

Decision \_\_\_\_\_

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

Application of Golden Bear Broadband, LLC for a Certificate of Public Convenience and Necessity in Order to Provide Full Facilities-Based and Resold Competitive Local Exchange Services.

Application 13-01-007  
(Filed January 8, 2013)

**DECISION GRANTING GOLDEN BEAR BROADBAND, LLC A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY IN ORDER TO PROVIDE FULL-FACILITIES BASED AND RESOLD COMPETITIVE LOCAL EXCHANGE SERVICE**

**1. Summary**

Pursuant to Public Utilities Code § 1001, we grant Golden Bear Broadband, LLC a certificate of public convenience and necessity to provide full facilities-based and resold local exchange telecommunications services in California subject to the terms and conditions set forth in the Ordering Paragraphs.

**2. Background**

On January 8, 2013, Golden Bear Broadband, LLC (Golden Bear Broadband), a limited liability corporation in California filed an application for a certificate of public convenience and necessity (CPCN) to provide limited facilities-based and resold telecommunications services in the service territories of Pacific Bell Telephone Company doing business as AT&T California (AT&T), Verizon California Inc. (Verizon), Citizens Telecommunications Company of California, Inc. (doing business as Frontier Communications of California

{Frontier}), Frontier Communications of the Southwest, Inc. (Frontier Southwest) and SureWest Communications<sup>1</sup> (SureWest).

Golden Bear Broadband proposes to provide dedicated private line special access services to business customers and carriers via a combination of use of the facilities of other providers and limited development of its own facilities in Northern California. If granted a California Advanced Services Fund request, Golden Bear Broadband may expand these services to provide broadband-enabled services to additional business and residential customers.

Golden Bear Broadband's principal place of business is located at 1804 Chestnut Street, Redding, CA, 96001.

On February 6, 2013 the assigned Administrative Law Judge (ALJ) sent a list of questions to Golden Bear Broadband. The Applicant submitted its response via email on February 7, 2013 (February 7 Response).

On February 13, 2013 the assigned ALJ sent a list of questions to Golden Bear Broadband. The Applicant submitted its response on March 18, 2013 (March 18 Response).

On April 5, 2013 the assigned ALJ issued a ruling seeking information on Golden Bear Broadband's services and how those services relate to the Commission's jurisdiction. On April 18, Golden Bear Broadband filed its response with the requested information (April 18 Response).

On June 20, 2013, Golden Bear Broadband filed an amended application stating its intent to seek a full facilities-based CPCN.

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<sup>1</sup> SureWest was formerly known as Roseville Telephone Company.

### 3. Jurisdiction

On April 5, 2013 the assigned ALJ issued a ruling seeking information on Golden Bear Broadband's services and how those services relate to the Commission's jurisdiction. On April 18, Golden Bear Broadband filed its response with the requested information.

Public Utilities Code § 216(a) defines the term "Public utility" to include a "telephone corporation," which in turn is defined in Public Utilities Code § 234(a) as "every corporation or person owning, controlling, operating, or managing any telephone line for compensation within this state."

Public Utilities Code § 710 states that the Commission "shall not exercise regulatory jurisdiction or control over Voice over Internet Protocol and Internet Protocol enabled services except as required or expressly delegated by federal law or expressly directed to do so by statute or as set forth in subdivision (c)." Public Utilities Code § 239 defines the relevant terms "Voice over Internet Protocol" and "Internet Protocol enabled service:"

239. (a) (1) "Voice over Internet Protocol" or "VoIP" means voice communications service that does all of the following:
- (A) Uses Internet Protocol or a successor protocol to enable real-time, two-way voice communication that originates from, or terminates at, the user's location in Internet Protocol or a successor protocol.
  - (B) Requires a broadband connection from the user's location.
  - (C) Permits a user generally to receive a call that originates on the public switched telephone network and to terminate a call to the public switched telephone network.
- (2) A service that uses ordinary customer premises equipment with no enhanced functionality that originates and terminates on the public switched telephone network, undergoes no net protocol

conversion, and provides no enhanced functionality to end users due to the provider's use of Internet Protocol technology is not a VoIP service.

- (b) "Internet Protocol enabled service" or "IP enabled service" means any service, capability, functionality, or application using existing Internet Protocol, or any successor Internet Protocol, that enables an end user to send or receive a communication in existing Internet Protocol format, or any successor Internet Protocol format through a broadband connection, regardless of whether the communication is voice, data, or video.

Golden Bear Broadband argues that its intention to provide intrastate special access service qualifies it as a telephone corporation, and therefore a public utility. We have previously stated that we have "jurisdiction over intrastate special access services."<sup>2</sup> Even though this conclusion was reached before the enactment of Public Utilities Code § 710, this new statute does not lead us to a different conclusion today. Public Utilities Code § 710 does not preclude our regulation of "non-VoIP and other non-IP enabled"<sup>3</sup> services such as the non-IP enabled special access that Golden Bear Broadband notes may be required by some customers.<sup>4</sup> Therefore, we agree with Golden Bear Broadband that it is a telephone corporation, and therefore a public utility subject to our jurisdiction.

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<sup>2</sup> Decision (D.) 02-12-081, Conclusion of Law 12.

<sup>3</sup> Public Utilities Code § 710(e) states: "This section does not affect any existing regulation of, proceedings governing, or existing commission authority over, non-VoIP and other non-IP enabled wireline or wireless service, including regulations governing universal service and the offering of basic service and lifeline service, and any obligations to offer basic service."

<sup>4</sup> April 18 Response at 2.

#### 4. California Environmental Quality Act (CEQA)

Pursuant to CEQA and Rule 2.4<sup>5</sup> of the Commission's Rules of Practice and Procedure, 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 the Proponent's Environmental Assessment and Response, Golden Bear Broadband's proposed construction activities will generally include the installation of new equipment in established, existing rights of way including trenches and conduits.<sup>6</sup>

These activities fall within the following classes of projects that are exempt from CEQA and for which neither an Environmental Impact Report 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.

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<sup>5</sup> Unless otherwise noted, items labeled "Rule" are from the Commission's Rules of Practice and Procedure.

<sup>6</sup> Golden Bear Broadband notes that its construction activities may be more significant if its California Advanced Services Fund application is approved, and that it will include a Proponents Environmental Assessment and other CEQA documentation along with its California Advanced Services Fund application.

Golden Bear Broadband's proposed activities involve construction of reasonably short utility extensions (Class 3). In order to provide its service, Golden Bear Broadband will install its equipment on existing utility poles or buildings, or in existing trenches, conduits, or other well-established rights of way. Exemption of these activities are consistent with Commission precedent. Golden Bear Broadband's proposed new construction activities are similar to those undertaken by other carriers that we have decided are categorically exempt from CEQA. See, e.g, D.06-04-063 (*ClearLinx Network Corporation*); D.06-04-067 (*CA-CLEC LLC*).

Golden Bear Broadband requests approval to utilize a procedure for expedited review of its projects once it is aware of a specific site(s) in which it plans construction. The proposed procedure tracks the expedited review procedure that we have approved for other carriers. Such a process will expedite CEQA review and is appropriate for the type of construction outlined here, which will be categorically exempt. By establishing this expedited review process, we are able to review the information on a specific project to confirm that it is categorically exempt from CEQA or to explain why further environmental review is required. At the same time, the proposed CEQA review process will enable Golden Bear Broadband to undertake construction of its projects in an efficient manner without experiencing delays caused by an unnecessarily protracted CEQA review.

Similar to the procedure approved for other carriers, the following procedure will be used to obtain Commission approval of Golden Bear Broadband's claimed CEQA exemptions for proposed construction projects:

- Golden Bear Broadband will provide the Commission's Energy Division with:

- A detailed description of the proposed project, including:
  - Customer(s) to be served;
  - The precise location of the proposed construction project; and
  - Regional and local site maps.
- A description of the environmental setting, to include at a minimum:
  - Cultural, historical, and paleontological resources;
  - Biological resources; and
  - Current land use and zoning.
- A construction workplan, to include:
  - Commission Preconstruction Survey Checklist – Archaeological Resources;
  - Commission Preconstruction Survey Checklist – Biological Resources;
  - A detailed schedule of construction activities, including site restoration activities;
  - A description of construction/installation techniques;
  - A list of other agencies contacted with respect to siting, land use planning, and environmental resource issues, including contact information; and
  - A list of permits required for the proposed project.
- A statement of the CEQA exemption(s) applicable to the proposed project; and
- Documentation and factual evidence sufficient to support a finding that the claimed exemption(s) is (are) applicable.
- The Energy Division will review Golden Bear Broadband's submission for the proposed project to confirm that the claimed exemption(s) from CEQA are applicable.

- Within 21 days from the date of Golden Bear Broadband's submittal, the Energy Division will issue either:
  - A Notice to Proceed (NTP) and file a Notice of Exemption with the State Clearinghouse, Office of Planning and Research, or
  - A letter of denial stating the specific reasons why the claimed exemption(s) are not applicable to the proposed project.

We have reviewed the application and Supplement and find that:

- Golden Bear Broadband's proposed facilities-based project activities are very limited;
- These activities would in almost all circumstances be very likely to qualify for an exemption from CEQA; and
- The proposed process for reviewing the applicability of CEQA exemptions to Golden Bear Broadband's facilities-based projects is not only adequate for the Commission's purposes as CEQA Lead Agency, but is also in the public interest because it enables Golden Bear Broadband to respond in a timely manner to requests for service without the delay or burden of a full CEQA review when such review is unnecessary.

We therefore approve Golden Bear Broadband's proposed process for Commission review of claimed CEQA exemptions for construction projects undertaken pursuant to Golden Bear Broadband's full facilities-based authority, based on the specific facts of this case with the following modifications related to the Commission's Energy Division review and approval or disapproval of the proposed exemptions.

- If the Energy Division disapproves Golden Bear Broadband's claimed CEQA exemption(s) and issues a letter of denial to Golden Bear Broadband, Golden Bear Broadband must either re-design the specific project and facilities and then reapply for a finding of exemption from CEQA, or file a formal application with

the Commission seeking the requisite approval and full CEQA review, before commencing any construction activities.

Golden Bear Broadband shall not perform any full facilities-based construction activities without first obtaining an NTP from the Energy Division or authorization by the Commission after the requisite environmental review.

We have previously determined that the public convenience and necessity require that competition be allowed in the provision of competitive local exchange service, Rulemaking (R.) 95-04-043/Investigation (I.) 95-04-044. Granting this application will benefit the public interest by expanding the availability of technologically advanced telecommunications services within the state.

#### **5. Financial Qualifications**

To be granted a CPCN, an applicant for authority to provide facilities based 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>7</sup> An 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>8</sup> In the application, Golden Bear Broadband provided a showing that \$100,000 plus an amount equal to the deposit required by AT&T, Verizon, Frontier, Frontier

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<sup>7</sup> The financial requirement for Competitive Local Exchange Carriers (CLEC) is contained in D.95-12-056, Appendix C. The financial requirement for Non-Dominant Interexchange Carriers (NDIEC) is contained in D.91-10-041.

<sup>8</sup> The requirement for Competitive Local Carrier (CLC) applicants to demonstrate that they have additional financial resources to meet any deposits required by underlying Local Exchange Carriers (LEC) and/or IECs is set forth in D.95-12-056, Appendix C. For NDIECs, the requirement is found in D.93-05-010.

Southwest, and SureWest would be available to Golden Bear Broadband for one year following certification. Since Golden Bear Broadband has provided documentation that it possesses a minimum of \$100,000 that is reasonably liquid and available, it has demonstrated that it has sufficient funds to meet its start-up expenses and has fulfilled this requirement.

Golden Bear Broadband proposed to initially interconnect with AT&T, Verizon, Frontier, Frontier Southwest, and SureWest. As stated above, Golden Bear Broadband has provided documentation that it has the funds available for the deposit required by AT&T, Verizon, Frontier, Frontier Southwest, and SureWest.

Therefore, no additional resources are required at this time to cover deposits.

## **6. Technical Qualifications**

To be granted a CPCN for authority to provide local exchange and interexchange service, an applicant must make a reasonable showing of managerial and technical expertise in telecommunications or a related business.<sup>9</sup> Golden Bear Broadband supplied biographical information on its management in Exhibit 10 to its application that demonstrated that it has sufficient expertise and training to operate as a telecommunications provider.

In its application, Golden Bear Broadband verified that, with limited exceptions, no one associated with or employed by Golden Bear Broadband as an affiliate, officer, director, partner, or owner of more than 10% of Golden Bear Broadband was previously associated with a telecommunications carrier that

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<sup>9</sup> D. 95-12-056 at Appendix C, Rule 4.A.

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 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. Golden Bear Broadband discloses three limited exceptions to this statement.<sup>10</sup>

One exception is that this Commission has found The Siskiyou Telephone Company, part owner of Golden Bear Broadband, guilty of a Rule 1 violation in D.11-03-030. This Commission has granted rehearing of D.11-03-030, and the matter is pending. Given the open rehearing, number of parties involved, and passage of time since the original proceeding, we find that this violation is insufficient to preclude granting Golden Bear Broadband a CPCN at this time.

Two other exceptions relate to the Ione Band of Miwok Indians (Ione Band), which through its subsidiaries, is a part owner of Golden Bear Broadband. The Ione Band has been investigated separately by the Federal Bureau of Investigations and the Internal Revenue Service. In both cases the investigations concerned internal matters not related to consumer protections and no charges were filed. These investigations are not material to Golden Bear Broadband's application.

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

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<sup>10</sup> A.13-01-007 at (S)(2)(c).

## **7. Tariff**

Commission staff reviewed Golden Bear Broadband's draft tariffs for compliance with Commission rules and regulations. The deficiencies are noted in Attachment A to this decision. In its compliance tariff filing, Golden Bear Broadband shall correct these deficiencies as a condition of our approval of its application.

## **8. Map of Service Territory**

To be granted a CPCN for authority to provide local exchange service, an applicant must provide a map of the service territories it proposes to serve.<sup>11</sup> In its application, Golden Bear Broadband incorporates by reference the service territories of AT&T, Verizon, Frontier, Frontier Southwest, and SureWest, in compliance with this requirement.

## **9. Rule 3.1(i) Statement**

Rule 3.1(i) sets forth the requirement that a utility filing an application under Pub. Util. Code § 1001, provide a statement regarding General Order (GO) 104-A, Section 2. Golden Bear Broadband states that it is not aware of any reportable matters pursuant to GO 104-A, Section 2. Golden Bear Broadband, therefore, has nothing to report under this rule.

On a going forward basis, though, Golden Bear Broadband must file all reports required of a public utility under Commission jurisdiction.

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<sup>11</sup> D.95-12-056 at Appendix C, Rule 4.E.

**10. Expected Customer Base**

Golden Bear Broadband provided its estimated customer base for the first and fifth years of operation in Exhibit 9 of its application. Therefore, Golden Bear Broadband has complied with this requirement.

**11. Conclusion**

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

The CPCN granted by this decision provides benefits to Golden Bear Broadband and corresponding obligations. Golden Bear Broadband receives authority to operate in the prescribed service territory, it can request interconnection with other telecommunications carriers in accordance with Section 251 of the Federal Communications Act (47 U.S.C. 251), and it receives access to public rights of way in California as set forth in D.98-10-058 subject to the CEQA requirements set forth in this decision. In return, Golden Bear Broadband is obligated to comply with all applicable Public Utilities Codes and Commission Rules, GOs, and decisions applicable to telecommunications carriers providing approved services. The applicable Codes, Rules, etc. include, but are not limited to consumer protection rules, tariffing, and reporting requirements. Moreover, Golden Bear Broadband is obligated to pay all Commission prescribed user fees and public purpose program surcharges as set forth in the Appendix B of this decision, to comply with CEQA, and to adhere to Pub. Util. Code

Section 451 which states that every public utility "...shall furnish and maintain such adequate, efficient, just, and reasonable service, instrumentalities, equipment, and facilities, including telephone facilities, as defined in Section 54.1 of the Civil Code, as are necessary to promote the safety, health, comfort, and convenience of its patrons, employees, and the public."

## **12. Request to File Under Seal**

Pursuant to Rule 11.4 of the Commission's Rules of Practice and Procedure, Golden Bear Broadband has filed motions for leave to file Exhibits 2-c, 6-c, and 7-c to the application as confidential materials under seal. Golden Bear Broadband represents that the information is sensitive, and disclosure could place Golden Bear Broadband at an unfair business disadvantage. We have granted similar requests in the past and do so here.

## **13. Motion of The California Association of Competitive Telecommunications Companies for Party Status**

On May 1, 2013 The California Association of Competitive Telecommunications Companies (CALTEL) filed a motion for party status in this proceeding. On May 16, 2013 Golden Bear Broadband filed a response to this motion. All evidence in this proceeding was submitted before CALTEL's motion was filed, and CALTEL does not present any plan for its participation in this proceeding. CALTEL's motion is denied.

In its motion, CALTEL states its concern that this application proceeding is not an appropriate venue for broad policy and legal decision making. Golden Bear Broadband responds that broad policy and legal decisions are not necessary in this application and observes that CALTEL has not advanced any arguments related to the ultimate issues in this proceeding. In fact, today's decision does

not reach any broad policy or legal decisions of the type CALTEL states are inappropriate for this type of proceeding.

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

In Resolution ALJ 176-3308, dated January 24, 2013 the Commission preliminarily categorized this application as ratesetting, and preliminarily determined that hearings were not necessary. No protests have been received. There is no apparent reason why the application should not be granted. Given these developments, a public hearing is not necessary, and it is not necessary to disturb the preliminary determinations.

#### **15. Comments on Proposed Decision**

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Section 311(g)(2) of the Public Utilities Code and Rule 14.6(c)(2), the otherwise applicable 30-day period for public review and comment is waived.

#### **16. Assignment of Proceeding**

Catherine J.K. Sandoval is the assigned Commissioner and Kevin R. Dudney is the assigned ALJ in this proceeding.

#### **Findings of Fact**

1. Notice of the application appeared on the Daily Calendar on January 18, 2013. No protests have been filed. A hearing is not required.
2. Golden Bear Broadband is a telephone corporation and a public utility as defined in Public Utilities Code § 234(a) and § 216(a).
3. The Commission is the Lead Agency for this project under CEQA.
4. Golden Bear Broadband's proposed construction activity falls within one or more CEQA categorical exemptions.
5. Golden Bear Broadband's authority to provide local services will not have a significant adverse effect upon the environment.

6. Golden Bear Broadband has a minimum of \$100,000 of cash or cash equivalent that is reasonably liquid and readily available to meet its start-up expenses.

7. Golden Bear Broadband has sufficient additional cash or cash equivalent to cover deposits that may be required by other telecommunications carriers in order to provide the proposed service.

8. Golden Bear Broadband's management possesses sufficient experience, knowledge, and technical expertise to provide local exchange services to the public.

9. With limited exceptions as discussed above, no one associated with or employed by Golden Bear Broadband as an affiliate, officer, director, partner, or owner of more than 10% of Golden Bear Broadband 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.

10. Except for the deficiencies identified in Attachment A to this decision, Golden Bear Broadband's draft tariffs comply with the Commission's requirements.

11. Golden Bear Broadband provided a map of the location of its proposed service territory.

12. Golden Bear Broadband has no information to report under Rule 3.1(i), which requires that a utility filing an application under Pub. Util. Code § 1001, provide a statement regarding compliance with GO 104-A, Section 2.

13. Golden Bear Broadband provided an estimate of its customer base for the first and fifth year of operation.

14. Pursuant to Rule 11.4, Golden Bear Broadband filed motions for leave to file confidential materials under seal, specifically Exhibits 2-c, 6-c, and 7-c to the application.

### **Conclusions of Law**

1. Golden Bear Broadband should be granted a CPCN to provide full facilities-based and resold local exchange telecommunications service in the service territories of AT&T, Verizon, Frontier, Frontier Southwest, and SureWest, subject to the terms and conditions set forth in the Ordering Paragraphs.

2. Golden Bear Broadband should be allowed to use the Energy Division 21-day CEQA exemption process.

3. Golden Bear Broadband, once granted a CPCN, should be subject to the applicable Commission rules, decisions, GOs, and statutes that pertain to California public utilities.

4. Golden Bear Broadband's initial tariff filing should correct the tariff deficiencies shown in Attachment A to this decision.

5. Golden Bear Broadband's motion to file under seal its Exhibits 2-c, 6-c, and 7-c to the application, should be granted for two years.

**O R D E R****IT IS ORDERED** that:

1. A Certificate of Public Convenience and Necessity is granted to Golden Bear Broadband to provide full facilities-based and resold local exchange telecommunications services in the territories of Pacific Bell Telephone, Verizon California Inc., Citizens Telecommunications Company of California, Inc., Frontier Communications of the Southwest, Inc. and SureWest Communications, subject to the terms and conditions set forth below.
2. Golden Bear Broadband may not offer competitive local exchange services until tariffs are filed with and authorized by this Commission, in accordance with General Order 96-B and as corrected for deficiencies set forth in Exhibit A.
3. The corporate identification number assigned to Golden Bear Broadband, U-7247-C, must be included in the caption of all original filings with this Commission, and in the titles of other pleadings filed in existing cases.
4. Golden Bear Broadband must obtain a performance bond of at least \$25,000 in accordance with Decision 13-05-035. 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 five days of acceptance of Certificate of Public Convenience and Necessity authority, Golden Bear Broadband must submit a Tier-1 advice letter to the Director of Communications, containing a copy of the license holder's executed bond, and submit a Tier-1 advice letter annually, but not later than March 31, with a copy of the executed bond.

5. Golden Bear Broadband must not allow its performance bond to lapse during any period of its operation. Pursuant to Decision 13-05-035, the Commission may revoke a Certificate of Public Convenience and Necessity if a carrier is more than 120 days late in providing the Director of the Communications Division a copy of its executed performance bond and the carrier has not been granted an extension of time by the Communications Division.

6. In addition to all the requirements applicable to competitive local exchange carriers and interexchange carriers included in Attachments B, C, and D to this decision, Golden Bear Broadband is subject to the Consumer Protection Rules contained in General Order (GO)168, and all applicable Commission rules, decisions, GOs, and statutes that pertain to California public utilities.

7. Golden Bear Broadband must file, in this docket, a written acceptance of the certificate granted in this proceeding within 30 days of the effective date of this order.

8. Golden Bear Broadband must annually pay the user fee and public purpose surcharges specified in Attachment B. Per the instructions in Exhibit E to Decision 00-10-028, the Combined California Public Utilities Commission Telephone Surcharge Transmittal Form must be submitted even if the amount due is \$0. Under Public Utilities Code § 405, carriers that are in default of reporting and submitting user fees for a period of 30 days or more will be subject to penalties including suspension or revocation of their authority to operate in California. In accordance with Decision 13-05-035, Golden Bear Broadband must pay a minimum user fee of \$100 or 0.18% of gross intrastate revenue, whichever is greater.

9. Prior to initiating service, Golden Bear Broadband must provide the Commission's Consumer Affairs Branch with the name and address of its designated contact person(s) for purposes of resolving consumer complaints. This information must be updated if the name or telephone number changes, or at least annually.

10. Golden Bear Broadband must notify the Director of the Communications Division in writing of the date that local exchange service is first rendered to the public, no later than five days after service first begins.

11. Golden Bear Broadband must file an affiliate transaction report with the Director of the Communications Division, in compliance with Decision 93-02-019, on a calendar year basis using the form contained in Attachment D.

12. Golden Bear Broadband must file an annual report with the Director of the Communications Division, in compliance with General Order 104-A, on a calendar-year basis with the information contained in Attachment C to this decision.

13. Golden Bear Broadband must file a tariff within 12 months of the effective date of this order, or its certificate will be cancelled.

14. The staff of the Commission's Energy Division is authorized to review, process, and act upon Golden Bear Broadband's requests for a determination that its full facilities-based construction activities are exempt from the requirements of the California Environmental Quality Act.

15. If Golden Bear Broadband wishes to engage in full facilities-based construction activities and believes that these activities are exempt from California Environmental Quality Act (CEQA), Golden Bear Broadband shall first apply to the Commission's Energy Division staff for a determination of exemption from CEQA using the following procedure set forth in Ordering Paragraph 16.

16. Golden Bear Broadband will provide the Commission's Energy Division with:

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

- d. A statement of the California Environmental Quality Act exemption(s) claimed to apply to the proposed project; and
- e. Documentation supporting the finding of exemption from California Environmental Quality Act.
- f. The Energy Division will then review the submittal and notify Golden Bear Broadband of either its approval or its denial of Golden Bear Broadband's claim for exemption from California Environmental Quality Act review within 21 days from the time that Golden Bear Broadband's submittal is complete.
- g. If the Energy Division approves Golden Bear Broadband's claimed California Environmental Quality Act exemption(s), the staff will prepare a Notice to Proceed and file a Notice of Exemption with the State Clearinghouse, Office of Planning and Research.
- h. If the Energy Division disapproves Golden Bear Broadband's claimed California Environmental Quality Act exemptions, the staff will issue to Golden Bear Broadband a letter which states the specific reasons that the claimed California Environmental Quality Act exemptions do not apply to the proposed project.
- i. If the Energy Division disapproves Golden Bear Broadband's claimed California Environmental Quality Act exemption(s), Golden Bear Broadband shall either re-design the specific project and facilities and then reapply for a finding of exemption from California Environmental Quality Act, or file a formal application with the Commission seeking the requisite approval and full California Environmental Quality Act review, before commencing any full facilities-based construction activities.

17. Golden Bear Broadband's motion to file under seal its Exhibits 2-c, 6-c, and 7-c is granted. The information will remain under seal for a period of two years after the date of this order. During this two-year period, this information will remain under seal and may not be viewed by any person other than the assigned Commissioner, the assigned Administrative Law Judge (ALJ), the Assistant Chief ALJ, or the Chief ALJ, except as agreed to in writing by Golden Bear Broadband or as ordered by a court of competent jurisdiction. If Golden Bear Broadband believes that it is necessary for this information to remain under seal for longer than two years, Golden Bear Broadband may file a new motion at least 30 days before the expiration of this limited protective order.

18. Application 13-01-007 is closed.

This order is effective today.

Dated \_\_\_\_\_, at San Francisco, California.

**ATTACHMENT A**

List of deficiencies in tariff filed by Golden Bear Broadband LLC (U-7247-C), in A13-01-007 to be corrected in its tariff compliance filing.

1. G.O. 96-B Sect 8.5.1 – U7247C is the Utility number. The title page and all the sheets in the tariff must carry the number in the upper left corner of the header.
2. G.O. 96-B Sect 8.5.4 - Tariff must show the map with the boundaries of the utility's service area and the location of the service area in relation to nearby cities, highways, or other reasonable reference points.
3. G.O. 96-B Sect 8.5.6 - Tariff must compile and publish in its tariffs a list of all contracts and deviations under which the utility provides service.
4. G.O. 96-B Sect 8.5.7 - Item 5 - Tariff must have special information required on forms such as notices to customers required on contracts, bills and deposit receipts.
5. G.O. 96-B Sect 8.5.7 - Item 8, D.95-07-054 App B - Rule 6A – Items 1 & 2 - Tariff must have terms and conditions of the rates and services that are provided to the customer. It also must have information about the customer rights to bring a complaint against the carrier if the carrier provides information in violation to the tariff.
6. G.O. 96-B Sect 8.5.7 - Item 11, D.95-07-054 App B - Rule 6B – Items 1 & 2 – Tariff must have information about notices by customer on discontinuation of service. The tariff also must include all the items under Item 2 namely items 1-8 explaining the format, procedures the customer uses to make payments to the carrier and contact information that shall be included in each notice.
7. G.O. 96-B Sect 8.5.7 - Item 12 – Tariff must mention where to get information on services and promotional offerings available from the utility.
8. G.O. 96-B Sect 8.5.7 - Item 15 – Tariff must include conditions to provide line extensions, advances and utility contributions to individuals and developers, deposits, refunds, ownership and maintenance.
9. G.O. 96-B Sect 8.5.7 - Item 16 – Tariff must include information that explains right of access to customer's premises and rights of the authorized personnel in the utility to make service connections.
10. G.O. 96-B Sect.8.5.8 – Tariff must include sample forms such as applications for service, regular bills, contract forms, notices, receipts.
11. D.95-07-054 App. B - Rule 2 – Tariff must include initiation of service details such as within 10 days the carrier will provide the confirmation letter setting forth the description of services ordered, terms and conditions and reason in case of denial of service.
12. D.95-07-054 App. B - Rule 9 – Tariff must include that bills are due and payable on presentation and the late payment date and charge which will be at least 15days after the date of presentation will be prominently displayed on the bill.

13. D.95-07-054 App. B – Rule 11 – Items A & B - Tariff must explain solicitation of customer authorization for service, termination, authorized and unauthorized transfer (slamming).
14. D.95-07-054 App. B – Rule 13 – Tariff must explain failure of performance due to causes beyond its control and have a maximum allowed liability of \$10K. The limit mentioned in the liability of the CLC is only \$2K which is incorrect.
15. D.95-07-054 App. B – Rule 14 – Tariff must explain the release of private or non-public customer information and disclosure on how customer’s private information might be used.
16. D.95-07-054 App. B – Rule 15 – Tariff must explain information regarding blocking of 900/976 pay per call telephone information services.
17. D.96-02-072 App E 8.J. (2) – Tariff must mention non published services that are offered by the carrier.
18. Res T-16901 – Tariff must restrict CPUC Reimbursement fee to be exempt only for directory advertisement and sales, terminal equipment, inter-utility and interstate services. The rest of the items shown are not allowed as per T-16901.
19. D.02-08-067 OP1, Attachment A – Tariff must explain the relocation of MPOB/LLDP regulation and limitations.

**(End of Attachment A)**

**ATTACHMENT B****REQUIREMENTS APPLICABLE TO COMPETITIVE LOCAL EXCHANGE CARRIERS AND INTEREXCHANGE CARRIERS**

1. Applicant must file, in this docket with reference to this decision number,<sup>1</sup> a written acceptance of the certificate granted in this proceeding within 30 days of the effective date of this order.
2. Applicant is subject to the following fees and surcharges that must be regularly remitted. Per the instructions in Exhibit E to Decision (D.) 00-10-028, the Combined California PUC Telephone Surcharge Transmittal Form must be submitted even if the amount due is \$0.
  - a. The Universal Lifeline Telephone Service Trust Administrative Committee Fund (Pub. Util. Code § 879);
  - b. The California Relay Service and Communications Devices Fund (Pub. Util. Code § 2881; D.98-12-073);
  - c. The California High Cost Fund-A (Pub. Util. Code § 739.3; D.96-10-066, at 3-4, App. B, Rule 1.C);
  - d. The California High Cost Fund-B (D.96-10-066, at 191, App. B, Rule 6.F.; D.07-12-054);
  - e. The California Advanced Services Fund (D.07-12-054);
  - f. The California Teleconnect Fund (D.96-10-066, at 88, App. B, Rule 8.G).
  - g. The User Fee provided in Pub. Util. Code §§ 431-435. The minimum annual User Fee is \$100, as set forth in D.13-05-035.

Note: These fees change periodically. In compliance with Resolution T-16901, December 2, 2004, Applicant must check the joint tariff for surcharges and fees filed by Pacific Bell Telephone Company (dba AT&T California) and apply the

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<sup>1</sup> Written acceptance filed in this docket does not reopen the proceeding.

current surcharge and fee amounts in that joint tariff on end-user bills until further revised. Current and historical surcharge rates can be found at <http://www.cpuc.ca.gov/PUC/Telco/Consumer+Information/surcharges.htm>.

Carriers must report and remit CPUC telephone program surcharges online using the CPUC Telecommunications and User Fees Filing System (TUFFS). Information and instructions for online reporting and payment of surcharges are available at <http://www.cpuc.ca.gov/PUC/Telco/Information+for+providing+service/userfee.htm>.

To request a user ID and password for TUFFS online filing and for questions, please e-mail [Telco\\_surcharges@cpuc.ca.gov](mailto:Telco_surcharges@cpuc.ca.gov).

Carriers must file and pay the PUC User Fee (see above item 2g) upon receiving the User Fee statement sent by the Commission. User Fees cannot be reported or paid online. Instructions for reporting filing are available at <http://www.cpuc.ca.gov/PUC/Telco/Information+for+providing+service/userfee.htm>.

Please call (415) 703-2470 for questions regarding User Fee reporting and payment.

3. Applicant must obtain a performance bond of at least \$25,000 in accordance with Decision 13-05-035. 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 five days of acceptance of Certificate of Public Convenience and Necessity authority, Applicant must submit a Tier-1 advice letter to the Director of Communications, containing a copy of the license holder's executed bond, and submit a Tier-1 advice letter annually, but not later than March 31, with a copy of the executed bond.

4. Applicant must not allow its performance bond to lapse during any period of its operation. Pursuant to Decision 13-05-035, the Commission may revoke a Certificate of Public Convenience and Necessity if a carrier is more than 120 days late in providing the Director of the Communications Division a copy of its executed performance bond and the carrier has not been granted an extension of time by the Communications Division.
5. Applicant is a competitive local exchange carrier (CLC). The effectiveness of its future tariffs is subject to the requirements of General Order 96-B and the Telecommunications Industry Rules (D.07-09-019).
6. Applicant is a non-dominant interexchange carrier (NDIEC). The effectiveness of its future NDIEC tariffs is subject to the requirement of General Order 96-B and the Telecommunications Industry Rules (D.07-09-019).
7. Tariff filings must reflect all fees and surcharges to which Applicant is subject, as reflected in #2 above.
8. Applicant must file a service area map as part of its initial tariff.
9. Prior to initiating service, Applicant must provide the Commission's Consumer Affairs Branch with the name and address of its designated contact person(s) for purposes of resolving consumer complaints. This information must be updated if the name or telephone number changes, or at least annually.
10. Applicant must notify the Director of the Communications Division in writing of the date that local exchange service is first rendered to the public, no later than five days after service first begins.

11. Applicant must notify the Director of the Communications Division in writing of the date local service is first rendered to the public within five days after service begins.
12. Applicant must keep its books and records in accordance with the Generally Accepted Accounting Principles.
13. In the event Applicant's books and records are required for inspection by the Commission or its staff, it must either produce such records at the Commission's offices or reimburse the Commission for the reasonable costs incurred in having Commission staff travel to its office.
14. Applicant must file an annual report with the Director of the Communications Division, in compliance with GO 104-A, on a calendar-year basis with the information contained in Attachment C to this decision.
15. Applicant must file an affiliate transaction report with the Director of the Communications Division, in compliance with D.93-02-019, on a calendar-year basis using the form contained in Attachment D. Applicant must ensure that its employees comply with the provisions of Pub. Util. Code § 2889.5 regarding solicitation of customers.
16. Within 60 days of the effective date of this order, Applicant must comply with Pub. Util. Code § 708, Employee Identification Cards, and notify the Director of the Communications Division in writing of its compliance.
17. If Applicant is 90 days or more late in filing an annual report, or in remitting the surcharges and fee listed in #2 above, and has not received written permission from the Communications Division to file or remit late, the Communications Division must prepare for Commission consideration a resolution that revokes Applicant's CPCN.

18. Applicant is exempt from Rule 3.1(b) of the Commission Rules of Practice and Procedure
19. Applicant is exempt from Pub. Util. Code §§ 816-830.
20. Applicant is exempt from the requirements of Pub. Util. Code § 851 for the transfer or encumbrance of property whenever such transfer or encumbrance serves to secure debt.
21. If Applicant decides to discontinue service or file for bankruptcy, it must immediately notify the Communications Division's Bankruptcy Coordinator.
22. Applicant must send a copy of this decision to concerned local permitting agencies no later than 30 days from the date of this order.

**(END OF ATTACHMENT B)**

**ATTACHMENT C****ANNUAL REPORT**

An original and a machine readable, copy using Microsoft Word or compatible format must be filed with the California Public Utilities Commission, State Office Building, 505 Van Ness Avenue, Room 3107, San Francisco, CA 94102-3298, no later than March 31st of the year following the calendar year for which the annual report is submitted.

Failure to file this information on time may result in a penalty as provided for in Pub. Util. Code §§ 2107 and 2108.

Required information:

20. Exact legal name and U # of the reporting utility.
21. Address.
22. Name, title, address, and telephone number of the person to be contacted concerning the reported information.
23. Name and title of the officer having custody of the general books of account and the address of the office where such books are kept.
24. Type of organization (e.g., corporation, partnership, sole proprietorship, etc.).  
If incorporated, specify:
  - a. Date of filing articles of incorporation with the Secretary of State.
  - b. State in which incorporated.
25. Number and date of the Commission decision granting the Certificate of Public Convenience and Necessity.
26. Date operations were begun.
27. Description of other business activities in which the utility is engaged.
28. List of all affiliated companies and their relationship to the utility. State if affiliate is a:
  - a. Regulated public utility.
  - b. Publicly held corporation.
29. Balance sheet as of December 31st of the year for which information is submitted.

30. Income statement for California operations for the calendar year for which information is submitted.
31. Cash Flow statement as of December 31st of the calendar year for which information is submitted, for California operations only.

For answers to any questions concerning this report, call (415) 703-2883.

**(END OF ATTACHMENT C)**

**ATTACHMENT D****CALENDAR YEAR AFFILIATE TRANSACTION REPORT**

**An original and a machine readable, copy using Microsoft Word and Excel, or compatible format must be filed with the California Public Utilities Commission, State Office Building, 505 Van Ness Avenue, Room 3107, San Francisco, CA 94102-3298, no later than May 1st of the year following the calendar year for which the annual report is submitted.**

1. Each utility must list and provide the following information for each affiliated entity and regulated subsidiary that the utility had during the period covered by the Annual Affiliate Transaction Report.
2. Form of organization (e.g., corporation, partnership, joint venture, strategic alliance, etc.);
3. Brief description of business activities engaged in;
4. Relationship to the utility (e.g., controlling corporation, subsidiary, regulated subsidiary, affiliate);
5. Ownership of the utility (including type and percent ownership)
6. Voting rights held by the utility and percent; and
7. Corporate officers.
8. The utility must prepare and submit a corporate organization chart showing any and all corporate relationships between the utility and its affiliated entities and regulated subsidiaries in #1 above. The chart must have the controlling corporation (if any) at the top of the chart, the utility and any subsidiaries and/or affiliates of the controlling corporation in the middle levels of the chart, and all secondary subsidiaries and affiliates (e.g., a subsidiary that in turn is owned by another subsidiary and/or affiliate) in the lower levels. Any regulated subsidiary must be clearly noted.

9. For a utility that has individuals who are classified as “controlling corporations” of the competitive utility, the utility must only report under the requirements of #1 and #2 above any affiliated entity that either (a) is a public utility or (b) transacts any business with the utility filing the annual report excluding the provision of tariff services.

10. Each annual report must be signed by a corporate officer of the utility stating under penalty of perjury under the laws of the State of California (CCP 2015.5) that the annual report is complete and accurate with no material omissions.

11. Any required material that a utility is unable to provide must be reasonably described and the reasons the data cannot be obtained, as well as the efforts expended to obtain the information, must be set forth in the utility’s Annual Affiliate Transaction Report and verified in accordance with Section I-F of Decision 93-02-019.

12. Utilities that do not have affiliated entities must file, in lieu of the annual transaction report, an annual statement to the Commission stating that the utility had no affiliated entities during the report period. This statement must be signed by a corporate officer of the utility, stating under penalty of perjury under the laws of the State of California (CCP 2015.5) that the annual report is complete and accurate with no material omissions.

**(END OF ATTACHMENT D)**