carriers.

DRA and TURN strongly support enhancing the information applicants seeking CPCN authority and wireless registrants are currently required to provide the Commission. More specifically, TURN and DRA maintain that additional information from wireless carriers in particular would provide the Commission with sufficient information about each company and its operations to better protect customers even if the Commission cannot specifically bar entry by these carriers. DRA suggests adding the requirement that all CPCN applicants and wireless carriers seeking a WIR be required to provide employment resumes of their officers, directors and any other principals, similar to the requirement of NDIECs. We agree. Requiring resumes from officers and directors of applicants will provide important information about the applicant's

principals, will improve the accuracy of the Commission's review, and may allow the Commission to review applications more efficiently with fewer rulings requesting additional information. We adopt DRA's proposal.

The Commission's ability to protect California consumers is greatly enhanced by accurate information about the carriers who are providing service within the State. The Audit Report's recommendations specifically noted that the Commission's ability to collect fines and penalties was hindered by inadequate background reviews of telecommunications providers seeking authority to provide service in the state. We conclude that it is reasonable to require telephone corporations seeking a CPCN and wireless carriers seeking registration to provide additional information to allow the Commission to do more thorough fiscal and civil responsibility checks. We further find that none of the proposed revisions to the Wireless Registration Application function as a bar to entry.

Therefore, the standardized informational requirements and checklist for applicants seeking CPCN certification and to wireless carriers seeking registration attached to the OIR as Attachment A shall be updated to reflect the new requirements adopted by this decision.<sup>50</sup> In response to comments filed, we have revised OIR Attachment A, and added Attachments B, C, D, and E to provide more detailed information and guidance to telephone corporations. The standardized informational requirements and checklist for CPCN applications in Attachments A and C are to provide guidance to telephone corporations drafting

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<sup>50</sup> D.94-10-031, D.94-12-042, and D.95-10-032 adopted the 10 questions wireless carriers must respond to when seeking a WIR. This decision adds requirements to the previously adopted questions.

applications. We remind CPCN applicants and wireless carriers seeking registration that applications must include all required information irrespective of whether an applicant or registrant chooses to use the forms provided in the Attachments to the Decision.

We further revise the verifications required by applicants seeking a CPCN and wireless carriers seeking a WIR, to make them consistent with the verification requirements recently adopted for NDIEC registrants.<sup>51</sup> Specifically, carriers must provide a declaration with their application for CPCN authority, application to transfer CPCN authority, WIR, and for a transfer of a WIR certifying the following:

Neither applicant, any of its affiliates, officers, directors, partners, agents, or owners (directly or indirectly) of more than 10% of applicant, or anyone acting in a management capacity for applicant: (a) held one of these positions with a company that filed for bankruptcy; (b) been personally found

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<sup>51</sup> Currently, carriers seeking a CPCN or seeking to transfer a CPCN, must provide the following verification:

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 a telecommunications carrier that filed for bankruptcy; was sanctioned by the Federal Communications Commission or any state regulatory agency for failure to comply with any regulatory statute, rule, or order; or was previously associated with any telecommunication carrier that has been found either civilly or criminally liable by a court of appropriate jurisdiction for a violation of § 17000, et seq. of the California Business and Professions Code, or for any actions which involved misrepresentations to consumers, nor is currently under investigation for similar violations.

Applicants who are unable to provide such verification are required to provide an explanation as part of the application for evaluation by the Commission.

liable, or held one of these positions with a company that has been found liable, for fraud, dishonesty, failure to disclose, or misrepresentations to consumers or others; (c) been convicted of a felony; (d) been (to his/her knowledge) the subject of a criminal referral by judge or public agency; (e) had a telecommunications license or operating authority denied, suspended, revoked, or limited in any jurisdiction; (f) personally entered into a settlement, or held one of these positions with a company that has entered into settlement of criminal or civil claims involving violations of sections 17000 *et seq.*, 17200 *et seq.*, or 17500 *et seq.* of the California Business & Professions Code, or of any other statute, regulation, or decisional law relating to fraud, dishonesty, failure to disclose, or misrepresentations to consumers or others; or (g) been found to have violated any statute, law, or rule pertaining to public utilities or other regulated industries; or (h) entered into any settlement agreements or made any voluntary payments or agreed to any other type of monetary forfeitures in resolution of any action by any regulatory body, agency, or attorney general.

To the best of applicant's knowledge, neither applicant, any affiliate, officer, director, partner, nor owner of more than 10% of applicant, or any person acting in such capacity whether or not formally appointed, is being or has been investigated by the Federal Communications Commission or any law enforcement or regulatory agency for failure to comply with any law, rule or order.

Attachment B to this decision provides a sample sworn affidavit which carriers may use to provide the required verification when a CPCN application. Attachment E to this decision provides a sample affidavit which wireless carriers seeking registration may use to provide the required verification with their registration. Both Attachment B and E contain the required verification language and may be used to fulfill the verification requirements. The Attachments are provided as guidance to applicants and registrants.



Carriers who are unable to make the required verifications with their CPCN application or WIR registration shall attach relevant documentation and describe any such bankruptcies, findings, judgments, convictions, referrals, denials, suspensions, revocations, limitations, settlements, voluntary payments, monetary forfeitures, and regulatory investigations. CPCN applicants, who do not meet these standards for disclosure or whose applications are protested but which nevertheless may be suitable for being granted authority will not be excluded from applying for Commission review of a CPCN application. Similarly, carriers seeking WIR registration, who do not meet these standards for disclosure will not automatically be denied entry; in such cases, the additional disclosures will provide the Commission with relevant information to more thoroughly protect California consumers attendant to the grant of authority.

**7. Should the Commission Increase the Application Fee for Applicants Seeking CPCN Certification and WIR Registration?**

The OIR proposed increasing the application fee for CPCN applications and applications for transferring CPCN authority from \$75 to \$500. In general, comments filed either failed to specifically address this issue or did not oppose an increase provided that the revenue generated by an increase in such fees should contribute to reducing the amount recovered from end-users through the CPUC User fee. DRA concluded that an increase in the application fee to \$500 was reasonable given the significantly greater workload associated with a CPCN application in contrast to that required to process a NDIEC registration. TURN also supports a reasonable increase in the application fee. TURN suggests that the Commission keep the fee at a reasonable level and asks the Commission to implement a mechanism to review ongoing reasonableness, such as tying increases in the fee to inflation adjustment rates.

We believe it reasonable to seek an increase to the fee to obtain a CPCN or transfer a license from \$75 to \$500 to help offset the costs of processing CPCN applications. There has been no increase to the amount of the application fee since it was established in the 1970's by Pub. Util. Code § 1904(a). Had the application fee been adjusted for inflation, using the Consumer Price Index inflation calculator, the fee would be approximately \$432. The workload associated with a CPCN application is significantly greater than that for processing an NDIEC registration. The registration process is designed to utilize a standardized application and be processed within 30 days. A CPCN application, however, undergoes a process similar to other Commission applications. In general this means that an application will be assigned to an Administrative Law Judge for review. The application will be subject to a 30-day protest period. A protested application may require hearings. The application will also be reviewed by other divisions to evaluate applicant fitness and technical issues. If construction of facilities is involved, a CEQA review may be required. Although there is a common structure to CPCN decisions, each is customized to reflect the applicant, the nature of the application, the facts of each set of circumstances justifying the application, the authority sought, and results of review, and the preparation of a proposed decision for Commission consideration. The Commission may incur substantial expense in processing a CPCN, ranging upwards from \$500 to several thousand dollars.<sup>52</sup> For these reasons, we conclude that it is reasonable for the Commission to pursue legislative action to make the appropriate statutory change to increase the

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<sup>52</sup> The estimate is based on an examination of employee time reports.

application fee for a CPCN from \$75 to \$500, indexed annually to reflect changes in the consumer price index.

The OIR also proposed that a \$250 fee be charged for the processing or transfer of a wireless registration. The OIR based its proposal on the issues regarding recovery of costs associated with staff efforts in reviewing, processing and maintaining the registration regime. The OIR sought comment on whether this proposal was reasonable and whether the fee should be required for the transfer of registration to another company. Few parties commented on this issue. The Small LECs asked the Commission to keep application fees reasonable. TURN and DRA supported the OIR's proposed \$250 fee but asked the Commission to review the WIR fee annually to determine whether adjustments are warranted based on the Commission's administrative burden in processing these registrations.

We find that it is reasonable to require wireless carriers to pay a \$250 application fee for new and transferred licenses to help offset the costs of reviewing, processing and maintaining wireless carrier registration applications. We therefore adopt a \$250 application fee for wireless telecommunications carriers seeking a WIR or seeking to transfer a WIR. The WIR Application shown at Attachment D has been updated to reflect the revised requirements for wireless telecommunications carriers seeking a WIR or seeking to transfer a WIR.

**8. Should the Commission Adjust the Terms of Payment of the CPUC Reimbursement Fee Required for CPCN Holders and for Wireless Registrants?**

We adopt the OIR's proposal to establish a minimum CPUC Reimbursement Fee (User Fee) of \$100 annually for CPCN holders and wireless registrants. A minimum User Fee for all CPCN holders and wireless registrants

will ensure that all CPCN holders and wireless registrants contribute a fair share toward the Commission's annual operating budget.

Currently, the Commission determines the User Fee to be paid by the telecommunications carriers annually based on a carrier's gross intrastate revenue, excluding inter-carrier sales, equipment sales and directory advertising.<sup>53</sup> The current User Fee is set at a rate of 0.18% of gross intrastate revenues.<sup>54</sup> However, carriers reporting no intrastate revenues pay no fee, even though the Commission incurs ongoing costs to maintain records and databases, and to perform other regulatory activities that benefit those carriers and protect their customers. There are no fees required for wireless registrants at this time.

DRA and TURN support establishing a minimum User Fee of \$100 paid annually by all CPCN holders and wireless registrants as a reasonable approach to help fund Commission regulatory activities. TWTC, CALTEL, California Cable and the Small LECs question the Commission's ability to change the terms of payment of the User Fee without seeking legislative action and argue that such action might be subject to the two-thirds vote requirement for a new tax. We disagree. Pub. Util. Code § 431 provides the Commission with the following authority:

The commission shall annually determine a fee to be paid by every electrical, gas, telephone, telegraph, water, sewer system, and heat corporation and every other public utility providing service directly to customers and subscribers and subject to the jurisdiction of the commission other than a railroad, except as provided in Article 2 (commencing with Section 421).

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<sup>53</sup> See Pub. Util. Code §§ 401-10, 431-435.

<sup>54</sup> See Resolution M-4819.

We agree with DRA that the Legislature intended the User Fee to reflect actual expenditures by the Commission on regulatory activities and to be fairly apportioned amongst the various classes of utilities. As discussed above, wireless carriers are public utilities. The Commission incurs expenditures on regulatory activities for carriers, even those that claim zero intrastate revenues. Requiring all California telephone corporations to pay a minimum User Fee, irrespective of whether they report intrastate revenues, more accurately distributes the regulatory costs amongst all carriers. It is reasonable to establish a minimum User Fee of \$100, paid annually, for CPCN holders and wireless registrants to help fund Commission regulatory activities. If a telephone corporation holding a CPCN or a wireless registrant has no intrastate revenues, it can avoid these fees by canceling its CPCN or wireless registration.

For these reasons we find it reasonable to adopt the requirement that all CPCN holders and wireless registrants annually pay a User Fee based on the Commission-established rate in effect at the time (currently set at 0.18% of gross intrastate revenue) or \$100, whichever is greater.

**9. Should the Commission Make Other Changes in the Requirements for Processing CPCN Applications and Wireless Registrations?**

The OIR asked for comment on whether other changes should be made to the requirements for processing CPCN applications and wireless registrations, such as implementation of an annual licensing fee (a new fee required to maintain a CPCN or wireless registration each year in addition to the CPUC User Fee), a fee to withdraw operating authority, or additional wireless registration terms and conditions, such as providing proof of registration with the California

Secretary of State and a copy of the resale agreement with an underlying facilities based wireless carrier as shown in Attachment A to the OIR.

Parties unanimously opposed imposition of an annual licensing fee and any fee to withdraw operating authority as proposed by the OIR. TWTW argued that in contrast to the FCC annual licensing fee that is tied to a specified electromagnetic spectrum assigned to that licensee, a CPCN simply indicates the holder is authorized to provide service. As a result, TWTC contends that there is no asset provided by the state to the CPCN holder. TWTC argues that an annual licensing fee would constitute an impermissible tax. For its part, TURN estimates that the CPUC User Fee should cover the Commission's regulatory costs and, by minimizing the variety of fees to be tracked and collected, the Commission would conserve its administrative resources.

We agree that minimizing the variety of fees to be tracked and collected conserves the Commission's administrative resources. As discussed above, this Decision modifies the existing CPUC User fee that carriers must pay annually to require a minimum payment of at least \$100, which may cover the Commission's regulatory costs. We do not see a need to add a new licensing fee or fee to withdraw authority at this time, and decline to do so now.

## **10. Motions**

On November 7, 2012, Sunesys, LLC, CA-CLEC LLC, Crown Castle NG West, Inc. f/k/a NextG Networks of California, NewPath Networks, LLC filed a joint motion to file certain confidential materials under seal. MetroPCS and ExteNet Systems (California) LLC, TWTC also filed motions to file confidential information under seal on November 7, 2012. All motions to file confidential information under seal are granted.

On November 7, 2012, Sunesys, LLC, CA-CLEC LLC, Crown Castle NG West, Inc. f/k/a NextG Networks of California, NewPath Networks, LLC and U.S. Telepacific Corp. filed motions for party status. Motions for Party Status were also filed by Level 3 Communications, LLC and Cox California Telecom, LLC on November 8, 2012, and November 9, 2012, respectively. Because all telecommunications corporations were made respondents in this rulemaking, these carriers were already parties to this rulemaking. As a result, all motions for party status were moot and are denied.

#### **11. Comments on Proposed Decision**

The proposed decision of the Commissioner in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were filed on November 7, 2012, by CALTEL, California Cable, DRA, TURN, CTIA, AT&T, Verizon, MetroPCS, the Small LECs, CBeyond Communications LLC, ExteNet Systems (California) LLC, TWTC, XO Communications Services, LLC, Sunesys, LLC, CA-CLEC LLC, Crown Castle NG West, Inc. f/k/a NextG Networks of California, NewPath Networks, LLC, Cox California Telecom, LLC, U.S. Telepacific Corp., Level 3 Communications, LLC, and reply comments were filed on November 13, 2012, by CALTEL, DRA, TURN, Verizon, MetroPCS, XO Communications Services, LLC, Sunesys, LLC, CA-CLEC LLC, Crown Castle NG West, Inc. f/k/a NextG Networks of California, NewPath Networks, LLC, CBeyond Communications LLC, ExteNet Systems (California) LLC, and TWTC. The comments have been considered and appropriate changes have been made.

## **12. Assignment of Proceeding**

Catherine J.K. Sandoval is the assigned Commissioner and Katherine Kwan MacDonald is the assigned ALJ in this proceeding.

### **Findings of Fact**

1. The Audit Report documents the need for a more thorough Commission review of the background and financial viability of applicants for licenses to operate as telecommunications carriers to identify unscrupulous individuals or companies and to improve the Commission's ability to successfully collect fines and bring about restitutions.

2. The Commission recently revised the simplified registration process for NDIECs to require a higher application fee, additional information from registrants, and require NDIEC registrants to obtain a performance bond.

3. After recent changes to the NDIEC registration requirements, there has been an increase in applications from NDIECs choosing the formal CPCN application route over the streamlined NDIEC registration process.

4. CPCN holders are not currently subject to the additional information requirements, more stringent verifications, increased application fee, minimum User Fee, or performance bond requirement now imposed on NDIEC registrants.

5. Complaints of unauthorized charges, known as "cramming" have more than doubled between 2005 and 2010. Cramming complaints are not limited to wireline carriers.

6. The Commission received 2,784 complaints of unauthorized charges in 2010, from wireline, wireless and VoIP customers.

7. In 2012, the Commission revoked operating authority from 106 telephone corporations for failure to comply with regulatory requirements including payment of required fees and surcharges.



8. A performance bond requirement is established for all telephone corporations holding or seeking CPCN authority, unless specifically exempted, pursuant to § 1001, to facilitate the collection of fines, penalties, taxes, surcharges, fees, and restitution.

9. URF and GRC ILECs who are COLRs, and their wholly-owned or majority owned (51% or more) affiliates or subsidiaries of their corporate parent or holding company, as well as Cox Communications where it serves as a COLR, are exempt from the requirement to obtain a performance bond as a condition for CPCN authority.

10. Wireless carriers are telephone corporations. The Commission has the ability to regulate the terms and conditions of wireless service.

11. In order to protect consumers, a wireless registrant should not allow its performance bond to lapse during any period of its operation.

12. Revocation of CPCN authority or wireless registration is not a deterrent to an unscrupulous carrier engaged in fraudulent practices who may cease operations or file bankruptcy before the Commission is able to collect fines, penalties, taxes, surcharges, fees or bring about restitution.

13. Allowing carriers with a history of regulatory compliance to either be exempt from the performance bond requirement or to limit the performance bond requirement to a limited number of years does not protect customers once the bond requirement lapses, and would be burdensome for the Commission to track.

14. The current information required from telephone corporations seeking CPCN authority does not require applicants to disclose certain information that might be pertinent to an applicant's fitness for a grant of operating authority.

15. The current information required from wireless carriers seeking a WIR does not require applicants to disclose certain information that might improve the Commission's ability to protect consumers.

16. Requiring telephone corporations seeking a CPCN or wireless carriers seeking a WIR to provide additional information will enable the Commission to conduct more thorough check of fiscal and civil responsibility.

17. Requiring telephone corporations seeking a CPCN or wireless carriers seeking a WIR to provide additional information during the application process is consistent with the Audit Report recommendation for the Commission to conduct more stringent background reviews of individual and companies applying for authority to operate in California.

18. Information disclosures concerning prior or current investigations of an applicant or its principals by governmental agencies that the applicant is aware of, and information disclosures concerning settlement agreements entered into or voluntary payments made by an applicant or its principals to resolve action by regulatory agencies, attorneys general, or courts, are relevant to conducting more thorough checks of fiscal and civil responsibility.

19. Requiring wireless carriers seeking a WIR or CPCN applicants to provide information concerning prior or current investigations of an applicant or its principals by governmental agencies that the applicant is aware of and information concerning settlement agreements entered into or voluntary payments made by an applicant or its principals to resolve action by regulatory agencies, attorneys general, or courts will expand the scope and accuracy of background checks that the Commission conducts.

20. Requiring resumes from officers and directors of CPCN applicants and wireless carriers seeking a WIR will provide important information about an

applicant's principals and will facilitate the Commission's civil responsibility checks.

21. The standardized informational requirements, sworn affidavit template, and CPCN Checklist in Attachments A - C will assist applicants in drafting complete applications for a CPCN. The sworn affidavit template and updated Wireless Registration Application provided in Attachments D and E will assist registrants in providing complete WIR applications.

22. The Commission incurs substantial expense processing a CPCN application, ranging from \$500 to several thousand dollars per application.

23. The Commission incurs costs related to reviewing, processing and maintaining wireless carrier registration and application procedures.

24. The purpose of the CPUC User Fee, required annually from CPCN holders and wireless carriers is to finance the Commission's annual operating budget and the Commission's objective of protecting consumers and maintaining public safety.

25. Carriers who hold a CPCN or a WIR reporting no intrastate revenues currently pay no User Fee, even though the Commission incurs ongoing costs to maintain records and databases, and to perform other regulatory activities that benefit those carriers and their customers.

### **Conclusions of Law**

1. In light of the Audit Report findings, it is reasonable to revise the CPCN application process and wireless registration process at this time.

2. It is reasonable and prudent to take steps now to reduce the likelihood of the need for future enforcement actions, and to increase the likelihood of successfully collecting fines or compelling restitution once an enforcement action is initiated.

3. A requirement for wireless carriers holding or seeking a WIR or for applicants holding or seeking CPCN authority to obtain a performance bond should improve the Commission's ability to collect fines, penalties, taxes, surcharges, fees and restitution from these carriers should they cease operations or file for bankruptcy.

4. Although the CPCN application process is more formal than that associated with NDIEC operating authority or wireless registration, the current process does not enhance the Commission's ability to collect fines, penalties, taxes, surcharges, fees and restitution.

5. The Commission's ability to revoke operating authority is insufficient to deter unscrupulous carriers engaged in fraudulent practices when they cease operations or file bankruptcy.

6. The Commission possesses the authority to require wireless carriers to obtain a performance bond.

7. Congress left the authority to regulate the terms and conditions of wireless service to give the states the ability to handle billing disputes and matters of consumer protection for wireless customers.

8. Imposition of a performance bond requirement as a condition of offering wireless service in this state does not prohibit or impede entry into California for financially responsible carriers and serves the legitimate state interest in consumer protection.

9. A performance bond requirement should be established for all wireless carriers seeking WIR in order to facilitate the collection of fines, penalties, taxes, surcharges, fees, and bring about restitution.

10. The Commission should establish a minimum performance bond amount of \$25,000 as recommended by DRA, and for such time as it deems reasonable.

11. A CPCN holder should not allow its performance bond to lapse during any period of its operation, and during all periods of operation a CPCN holder must continue to possess the requisite legal, technical, and financial qualifications.

12. Requiring a performance bond as a precondition to granting CPCN authority or as a condition of offering wireless service after wireless registration in California is consistent with the authority granted the Commission pursuant to Pub. Util. Code §§ 701 and 709.

13. COLRs, including URF ILECs, GRC ILECs, and their wholly-owned or majority owned (51% or more) affiliates or subsidiaries of their corporate parent or holding company, as well as Cox Communications, where it serves as a COLR, should not be required to obtain a performance bond because they are COLRs and, as such, they are required to at a minimum notify the Commission prior to ceasing operations and, where they operate as the sole COLR in a given service territory, must obtain full Commission approval before ceasing operations. As a result, the Commission has the ability to collect any fines, surcharges, fees owed and ensure that customers are compensated when restitution is owed.

14. The performance bond requirement should not lapse after a set number of years, irrespective of a carrier's history of regulatory compliance, because customers are not protected if the performance bond lapses or the requirement ends.

15. Because the performance bond is designed to facilitate the collection of fines penalties, taxes, surcharges, fees, and restitution to customers, the amount of the performance bond, adopted by the Commission after conclusion of Phase II of this OIR, should bear some relationship to the fines, penalties, surcharges, taxes, fees, and restitution the Commission may potentially impose on a carrier.

16. Requiring new wireless registrants or CPCN holders who have yet to calculate intrastate revenues to obtain a performance bond of at least \$25,000 is reasonable.

17. Requiring existing CPCN holders and wireless registrants to obtain a performance bond of at least \$25,000 until the Commission determines the proper amount for the performance bond during Phase II of this rulemaking is reasonable.

18. It is reasonable for the Commission to periodically review the bond amount to ensure that it is sufficient to enable the Commission's collection of fines, penalties, taxes, fees, and restitution.

19. Because no alternatives to a performance bond were shown to promise the same consumer protections as a performance bond, the issue may be addressed during the workshop conducted during Phase II of this rulemaking. It is reasonable that the Commission will not accept alternatives to a performance bond for wireless carriers seeking or holding a WIR or for carriers seeking or holding CPCN authority at this time.

20. Obtaining additional relevant data on CPCN applicants and wireless registrants during the respective application or registration process and establishing other requirements proposed in the OIR should reduce the likelihood that subsequent enforcement actions against a carrier will be necessary, and, when enforcement actions against a carrier are necessary, should improve the Commission's ability to collect fines, penalties and bring about restitution.

21. Telephone corporations applying for CPCN authority and wireless carriers seeking registration should be required to provide additional information, and undergo expanded checks of their fiscal and civil responsibility.

22. It is reasonable that telephone corporations applying for CPCN authority and wireless carriers seeking registration should be required to disclose monetary forfeitures paid to resolve any action by any regulatory body, agency, or attorney general, or court, in addition to information concerning settlement agreements entered into or voluntary payments made by an applicant.

23. Because a requirement for a telephone corporation seeking a CPCN and for a wireless carrier seeking registration to provide résumés from its officers and directors will provide important information about an applicant's principals, will facilitate the Commission's ability to do a thorough and more accurate background check, and will enable the Commission to further protect consumers, it therefore should be adopted.

24. It is reasonable to increase the fee for CPCN applications from \$75 to \$500, indexed annually to reflect changes in the consumer price index. The Commission should pursue legislative action to make the appropriate statutory change.

25. It is reasonable to require wireless carriers seeking a WIR or transferring a WIR to pay a \$250 application fee. The Commission should require wireless carriers to pay a \$250 application fee.

26. Pub. Util. Code § 431 provides the Commission authority to change the terms of payment of the CPUC User Fee for CPCN holders and for wireless registrants so that telephone corporations pay a minimum assessment or a percentage of gross intrastate revenues, whichever is greater.

27. It is reasonable to establish a minimum CPUC User fee of \$100 to be paid annually by CPCN holders and wireless registrants to help fund Commission regulatory activities on behalf of consumers.

28. The proposed revisions to the WIR process do not function as a bar to entry.

29. Imposition of a variety of other fees, such as an annual licensing fee or a fee to withdraw service in California, would increase the Commission's administrative costs and is therefore not imposed at this time.

30. Evidentiary hearings are not necessary.

31. R.11-11-006 should remain open to allow the Commission to hold workshops to determine the proper amount for the performance bond required by this decision and to determine its obligations with respect to VoIP.

32. This order should be effective immediately.

## **O R D E R**

### **IT IS ORDERED** that:

1. The Certificate of Public Convenience and Necessity application process for telephone corporations established pursuant Pub. Util. Code § 1001, is revised to include requirements as specified in the Ordering Paragraphs below.

2. The wireless registration process established by Decision (D.) 94-10-031 and D.95-10-032 is revised to include requirements specified in the Ordering Paragraphs below.

3. Telephone corporations holding a Certificate of Public Convenience and Necessity (CPCN) must obtain a performance bond of at least \$25,000. The performance bond must be a continuous bond (i.e., there is no termination date on the bond) issued by a corporate surety company authorized to transact surety business in California, and the Commission must be listed as the obligee on the bond. Within 90 days after the effective date of this Decision, all telephone



corporations holding a CPCN must submit a Tier 1 advice letter to the Director of the Communications Division containing a copy of the CPCN holder's executed performance bond.

4. Telephone corporations applying for a Certificate of Public Convenience and Necessity (CPCN) for the first time, which have not previously reported revenues or submitted surcharges to the Commission, must obtain a performance bond in the amount of \$25,000. In the affidavit included in its application, the CPCN applicant must attest to the amount of the bond that will be obtained. Upon written acceptance of CPCN authority, the new CPCN licensee must submit a Tier-1 advice letter to the Director of Communications, containing a copy of the license holder's executed bond. The performance bond must be a continuous bond (i.e., there is no termination date on the bond) issued by a corporate surety company authorized to transact surety business in California, and the Commission must be listed as the obligee on the bond.

5. Carriers of Last Resort (COLRs) including Uniform Regulatory Framework incumbent local exchange carriers, General Rate Case incumbent local exchange carriers, and their wholly-owned or majority owned (51% or more) affiliates or subsidiaries of their corporate parent or holding company, as well as Cox Communications where it serve as a COLR, are exempt from the requirement to obtain a performance bond.

6. Wireless Carriers holding Wireless Identification Registration (WIR) must obtain a performance bond of at least \$25,000. The performance bond must be a continuous bond (i.e., there is no termination date on the bond) issued by a corporate surety company authorized to transact surety business in California, and the Commission must be listed as the obligee on the bond. Within 90 days after the effective date of this Decision, all telephone corporations holding a WIR

must submit a Tier-1 advice letter to the Director of the Communications Division containing a copy of the registrant's executed performance bond.

7. New wireless carriers granted Wireless Identification Registration for the first time and who have not previously reported revenues or submitted surcharges to the Commission must obtain a performance bond in the amount of \$25,000. In the affidavit included in its application, the registration applicant must attest to the amount of the bond that will be obtained and that the required performance bond will be executed within five business days after the effective date of the issuance of a registration. The performance bond must be a continuous bond (i.e., there is no termination date on the bond) issued by a corporate surety company authorized to transact surety business in California, and the Commission must be listed as the obligee on the bond.

8. Each telephone corporation required to hold a Certificate of Public Convenience and Necessity (CPCN), who is not specifically exempt by this Decision from the requirement to obtain a performance bond, must submit an Tier-1 advice letter to the Director of the Communications Division containing a copy of the CPCN holder's executed performance bond at least annually but not later than March 31. Within five business days after the effective date of CPCN authority, a CPCN holder must submit a Tier-1 advice letter to the Director of the Communications Division with a copy of the license holder's executed bond.

9. Each Wireless Identification Registration holder must submit a Tier-1 advice letter to the Director of the Communications Division containing a copy of the registration license holder's executed performance bond at least annually but not later than March 31. Within five business days after the effective date of the issuance of a registration license, a wireless registrant must submit a Tier-1

advice letter to the Director of the Communications Division with a copy of the registration holder's executed bond.

10. A telephone corporation holding a Certificate of Public Convenience and Necessity (CPCN) required by this Decision to obtain a performance bond must not allow its performance bond to lapse during any period of its operation. During all periods of operation, a CPCN license holder must continue to possess the requisite legal, technical, and financial qualifications.

11. A Wireless Identification Registration holder must not allow its performance bond to lapse during any period of its operation.

12. The Communications Division is authorized to grant a one-time extension of 60 days for additional time for telephone corporations holding a Certificate for Public Convenience and Necessity (CPCN) and for Wireless Identification Registration (WIR) holders to submit a copy of the executed bond if the CPCN or license holder makes a written request to the Communications Division before CPCN or license holder is deemed delinquent. A CPCN holder or holder of a WIR must demonstrate good cause for the additional time requested to comply with the requirement to submit to the Commission a copy of the executed bond.

13. The Communications Division must prepare for Commission consideration a resolution revoking the Certificate of Public Convenience and Necessity (CPCN) authority or the Wireless Identification Registration of any CPCN or registration license holder that is more than 120 days late in providing the Director of the Communications Division a copy of its executed performance bond and that has not been granted an extension of time by the Communications Division.

14. Telephone corporations seeking or transferring a Certificate of Public Convenience and Necessity must include the following certification as part of their applications:

Neither applicant, any of its affiliates, officers, directors, partners, agents, or owners (directly or indirectly) of more than 10% of applicant, or anyone acting in a management capacity for applicant: (a) held one of these positions with a company that filed for bankruptcy; (b) been personally found liable, or held one of these positions with a company that has been found liable, for fraud, dishonesty, failure to disclose, or misrepresentations to consumers or others; (c) been convicted of a felony; (d) been (to his/her knowledge) the subject of a criminal referral by judge or public agency; (e) had a telecommunications license or operating authority denied, suspended, revoked, or limited in any jurisdiction; (f) personally entered into a settlement, or held one of these positions with a company that has entered into settlement of criminal or civil claims involving violations of sections 17000 *et seq.*, 17200 *et seq.*, or 17500 *et seq.* of the California Business & Professions Code, or of any other statute, regulation, or decisional law relating to fraud, dishonesty, failure to disclose, or misrepresentations to consumers or others; or (g) been found to have violated any statute, law, or rule pertaining to public utilities or other regulated industries; or (h) entered into any settlement agreements or made any voluntary payments or agreed to any other type of monetary forfeitures in resolution of any action by any regulatory body, agency, or attorney general.

If the applicant is unable to make the required verification, the applicant must attach documentation and describe any such bankruptcies, findings, judgments, convictions, referrals, denials, suspensions, revocations, limitations, settlements, voluntary payments or any other type of monetary forfeitures.

To the best of applicant's knowledge, neither applicant, any affiliate, officer, director, partner, nor owner of more than 10% of applicant, or any person acting in such capacity whether or

not formally appointed, is being or has been investigated by the Federal Communications Commission or any law enforcement or regulatory agency for failure to comply with any law, rule or order.

Applicants who do not meet these standards or whose applications are protested but who nevertheless may be otherwise suitable for being granted authority will not be excluded from applying for operating authority.

15. Wireless carriers seeking or transferring Wireless Identification

Registration must certify:

Neither registrant, any of its affiliates, officers, directors, partners, agents, or owners (directly or indirectly) of more than 10% of applicant, or anyone acting in a management capacity for applicant: (a) held one of these positions with a company that filed for bankruptcy; (b) been personally found liable, or held one of these positions with a company that has been found liable, for fraud, dishonesty, failure to disclose, or misrepresentations to consumers or others; (c) been convicted of a felony; (d) been (to his/her knowledge) the subject of a criminal referral by judge or public agency; (e) had a telecommunications license or operating authority denied, suspended, revoked, or limited in any jurisdiction; (f) personally entered into a settlement, or held one of these positions with a company that has entered into settlement of criminal or civil claims involving violations of sections 17000 *et seq.*, 17200 *et seq.*, or 17500 *et seq.* of the California Business & Professions Code, or of any other statute, regulation, or decisional law relating to fraud, dishonesty, failure to disclose, or misrepresentations to consumers or others; or (g) been found to have violated any statute, law, or rule pertaining to public utilities or other regulated industries; or (h) entered into any settlement agreements or made any voluntary payments or agreed to any other type of monetary forfeitures in resolution of any action by any regulatory body, agency, or attorney general.

If the registrant is unable to make the required verification, the applicant must attach documentation to the application describing any such bankruptcies, findings, judgments, convictions, referrals, denials, suspensions, revocations, limitations, settlements, voluntary payments or any other type of monetary forfeitures.

To the best of registrant's knowledge, neither applicant, any affiliate, officer, director, partner, nor owner of more than 10% of applicant, or any person acting in such capacity whether or not formally appointed, is being or has been investigated by the Federal Communications Commission or any law enforcement or regulatory agency for failure to comply with any law, rule or order.

If the registrant is unable to make the required verification, the applicant shall attach any documentation it deems relevant and describe all such investigations, whether pending, settled voluntarily or resolved in another manner with the application.

Registrants not meeting these standards will not be excluded from applying for registration authority.

16. Telephone corporation applicants seeking a Certificate of Public Convenience and Necessity must submit résumés from officers, directors and principals listing all employment as part of the application.

17. Wireless carriers seeking Wireless Identification Registration in California shall attach, as part of the registration application, résumés from officers, principals and directors listing all employment.

18. Applicants seeking to transfer Certificate of Public Convenience and Necessity or Wireless Identification Registration authority must verify compliance with all Commission reporting, fee, and surcharge transmittals.

19. The Commission shall establish an application fee of \$250 for new and transferred wireless carrier registrations.

20. The Commission shall seek Legislative action to make the appropriate statutory change to increase the application fee for a Certificate of Public Convenience and Necessity from \$75.00 to \$500.00, indexed annually to reflect changes to the Consumer Price Index.

21. A minimum California Public Utilities Commission Reimbursement Fee (User Fee) for all telephone corporations holding Certificate of Public Convenience and Necessity (CPCN) authority and Wireless Identification Registration holders is set at \$100. CPCN holders and wireless registrants shall pay the User Fee annually based on the Commission-established rate in effect at the time (currently 0.18% of gross intrastate revenue) or \$100, whichever is greater.

22. The Commission shall open a Phase II of this rulemaking to conduct a workshop to examine the following questions:

- a. What size of bond should be required?
- b. What should the terms and conditions of the bond be?
- c. Should the bond requirement be applied to existing carriers or only to transferees and new applicants seeking operating authority?
- d. Should the bond amount differ by utility type or type of service?
- e. Should the bond requirement be continuous or should the obligation cease after a certain number of years during which no problems or corrective actions against the bonded entity have been taken?
- f. Should the Commission allow for alternatives to the posting of a bond such as an irrevocable standby letter of credit, a site draft letter of credit, or escrow agreements? If

so, what criteria of performance and compliance with Commission orders and rules will provide comparable levels of consumer protection?

The assigned Administrative Law Judge (ALJ) will schedule a workshop within 90-days after the effective date of this decision. The assigned ALJ may adjust the workshop schedule if necessary.

23. The Commission shall hold a workshop to examine the Commission's regulatory obligations and duties with respect to uncertificated Voice over Internet Protocol (VoIP) carriers in light of the recent adoption of Senate Bill 1161. The assigned Administrative Law Judge (ALJ) will schedule a workshop within 90-days to consider whether a registration process, in whole or in part, should be extended to VoIP carriers in light of current market conditions, consumer protection issues, and the current regulatory status of VoIP and IP-enabled voice services. The assigned ALJ may adjust the workshop schedule if necessary.

24. All motions to file confidential material under seal are granted.

25. All motions for party status are denied without prejudice.

26. Rulemaking 11-11-006 remains open.

This order is effective today.

Dated May 23, 2013, at San Francisco, California.

MICHAEL R. PEEVEY

President

MICHEL PETER FLORIO

CATHERINE J.K. SANDOVAL

MARK J. FERRON

CARLA J. PETERMAN

Commissioners



# **ATTACHMENT A**

**ATTACHMENT A**

**ATTACHMENT A  
Requirements for CPCN Application Pursuant to P.U. Code §1001  
and CPUC Rules of Practice and Procedure**

**1. Identification of Applicant [Rule 2.1(a)]**

The applicant must provide its exact legal name and the location of principal place of business, and if an applicant is a corporation, trust, association, or other organized group, the State under the laws of which such applicant was created or organized.

**2. Correspondence or Communications [Rule 2.1(b)]**

The applicant must provide the name, title, address, telephone number, facsimile transmission number, and, if the applicant consents to e-mail service, the e-mail address, of the person to whom correspondence or communications in regard to the application are to be addressed. Notices, orders and other papers may be served upon the person so named, and such service shall be deemed to be service upon applicant.

**3. Description of Services to be Provided [Rule 3.1(e)]**

The applicant must clearly describe its operation including but not limited to identifying the authority that it is seeking. The applicant should clearly identify the type of service it propose to provide it could be any or the following combination of service types: Resold or Limited Facilities-Based Local Exchange, Full Facilities-Based Local Exchange or Interexchange service.<sup>55</sup> The applicant should provide information regarding the service areas it plans to provide service to and the method by which it plans to provide the service. If the applicant states that it is requesting Full Facilities-Based CPCN, then it is required to comply with the Proponent's Environmental Assessment (PEA) and CEQA Rule 2.4 of the Commission's Rules of Practice and Procedure. *See* Section 4 of this Attachment related to CEQA.

**4. Articles of Organization and Certificate of Qualification to Transact Business in California [Rule 2.2]**

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<sup>55</sup> An applicant seeking authorization to provide long distance service may utilize the simplified registration process for NDIEC pursuant to P.U. Code § 1013. Decision 10-09-017 at p.4.

All applicants other than natural persons shall submit with their applications a copy of the entity's organizing documents and evidence of the applicant's qualification to transact business in California. The applicant must provide a copy of its Certificate of Good Standing Status certified by the Secretary of State of California as an attachment to its application.

#### **5. Description of Proposed Construction [Rule 3.1(a)]**

The applicant must provide a full description of the proposed construction or extension, and the manner in which the same will be constructed.

#### **6. California Environmental Quality Act (CEQA) Compliance [Rule 2.4]**

Pursuant to CEQA and Commission Rule 2.4, the Commission examines projects to determine any potential environmental impacts in order that adverse effects are avoided and environmental quality is restored or enhanced to the fullest extent possible under CEQA. In Rule 2.4(b), the Commission recognizes that the Secretary for Resources has exempted certain classes of projects from CEQA. The following are the classes of projects that are exempt from CEQA and for which neither an EIR nor a Negative Declaration is required:

- Class 1 Exemption: operation, repair, maintenance, leasing or minor alteration of existing public or private structures and facilities, with negligible or no expansion of an existing use. This includes existing facilities used to provide public utility services. 14 CCR §15301.
- Class 3 Exemption: construction including water main, sewage, electrical, gas and other utility extensions of reasonable length to serve such construction. This includes the construction of limited numbers of new small facilities or utility extensions. 14 CCR §15303.

An applicant seeking authority as a Full Facilities-Based provider must clearly identify the construction activities and projects involved in order to provide service to its customers. The applicant should clearly identify whether the proposed construction activities and projects fall are statutorily or categorically exempt from CEQA requirements, with citation to the relevant authority. If applicable, the applicant may request approval to utilize a procedure for expedited review of its projects.

For applicant seeking authority as a Resold or Limited Facilities-Based provider, it must clearly state that it does not intend to construct any facilities.<sup>56</sup>

Additional information regarding CEQA requirements is available at:  
[http://www.cpuc.ca.gov/puc/energy/environment/ceqa\\_rules.htm](http://www.cpuc.ca.gov/puc/energy/environment/ceqa_rules.htm)

#### **7. Names of Competitors and Names of Counties [Rule 3.1(b)]**

The applicant must provide the names and addresses of all utilities, corporations, persons or other entities, whether publicly or privately operated, with which the proposed construction is likely to compete, and of the cities or counties within which service will be rendered in the exercise of the requested certificate. The application shall contain a certification that a copy of the application has been served upon or mailed to each such person named.<sup>57</sup>

#### **9. Areas of Service (Maps) [Rule 3.1(c)]**

The applicant must clearly describe and provide a map of the service territories it proposes to serve. It should also identify the entities currently providing service in the area.<sup>58</sup> The map should be included as an attachment to the application.

#### **8. Identification of Required Franchises, Health and Safety Permits [Rule 3.1(d)]**

The Applicant must provide a statement identifying the franchises and such health and safety permits as the appropriate public authorities have required or may require for the proposed construction or extension.

#### **9. Facts Showing Public Convenience and Necessity [Rule 3.1(e)]**

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<sup>56</sup> See D.08-04-018 (authorizing a facilities-based CPCN and noting that installation of telecommunications facilities “in existing conduit or other structures will not result in material adverse impacts” and thus it “can be seen with certainty that there is no possibility that [such activity] may have a significant adverse effect on the environment” and thus the project is exempt from CEQA review); See D.99-10-025.

<sup>57</sup> Pursuant to D.97-06-107, issued in Commission proceeding R.94-02-003/I.94-02-004, CLCs are no longer required to comply with Rule 18(b) and General Order 96-A, subsections (G)(1) and (2). Thus, the applicant is not required to mail its Application to all potential competitors and counties. However, the applicant must provide a copy of its Application upon request to potential competitors and counties.

<sup>58</sup> D.95-12-056, Appendix C, Rule 4.E

The applicant must demonstrate that granting its application will benefit the public interest. The Commission has previously determined that the public convenience and necessity require that competition be allowed in the provision of competitive local exchange service. By its issuance of D. 95-07-054, D. 95-12-056 and D.96-02-072, the Commission recognized the benefits of competition for local exchange and intraLATA services. These benefits include technological innovation in telecommunications, the deployment of advanced telecommunications services, lower rates and improved services for telecommunications service users, investment in new infrastructure and the creation of new jobs in the State. Granting this Application will benefit the public interest by expanding the availability of technologically advanced telecommunications services within the State.

#### **10. Estimated Cost of Construction, Annual Fixed and Operating Costs and Economic**

##### **Feasibility [Rule 3.1(f)]**

The applicant must provide a statement detailing the estimated cost of the proposed construction or extension and the estimated annual costs, both fixed and operating associated therewith. In the case of a utility which has not yet commenced service or which has been rendering service for less than twelve months, the applicant shall file as a part of the application supporting statements or exhibits showing that the proposed construction is in the public interest and whether it is economically feasible.

#### **11. Financial Statements and Ability to Finance [Rule 3.1(g) and 2.3]**

The applicant must clearly demonstrate that it is financially capable of rendering its proposed service. In order to be granted a CPCN, an applicant seeking authority to provide limited-facilities-based and resold local exchange and 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>59</sup> The applicant must also demonstrate that it has sufficient additional resources to cover all deposits required by local exchange carriers and/or interexchange carriers in order to provide the proposed service.<sup>60</sup> The applicant must provide statements or exhibits showing the financial ability of the applicant to render the proposed service together with information

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<sup>59</sup> D.95-12-056 (Appendix C) – Financial requirements for Competitive LECs; D.91-10-041/ D.93-05-010 – Financial Requirement for Non-dominant Interexchange Carriers.

<sup>60</sup> D.95-12-056 (Appendix C) sets for the requirements for CLCs. See D.93-05-010 for NDIEC requirements.

regarding the manner in which applicant proposes to finance the cost of the proposed construction or extension.

## **12. Proposed Rates [Rule 3.1(h)]**

The applicant must provide a statement of its proposed rates to be charged for service to be rendered. If the application proposes any increase in rates, it shall comply with Rule 3.2(a).

## **13. General Order 104-A Statement [Rule 3.1(i)]**

The applicant must provide a statement corresponding to the statement required by Section 2 of General Order No. 104-A, as to all known matters which both (a) are designated by said section for inclusion in the annual report but occurred or were proposed subsequent to the period covered by the last previous annual report filed by the applicant and (b) are, or will be, connected with the construction or extension proposed in the application; or, if no such matters are known to have so occurred or are then known to be proposed, a statement to that effect; provided, that an applicant whose capital stock, or that of its parent company, is listed on a "national securities exchange," as defined in the Securities Exchange Act of 1934 (15 U.S.C. 78(a) et seq.), in lieu of the statement required by this rule shall include in the application a copy of the latest proxy statement sent to stockholders by it or its parent company if not previously filed with the Commission, provided, further, that an applicant whose capital stock, or that of its parent company, is registered with the Securities and Exchange Commission (SEC) pursuant to the provisions of Section 12(g) of said Securities Exchange Act of 1934, in lieu of the statement required by this rule shall include in the application a copy of the latest proxy statement sent to stockholders by it or its parent company containing the information required by the rules of the SEC if not previously filed with the Commission.

## **14. Estimated Customer Base [Rule 3.1(j)]**

The applicant must provide the estimated number of customers and their requirements for the first and fifth years in the future.

## **15. Technical and Managerial Competence [D.95-12-056, Appendix C, D. XX-XX-XXX, Rule. 4.A]**

The applicant seeking authority to provide local exchange and/or interexchange service must demonstrate that it has the technical and managerial qualifications necessary to provide the proposed services in its service territory. The applicant should provide the following

information, but not limited to: the applicant's key management and technical personnel, resumes and biographies of the key management and technical person that reflects that the applicant possesses significant technical and managerial expertise for operating a telecommunications company, consistent with the Commission's requirements.

The applicant must provide a sworn affidavit stating the following: "Neither applicant, any of its affiliates, officers, directors, partners, agents, or owners (directly or indirectly) of more than 10% of applicant, or anyone acting in a management capacity for applicant: (a) held one of these positions with a company that filed for bankruptcy; (b) been personally found liable, or held one of these positions with a company that has been found liable, for fraud, dishonesty, failure to disclose, or misrepresentations to consumers or others; (c) been convicted of a felony; (d) been (to his/her knowledge) the subject of a criminal referral by judge or public agency; (e) had a telecommunications license or operating authority denied, suspended, revoked, or limited in any jurisdiction; (f) personally entered into a settlement, or held one of these positions with a company that has entered into settlement of criminal or civil claims involving violations of sections 17000 *et seq.*, 17200 *et seq.*, or 17500 *et seq.* of the California Business & Professions Code, or of any other statute, regulation, or decisional law relating to fraud, dishonesty, failure to disclose, or misrepresentations to consumers or others; or (g) been found to have violated any statute, law, or rule pertaining to public utilities or other regulated industries; or (h) entered into any settlement agreements or made any voluntary payments or agreed to any other type of monetary forfeitures in resolution of any action by any regulatory body, agency, or attorney general.

To the best of applicant's knowledge, neither applicant, any affiliate, officer, director, partner, nor owner of more than 10% of applicant, or any person acting in such capacity whether or not formally appointed, is being or has been investigated by the Federal Communications Commission or any law enforcement or regulatory agency for failure to comply with any law, rule or order.

A sample sworn affidavit form is found in ATTACHMENT B of this decision.

#### **16. Request for Exemptions (To be included only if applicant requests treatment as an NDIEC)**

The applicant may request that, in connection with its authorization as a CLEC, it be accorded the same streamlined regulatory treatment previously accorded to other CLECs as a non-dominant interexchange carrier as set forth in D.96-02-075 and as adopted by NDIECs, including the following:

1. The applicant seeks exemption from the provisions of PU Code Section 816-830 (pertaining to the issuance of stocks and securities) and PU Code Section 851 (pertaining to the transfer or encumbrance of utility assets when such transfer or encumbrance is for the purpose of securing debt). The Commission has previously concluded that NDIECs

should be exempt from the provisions and requirements of PU Code Sections 816-830 and 851 (insofar as these sections pertain to the issuance of securities and transfer or encumbrance of utility property for purposes of securing debt) in D.85-07-081, D.85-11-044 and D.86-08-057, as confirmed by D.90-09-032. This exemption was extended to CLCs in D.96-02-072, Ordering Paragraph 18.

2. The applicant may further request that it be exempted from any requirement to maintain its books and records in accordance with the Uniform System of Accounts specified in Title 47 I.E. Part 32 consistent with D.99-02-038, which relieved CLCs that are not part of an incumbent local exchange carrier (ILEC) corporate entity from the requirement to keep their books of account in conformance with the Uniform System of Accounts.

## **17. Tariffs**

The applicant must attach a copy of its draft tariff that describes all the services and sample rates that it intends to offer. In order to draft a tariff that complies with the CPUC's requirement, the following documents are important to obtain and review before drafting.

1. Appendix B to D. 95-07-054
2. General Order 96-B
3. Sample tariff (see sample tariffs submitted by competitors).
4. Limitation of Liabilities - Appendices B & C of D 95-12-057

The applicant may order a sample competitor tariff for facilities-based and resold service by calling the Communications Division at (415) 703-3052. Appendix B to D. 95-07-054 and Appendices B & C of D 95-12-057 can be obtained by calling Central Files Office at (415) 703-2045.

Applicant may also request for exemption from tariff requirements pursuant to GO 96-B Telco Industry Rule 5.

## **18. Application Fee**

A fee of \$500<sup>61</sup> (check, draft, or money order payable to the CPUC) must be enclosed with all applications requesting facilities-based or reseller authority. Applicant can also request in

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<sup>61</sup> D. XX-XX-XXX



its CLC application authority for intra-LATA and inter-LATA toll authority with the CLC application at no extra cost. The applicant can also file a separate application to obtain intra-LATA and inter-LATA toll authority using the NDIEC (Non-Dominant Inter-Exchange Carrier) registration process which normally will be shorter (40 days vs. approx. 3 months).

In addition to the above noted application fee, all applicants requesting facilities-based CLC authority are required to submit an additional \$200 deposit for California Environmental Quality Act (CEQA) processing (not applicable to applicants requesting only reseller authority). This deposit includes applicants applying only for limited facilities-based CLC authority (a limited facilities-based CLC is one that uses facilities that are installed solely within existing structures). The \$200 CEQA deposit (check, draft, or money order payable to the CPUC) must include the statement "CEQA Fee per D.00-08-010".

If the applicant seeks only limited facilities-based authority, only the \$200 shall be required. If the applicant seeks more extensive facilities based authority that requires the preparation of either an MND (mitigated negative declaration) or an EIR (environmental impact report), however, then the applicant shall remain liable for reimbursing the Commission for additional CEQA costs that may be incurred in processing its application. The Commission will bill the applicant for any additional CEQA costs that are applicable once they become known.

For additional information regarding Application fees, please visit:

<http://www.cpuc.ca.gov/PUC/Telco/Information+for+providing+service/clcapps.htm>

#### **19. Continuous Performance Bond Requirement (D. xx-xx-xxx)**

D. xx-xx-xxx requires new and existing CPCN holders to submit a continuous performance bond in the amount of \$25,000 issued by a corporate surety company authorized to transact surety business in California with the Commission listed as an obligee on the bond. The minimum amount of the bond is currently set at \$25,000 but the CPUC is currently working to establish a maximum bond amount.

**(END OF ATTACHMENT A)**

# **ATTACHMENT B**

**ATTACHMENT B**

**SWORN AFFIDAVIT**

Name of Applicant/Company \_\_\_\_\_

My name is \_\_\_\_\_. I am \_\_\_\_\_(Title) of  
\_\_\_\_\_ (Applicant). My personal knowledge of the facts stated herein  
has been derived from my employment with \_\_\_\_\_ (Applicant)

I affirm that \_\_\_\_\_ [Name of Applicant]:

- agrees to comply with all federal and state statutes, rules, and regulations, (state whether application is for a Certificate of Public Convenience and Necessity (CPCN), Transfer, Merger, etc) and state contractual rules and regulations, if granted the request as stated in this application; and
- Certifies [if Applicant is seeking a CPCN] that all answers to the attached Application for CPCN are true and correct;
- In the event Applicant's request for a CPCN or Wireless Identification Registration is granted, Applicant agrees to post a continuous bond (i.e., there is no termination date on the bond) performance bond equivalent to in the amount of \$25,000 for the first year of operation or 10% of intrastate revenue (for subsequent years), issued by a corporate surety company authorized to transact surety business in California, and with the Commission listed as the obligee on the bond. Further, I will provide a copy of the executed performance bond to the Director of the Communications Division with the written notification to the Commission of acceptance of operating authority.

I affirm and declare under penalty of perjury under the laws of the State of California, including Rule 1.1 of the California Public Utilities Commission's Rules of Practice and Procedure, that, to the best of my knowledge, all of the statements and representations made in this Application are true and correct.

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Signature and title

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Type or print name and title

**(END OF ATTACHMENT B)**

# **ATTACHMENT C**

**ATTACHMENT C**  
**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**  
**Checklist for CPCN Application (§1001)**

**1 Application of**

for authorization to obtain a Certificate of Public Necessity and Convenience as a Telephone Corporation Pursuant to the Provisions of the Public Utilities Code Section 1001.  
(Insert the full legal name of applicant in blank above; see instruction 1)

Street address:

Telephone: (     )              Fax No.: (     )              E-Mail:

**1.A. List all fictitious business names under which applicant has done business in the last five years:**

<b>2</b> Applicant is: (Check only one; see instruction 2.)	A corporation (attach good standing certificate) <input type="checkbox"/> A limited partnership (attach good standing certificate) <input type="checkbox"/> A limited partnership (attach good standing certificate) <input type="checkbox"/> A limited liability company (attach good standing certificate) <input type="checkbox"/> A general partnership <input type="checkbox"/> A sole proprietor <input type="checkbox"/> A trust <input type="checkbox"/> Other (describe) <input type="checkbox"/>
	<p><b><i>Attach name, street address, and telephone number of applicant's registered agent for service of process.</i></b></p> <p><b><i>Attach list of the names, titles, and street addresses of all officers and directors, general partners, trustees, members, or other persons authorized to conduct the business of applicant at a similar level.</i></b></p> <p><b><i>Attach resumes listing all employment for each officer and director.</i></b></p> <p><b><i>Attach list of all affiliated entities (see instruction 2)</i></b></p>
<b>3</b> Legal domicile of applicant is: (Check only one; see instruction 3.)	California <input type="checkbox"/> Other (identify): <input type="checkbox"/>
<b>4</b> Applicant will operate as: (Check one or more; see instruction 4.)	<input type="checkbox"/> Full Facilities-based carrier <input type="checkbox"/> Interexchange carrier <input type="checkbox"/> Limited Facilities-based carrier <input type="checkbox"/> Resold-based carrier
<b>5</b> Applicant will provide service: (Check only one; see instruction 5.)	Statewide <input type="checkbox"/> In specific portions only (attach description and map) <input type="checkbox"/>

<b>6</b> Applicant <u>expects to</u> begin offering service in California on:	_____ ( date)	
<b>7</b> Applicant will provide: voice and data telecommunications only (Check only one; see instruction 7.)	True <input type="checkbox"/> Not true <input type="checkbox"/>	
<b>8</b> Neither applicant, any of its affiliates, officers, directors, partners, agents,	True <input type="checkbox"/> Not true <input type="checkbox"/>	
<p>or owners (directly or indirectly) of more than 10% of applicant, or anyone acting in a management capacity for applicant: (a) held one of these positions with a company that filed for bankruptcy; (b) been personally found liable, or held one of these positions with a company that has been found liable, for fraud, dishonesty, failure to disclose, or misrepresentations to consumers or others; (c) been convicted of a felony; (d) been (to his/her knowledge) the subject of a criminal referral by judge or public agency; (e) had a telecommunications license or operating authority denied, suspended, revoked, or limited in any jurisdiction; (f) personally entered into a settlement, or held one of these positions with a company that has entered into settlement of criminal or civil claims involving violations of sections 17000 et seq., 17200 et seq., or 17500 et seq. of the California Business &amp; Professions Code, or of any other statute, regulation, or decisional law relating to fraud, dishonesty, failure to disclose, or misrepresentations to consumers or others; (g) been found to have violated any statute, law, or rule pertaining to public utilities or other regulated industries; or (h) entered into any settlement agreements or made any voluntary payments or agreed to any other type of monetary forfeitures in resolution of any action by any regulatory body, agency, or attorney general. (Check only one; see instruction 2.)</p> <p>If your answer to this question is anything other than an unqualified 'True', please attach documentation and describe any such bankruptcies, findings, judgments, convictions, referrals, denials, suspensions, revocations, limitations, settlements, voluntary payments or any other type of monetary forfeitures.</p>		
<b>9</b> To the best of applicant's knowledge,	True <input type="checkbox"/> Not true <input type="checkbox"/>	



neither applicant, any affiliate, officer, director, partner, nor owner of more than 10% of applicant, or any person acting in such capacity whether or not formally appointed, is being or has been investigated by the Federal Communications Commission or any law enforcement or regulatory agency for failure to comply with any law, rule or order. (Check only one; see instruction 2.)

If your answer to this question is anything other than an unqualified 'True,' please attach documentation and describe all such investigations, whether pending, settled voluntarily or resolved in another manner.

**10** Applicant will obtain a continuous bond, issued by a corporate surety

True (attach documentation) ☐

Not true ☐

company authorized to transact surety business in California, in the amount of \$25,000 that will be in effect during all periods of operation, and lists the California Public Utilities Commission as the obligee. Applicant will submit an Information-Only advice letter to the Director of the Communications Division containing a copy of the Applicant's executed bond within five business days after the effective date of the issuance of a registration license. (Check only one; see instruction 8.)

**11** Applicant has a minimum of (a) \$25,000 in the case of a switchless reseller OR

True (attach documentation) ☐

Not true ☐

(b) \$100,000 in the case of a facilities based applicant, in each case reasonably liquid and available to meet the firm's first-year expenses, including deposits required by local exchange carriers or interexchange carriers or (c) has profitable interstate operations to generate the required cash flow. (Check only one; see instruction 9.)

**12** Applicant has the required expertise to operate as carrier of the type indicated in the application.

True ☐

Not true ☐

**13** Applicant is eligible for an exemption from tariffing requirements as set out in Commission Decision 98-08-031 and seeks such an exemption. (Check only one; see

True ☐

Not true (Attach draft Tariff) ☐

instruction 8.)	
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Applications must be signed under penalty of perjury.

**(END OF ATTACHMENT C)**

# **ATTACHMENT D**

**ATTACHMENT D**  
**Wireless Registration Application<sup>62</sup>**

The Commission now requires Commercial Mobile Radio Service providers who did not hold a Certificate of Public Convenience and Necessity prior to August 10, 1994, and who intend to offer intrastate wireless telecommunications services within California, to file a Wireless Identification Registration containing the following information concurrent with undertaking such service. This information must clearly describe type of service to be offered (e.g. facilities based or resale), and be signed by at least one officer of the company.

1. The legal name of the business offering such service.
2. Any fictitious or other names under which such service will be offered.
3. The applicant's Federal Communications Commission (FCC) Federal Registration Number (FRN) and Universal Licensing System (ULS) wireless license call sign if facilities based registration is sought.
4. The local business address for the utility, if any.
5. The home office business address if different than the local business address.
6. The name and address of the designated agent for service of process.
7. Name, title, mailing address, e-mail address, and telephone number of the person to be contacted regarding the reported information.
8. The identity of the directors and principal officers of the business.
9. Names of all affiliated companies and their relationship, indicating if the affiliate is a regulated public utility.
10. Telephone numbers to which service or other customer complaints should be directed.

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62 This revises the registration information requested in D.94-10-031.

11. WIR Applicants shall provide a certification that neither registrant, any of its affiliates, officers, directors, partners, agents, or owners (directly or indirectly) of more than 10% of applicant, or anyone acting in a management capacity for applicant: (a) held one of these positions with a company that filed for bankruptcy; (b) been personally found liable, or held one of these positions with a company that has been found liable, for fraud, dishonesty, failure to disclose, or misrepresentations to consumers or others; (c) been convicted of a felony; (d) been (to his/her knowledge) the subject of a criminal referral by judge or public agency; (e) had a telecommunications license or operating authority denied, suspended, revoked, or limited in any jurisdiction; (f) personally entered into a settlement, or held one of these positions with a company that has entered into settlement of criminal or civil claims involving violations of sections 17000 *et seq.*, 17200 *et seq.*, or 17500 *et seq.* of the California Business & Professions Code, or of any other statute, regulation, or decisional law relating to fraud, dishonesty, failure to disclose, or misrepresentations to consumers or others; or (g) been found to have violated any statute, law, or rule pertaining to public utilities or other regulated industries; or (h) entered into any settlement agreements or made any voluntary payments or agreed to any other type of monetary forfeitures in resolution of any action by any regulatory body, agency, or attorney general.

11. Contact name, telephone number, and email address of the underlying facilities based carrier providing resold service.

PLEASE SEND THIS INFORMATION ALONG WITH A COPY OF THE WIRELESS RESALE AGREEMENT TO:

**California Public Utilities Commission  
Communications Division  
Wireless ID Registration (WIR)  
505 Van Ness Avenue**

**San Francisco, CA 94102**

The information should be filed with the Communications Division. Service can be commenced upon receiving the WIR number from the CPUC. You should receive a WIR number within a few days after the Commission has reviewed and approved the registration information and the information provided is satisfactory.

Within 30 days of a change in the status of any of the information items listed above, the carrier shall notify the Communications Division of such change in writing using the Regulatory/Official Contact Information Update Request form available at:

<http://www.cpuc.ca.gov/NR/rdonlyres/C4216E24-D29A-4EF4-88AD-8F68B274DAF5/0/UCSupupdateform010311.pdf>

Please return the complete form by Fax at 415-703-4405 or by e-mail to [telcofiling@cpuc.ca.gov](mailto:telcofiling@cpuc.ca.gov).

**(END OF ATTACHMENT D)**

# **ATTACHMENT E**

**ATTACHMENT E**

**SWORN AFFIDAVIT FOR WIRELESS REGISTRANT**

Name of Applicant/Company \_\_\_\_\_

My name is \_\_\_\_\_. I am \_\_\_\_\_ (Title) of  
\_\_\_\_\_ (Applicant). My personal knowledge of the facts stated herein  
has been derived from my employment with \_\_\_\_\_ (Applicant)

I affirm that \_\_\_\_\_ [Name of Applicant]:

- agrees to comply with all federal and state statutes, rules, and regulations, if granted the registration as requested in this application; and
- Certifies that all answers to the attached Application for Wireless Registration are true and correct;
- In the event Applicant's request for Wireless Registration is granted, Applicant agrees to post a continuous bond (i.e., there is no termination date on the bond) performance bond equivalent to in the amount of \$25,000 for the first year of operation or 10% of intrastate revenue (for subsequent years), issued by a corporate surety company authorized to transact surety business in California, and with the Commission listed as the obligee on the bond. Further, I will provide a copy of the executed performance bond to the Director of the Communications Division with the written notification to the Commission of acceptance of operating authority.
- Neither applicant, any of its affiliates, officers, directors, partners, agents, or owners (directly or indirectly) of more than 10% of applicant, or anyone acting in a management capacity for applicant: (a) held one of these positions with a company that filed for bankruptcy; (b) been personally found liable, or held one of these positions with a company that has been found liable, for fraud, dishonesty, failure to disclose, or misrepresentations to consumers or others; (c) been convicted of a felony; (d) been (to his/her knowledge) the subject of a criminal referral by judge or public agency; (e) had a



telecommunications license or operating authority denied, suspended, revoked, or limited in any jurisdiction; (f) personally entered into a settlement, or held one of these positions with a company that has entered into settlement of criminal or civil claims involving violations of sections 17000 *et seq.*, 17200 *et seq.*, or 17500 *et seq.* of the California Business & Professions Code, or of any other statute, regulation, or decisional law relating to fraud, dishonesty, failure to disclose, or misrepresentations to consumers or others; or (g) been found to have violated any statute, law, or rule pertaining to public utilities or other regulated industries; or (h) entered into any settlement agreements or made any voluntary payments or agreed to any other type of monetary forfeitures in resolution of any action by any regulatory body, agency, or attorney general. [If Applicant is unable to make this averment, Applicant should strike through this paragraph and provide with its Application an explanation of the circumstances which prevent such averment.]

- To the best of applicant's knowledge, neither applicant, any affiliate, officer, director, partner, nor owner of more than 10% of applicant, or any person acting in such capacity whether or not formally appointed, is being or has been investigated by the Federal Communications Commission or any law enforcement or regulatory agency for failure to comply with any law, rule or order. [If Applicant is unable to make this averment, Applicant should strike through this paragraph and provide with its Application an explanation of the circumstances which prevent such averment.]

I affirm and declare under penalty of perjury under the laws of the State of California, including Rule 1.1 of the California Public Utilities Commission's Rules of Practice and Procedure, that, to the best of my knowledge, all of the statements and representations made in this Application are true and correct.

**(END OF ATTACHMENT E)**

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Signature and title