

Decision \_\_\_\_\_

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

Application of Five9, Inc. for Registration as an Interexchange Carrier Telephone Corporation pursuant to the provisions of Public Utilities Code Section 1013.

Application 14-08-025  
(Filed August 25, 2014)

**DECISION ADOPTING A SETTLEMENT AGREEMENT AND GRANTING FIVE9 INCORPORATED A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO PROVIDE LIMITED FACILITIES-BASED AND RESOLD INTEREXCHANGE SERVICE**

**Summary**

This decision adopts the proposed Settlement Agreement between the Safety and Enforcement Division and Five9, Inc. (Five9) to provide limited facilities-based and resold interexchange service within California. Among other things the Settlement Agreement requires Five9 to pay a penalty of \$10,000 to the General Fund to pay retroactive surcharges and fees plus interest and comply fully with all applicable regulatory and legal requirements. Pursuant to Public Utilities Code Section 1001, we grant Five9, a Certificate of Public Convenience and Necessity to provide resold interexchange service in California subject to the terms and conditions set forth in the Ordering Paragraphs.<sup>1</sup>

---

<sup>1</sup> While this application was filed pursuant to Pub. Util. Code § 1013, an expedited and ministerial registration process, the application was protested. As a result, it did not qualify for registration process, resulting in assignment to an administrative law judge and removal from the registration track. It has therefore been evaluated as a CPCN under § 1001.

**1. Background**

On August 25, 2014, Five 9, Incorporated (Five 9 or Applicant) a Delaware corporation authorized to do business in California filed an application for a certificate of public convenience and necessity (CPCN) to provide limited facilities-based and resold telecommunications services in California. Five9's principal place of business is located at 40000 Executive Parkway, Suite 400, San Ramon, California.

On October 2, 2014, the Safety and Enforcement Division (SED) protested the application of Five9. SED contends that Five9 operated in California without prior California Public Utilities Commission (Commission) authorization in violation of Public Utilities Code (Pub. Util. Code) Section 1013.

On October 24, 2014, a prehearing conference (PHC) was held in San Francisco to establish the service list for the proceeding, discuss the scope of the proceeding, and develop a procedural timetable for the management of the proceeding. During the PHC, both parties agreed with the determination that no hearings would be necessary and that the application could be resolved based on filed documents. In addition, both parties expressed an interest in settling the issues in dispute.

On November 19, 2014, the assigned Administrative Law Judge (ALJ) requested additional information from Five9 necessary for consideration of its application for a CPCN. Five9 provided the requested information on December 8, 2014.

In an effort to efficiently proceed with this application, parties agreed to work expeditiously to resolve issues in dispute. On January 12, 2014, parties notified the ALJ that outstanding issues had been resolved. On January 26, 2014

SED and Five9 filed a settlement agreement with the Commission and moved for Commission approval.

## **2. Jurisdiction**

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

Five9 proposes to provide limited-facilities based and resold interexchange service in California. Five9’s telecommunications services are offered as an integrated part of its cloud-based contact center software. Five9 is a telephone corporation and a public utility subject to our jurisdiction.

## **3. Issues Raised by the SED Protest**

SED argues that Five9 has been operating as telephone corporation in California since January 3, 2003 without prior Commission authorization in violation of California Pub. Util. Code § 1013. SED asks the Commission to consider imposing penalties against Five9 for its apparent violations of Pub. Util. Code § 1013.

Five9 contends that it provides what might be considered resold telecommunications services incidental to its core business. Five9 provides cloud-based software services to its clients through Five9’s “virtual contact center.” Five9 explains it has provided its cloud-based contact center software supporting inbound and outbound contact center services that allows its clients’ agents to interact with their customers. Five9 states that inbound and outbound customer calls use the Public Switched Telephone Network and are delivered though circuits leased from telecommunications carriers, Five9 owned public

internet access connections bridging calls from telecommunications carriers, or client owned telecommunication circuits terminated directly into Five9 data centers.

Five9 maintains that it primarily generates revenue by selling subscriptions related to its use of Virtual Contact Center cloud platform and that it provides limited telephony as a convenience to its customers. In 2006, Five9 engaged an attorney to explain to the Federal Communications Commission (FCC) why Five9 did not believe it was a telecommunications provider subject to FCC jurisdiction. In 2008, Five 9 responded to an inquiry from the Commissions Consumer Protection and Safety Division<sup>2</sup> but has no record indicating a response from the Commission.

In 2012, Five9 engaged the law firm of Jones Day to evaluate whether Five9 might be subject to FCC jurisdiction. Based on this review Five9 determined that it would register with the FCC. Five9's FCC Registration number is 0022289409. Five9 also began the process of registration with the Commission. Five9 explains in its application that it had to pull an extensive amount of data from archived records to determine the amount of taxable revenue subject to California's jurisdiction and calculate California surcharges owed.

Five9 proposes to pay \$148,021 to cover surcharges that would have been paid to the Commission for Five9's operations from January 2003 through December 31, 2013. Five9 asks the Commission not to impose a penalty for its failure to register because Five9 relied in good faith upon the erroneous advice of

---

<sup>2</sup> Presently renamed as the Safety Enforcement Division.

prior counsel, its voluntary filing of this application, and its willingness to pay retroactive surcharges due since January 2003.

#### **4. Resolution of Protested Issue through a Settlement Agreement**

On January 26, 2015, SED and Five9 jointly motioned for approval of a settlement agreement. After settlement discussions, the parties agreed to a joint factual statement of the case upon which they based the resolution of the issues in dispute. Five9 also acknowledged that it did not seek Commission authority prior to offering its services in California and that it will fully meet its regulatory and legal obligations and its responsibilities to its customers and members of the public in California going forward.

Pursuant to the proposed Settlement Agreement, Five9 agreed to pay a \$10,000 penalty to resolve the legal issues raised by SED to the State of California General Fund. In addition, Five9 will pay retroactive surcharges and user fees totaling \$148,021<sup>3</sup> based on its intrastate telecommunication revenue from 2003 to 2013, when that activity commenced as an adjunct to selling its cloud-based contact center software. Five9 will also pay \$14,000 in interest for the retroactive surcharge remittances at an interest rate of 10%, consistent with Commission General Order (GO) 153, Section 11.4. These payments shall be made to the Commission's Fiscal Office for deposit with the State's General Fund within 30 calendar days from the date of the Commission approval of this settlement agreement.

---

<sup>3</sup> SED states that it verified the amount of surcharges and use fees due with the Communications Division.

We review this uncontested settlement pursuant to Rule 12.1(d), which requires that, prior to approval, the Commission must find a settlement “reasonable in light of the whole record, consistent with the law, and in the public interest.”

SED and Five9 are the only parties to this application, and represent the only affected interests. Nothing in the Settlement Agreement contravenes any statutory provisions or prior Commission Decisions. Five9’s application, the Protest, and Settlement Agreement, provide sufficient information for the Commission to assess the reasonableness of the Settlement Agreement. Nothing in the Settlement Agreement contravenes the law; Five9 accepts the authority of the Commission and agrees that it will meet its regulatory and legal obligations and responsibilities in California. Five9 acknowledges that it did not obtain the required authority prior to its operations in California, and as a result, it will pay \$10,000 to the State’s General Fund.

The Settlement Agreement resolves a potentially time-consuming and disruptive dispute and avoids future litigation. The benefits to the public including the payment to the General Fund, and avoidance of litigation, clearly outweigh the benefits of continued litigation with its associated cost and uncertainty of outcome.

We conclude that the Settlement Agreement is reasonable in light of the record as a whole, consistent with the law, and in the public interest. Accordingly, we adopt the Settlement Agreement.

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

The CEQA requires the Commission act as the designated lead agency to assess the potential environmental impact of a project in order that adverse

effects are avoided, alternatives are investigated, and environmental quality is restored or enhanced to the fullest extent possible. Since Five9 states that it does not intend to construct any facilities other than equipment to be installed in existing buildings or structures, it can be seen with certainty that there is no possibility that granting this application will have an adverse impact upon the environment. Before it can construct facilities other than equipment to be installed in existing buildings or structures, Five9 must file for additional authority, and submit to any necessary CEQA review.

## **6. Financial Qualifications**

To be granted a CPCN, an applicant for authority to provide limited-facilities based and resold 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>4</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>5</sup> In the application, Five9 provided financial documentation showing that it exceeded the requisite \$100,000 plus an additional \$25,000 sufficient to cover any deposits that might be required by AT&T California (AT&T), Verizon California Inc. (Verizon), Citizens Telephone Company (Citizens), and SureWest and that the funds would be available to Five9 for one year following certification. Since

---

<sup>4</sup> The financial requirement for Competitive Local Exchange Carriers is contained in Decision (D.) 95-12-056, Appendix C. The financial requirement for non-dominant interexchange carriers is contained in D.91-10-041.

<sup>5</sup> The requirement for competitive local carrier applicants to demonstrate that they have additional financial resources to meet any deposits required by underlying Local Exchange Carriers and/or IECs is set forth in D.95-12-056, Appendix C. For Non-Dominant Interexchange Carriers, the requirement is found in D.93-05-010.

Five9 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.

Five9 proposed to initially interconnect with AT&T, Verizon, Citizens, and SureWest. As stated above, Five9 has provided documentation that it has funds above the minimum \$25,000 for any deposit required by AT&T, Verizon, Citizens, and SureWest. Therefore, no additional resources are required at this time to cover deposits.

## **7. Technical Qualifications**

To be granted a CPCN for authority to provide interexchange service, an applicant must make a reasonable showing of managerial and technical expertise in telecommunications or a related business.<sup>6</sup> Five9 supplied biographical information and employment history for its management in its application<sup>7</sup> and the information is detailed and identical to the information that would be provided on individual resumes. Five9 demonstrated that it has sufficient expertise and training to operate as a telecommunications provider.

In its application, Five9 verified that, with the qualifications discussed in detail below, no one associated with or employed by Five9 as an affiliate, officer, director, partner, or owner of more than 10% of Five9 was previously associated with a telecommunications carrier that filed for bankruptcy, was sanctioned by the FCC 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

---

<sup>6</sup> D.95-12-056 at Appendix C, Rule 4.A.

<sup>7</sup> See Application at Supplement to Question 2.



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, or 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 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.

Five9 explained in Supplement 9 to the Application that Mr. Acosta, Ms. Ubias, Mr. Zwarenstein, Ms. Alexy, and Mr. Walsh held positions in companies that had filed for bankruptcy, had been the subject of litigation, and or criminal investigation.<sup>8</sup> These matters have either been resolved or remain in litigation for the benefit of Five9. Finally, Five9 requested review of the Universal Service Administrative Company (USAC) order rejecting Five9's request that the time period for which it would have to register be limited to 2008-2012. As a result Five9's obligation to make contributions to the Universal Service Fund (USF) for the years 2003-2007 is currently pending before the FCC under WC Docket Number 06-122. Five9's request for review of the USAC order rejecting Five9's claim for credit of USF fee amounts Five9 paid to its underlying

---

<sup>8</sup> Charges were dropped upon the recommendation of the Quezon City Prosecutor (Phillippines) after Five9 responded to a subpoena duces tecum.

wholesale carriers from 2008-2012 to avoid duplicative payments remains pending.

Five 9 filed an International Section 214 application with the FCC International Bureau as an international reseller of common carrier services and requested special temporary authorization (STA) status on January 20, 2013. The STA was granted and the full application remains pending.

Five9 is participating in an ongoing investigation by the FCC Enforcement Bureau for potential violations of the Communications Act of 1934 due to Five9's providing international telecommunications service without first obtaining FCC Authorization. Five9 indicates it is being cooperative in the ongoing investigation.<sup>9</sup>

Five9 provided a list of additional compliance filings with the FCC that are pending as part of its good faith effort to resolve outstanding compliance issues.<sup>10</sup>

In each instance Five9 and or its officers have resolved the issue or are in compliance with ongoing proceedings. Five9's actions indicate that it is working toward being in compliance with both state and federal agencies going forward. For the above reasons, we find that Five9 meets the requirements of D.95-12-056.

---

<sup>9</sup> FCC Enforcement Bureau Investigation number EB-12-IH-1676.

<sup>10</sup> Examples of compliance filings currently pending included filing of its International Traffic and Revenue Report, Customer Proprietary Network Information certification, and certification regarding geographic rate averaging.

**8. Exemption from Tariff Requirement**

Five9 has requested an exemption from tariffing requirements pursuant to the requirements set out in D.98-08-031. Five9 has agreed to abide by the requirements and consumer protection rules set forth in D.98-08-031, as such rules may be modified from time to time. Five9 is eligible to provide detariffed service in accordance with D.98-08-031. Five9 also requested that it be exempt from the notice requirements of Telecommunications Industry Rule 5 and GO 96-B because it does not provide any residential service. As noted above, Five9 provides telephone service only to commercial customers as an integrated part of Five9's cloud based call center software.

Five9 never provided any service pursuant to a tariff, Five9 requested exemption from the tariff requirement in the instant application for a CPCN. As a result, Five9 is not required to undertake the detariffing procedure outlined by Rule 5.1.

Five9 must post all detariffed rates, terms, and conditions of service on an internet site pursuant to Rule 5.2 of the Telecommunications Industry Rules in GO 96-B. However, Five9 may limit access to this information to individual Five9 customers and is exempt from the Rule 5.2(ii) requirement that the information be available without requiring personal identifying information because Five9 does not provide telecommunications service to any residential customers; Five9 only provides telecommunications service to customers who purchase its cloud-based call center software; and Five9 separately negotiates the terms and conditions with each customer. By requiring that the information be provided to each customer, the Commission will ensure that Five9 customers are aware of the rates, terms and conditions for the telecommunications service they are receiving but limiting the availability of that information to the customer will

allow Five9 to negotiate individual contracts based on its software contracts without compromising market sensitive data.

Five9 also must notify customers of higher rates or charges, or more restrictive terms or conditions or withdrawal of service or transfer of ownership or customer base pursuant to Rule 5.3 of the Telecommunications Industry Rules in GO 96-B. If Five9 decides to provide residential service in the future it must meet all notice requirements set forth in Telecommunications Industry Rule 5 and GO 96-B.

### **9. Expected Customer Base**

Five9 provided its estimated customer base for the first and fifth years of operation in its Response to ALJ Inquiry on December 8, 2014. Five9 estimates that in its first year of operation it had approximately 30 customers.<sup>11</sup> Five9 had 1,717 customers in its fifth year. As of October 31, 2014, Five9 had 2,327 customers and states that approximately 98 percent purchase telecommunications service. Therefore, Five9 has complied with this requirement.

### **10. Request for Treatment as a Non-dominant Carrier**

Five9 requests treatment as a non-dominant interexchange carrier, which would include exemption from the requirements of Pub. Util. Code §§ 816-830 concerning stocks and security and § 851 concerning the encumbrance and transfer of utility property. The Commission detailed its rules regarding exemption of non-dominant carriers in D.85-01-008, and subsequently modified in D.85-07-081 and D.85-11-044. We grant Five9's request for non-dominant

---

<sup>11</sup> Due to software limitations, Five9's access to records prior to 2007 is limited.

interexchange carrier status, provided that they follow all rules detailed in the above referenced decisions.<sup>12</sup>

## **11. Conclusion**

We conclude that the application conforms to our rules for certification as an interexchange carrier. Accordingly, we grant Five9 a CPCN to provide limited facilities-based and resold interexchange telecommunications service in California subject to compliance with the terms and conditions set forth in the Ordering Paragraphs.

The CPCN granted by this decision provides benefits to Five9 and corresponding obligations. Five9 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, Five9 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, and reporting requirements. Moreover, Five9 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

---

<sup>12</sup> While the Commission has granted exemption from §§ 816 – 830 to others, exemption from §§ 851-854 has not been granted previously and is not granted here.

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 (Include only if requested by applicant)**

Pursuant to Rule 11.4 of the Commission’s Rules of Practice and Procedure, Five9 moved for leave to file the confidential portions of the Application and its exhibits under seal.<sup>13</sup> Five9 represents that the information is sensitive, and disclosure could place Five9 at an unfair business disadvantage. We have granted similar requests in the past and do so here.

**13. Categorization and Need for Hearings**

In Resolution ALJ 176-3342, dated September 11, 2014 the Commission preliminarily categorized this application as ratesetting, and preliminarily determined that hearings were not necessary. On October 2, 2014, SED filed a protest to the application. SED and Five9 submitted a settlement for Commission approval on January 26, 2014. As a result of the settlement agreement the application is no longer protested.

---

<sup>13</sup> Five9 filed both a public version and a confidential version of the Application with the Commission. The confidential information is redacted in the public version. Review of the application confirms that the information redacted is limited non-public and market sensitive information.

**14. Waiver of Comments**

Pursuant to Rule 14.6(b) of the Commission's Rules of Practice and Procedure, in an uncontested matter that grants the relief requested the 30-day public review and comment period required by Section 311 of the Public Utilities Code is waived. Accordingly, this matter was placed on the Commission's agenda directly for prompt action.

**15. Assignment of Proceeding**

Carla Peterman is the assigned Commissioner and Katherine Kwan MacDonald is the assigned ALJ in this proceeding.

**Findings of Fact**

1. Notice of the application appeared on the Daily Calendar on September 4, 2014. On October 2, 2014, the SED protested the application.
2. Five9 acknowledged that it did not obtain Commission authority prior to offering telecommunications service in California.
3. On January 26, 2015, a Joint Motion for Approval of Settlement Agreement was filed to resolve contested issues. The Settlement Agreement provides that Five9 will pay retroactive surcharges and user fees totaling \$148,021; \$14,000 in interest for the retroactive surcharge remittances; and a \$10,000 penalty.
4. The Settlement Agreement is consistent with applicable law and Commission precedent and in the public interest.
5. Five9 is a telephone corporation and a public utility as defined in Pub. Util. Code §§ 234(a) and 216(a).
6. Five9 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. Five9 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. Five9's management possesses sufficient experience, knowledge, and technical expertise to provide local exchange services to the public.

9. No one associated with or employed by Five9 as an affiliate, officer, director, partner, or owner of more than 10% of Five9 was: previously associated with a telecommunications carrier that filed for bankruptcy; was sanctioned by the FCC 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. Five9 does not provide any residential service.

11. Five9 only provides telecommunications service to customers who purchase its cloud-based contact center software.

12. Five9 meets the qualifications for exemption from tariffing requirements and Five 9 has agreed to abide by the consumer protection rules adopted in D.98-08-031.

13. Five9 requests exemption from certain notice requirements in Telecommunications Industry Rule 5 and GO 96-B.

14. Five9 requests non-dominant interexchange carrier treatment.

15. Five9 provided a map of the location of its proposed service territory.



16. Five9 provided an estimate of its customer base for the first and fifth year of operation.

17. Five9 will not be constructing facilities.

18. Pursuant to Rule 11.4, Five9 filed motions for leave to file confidential materials under seal, including supplemental information to the application marked as confidential.

### **Conclusions of Law**

1. The Settlement Agreement should be adopted.

2. Ten percent annual interest is an appropriate rate consistent with General Order 153, section 11.4.

3. Five9 should be granted a CPCN to provide limited facilities-based and resold inter-exchange telecommunications service in California, subject to the terms and conditions set forth in the Ordering Paragraphs.

4. Five 9, once granted a CPCN, should be subject to the applicable Commission rules, decisions, GOs, and statutes that pertain to California Public Utilities.

5. Five9 should be granted an exemption from the requirement to file tariffs.

6. Five9 should be required to post applicable rates, charges, terms and conditions for their detariffed service to an internet site pursuant to Telecommunications Industry Rule 5.2 but should be allowed to require personal identifying information because Five9 does not provide residential service and only provides service to customers who purchase its cloud-based call center software.

7. Five9 should be granted non-dominant interexchange carrier status, subject to Commission rules and regulations applicable to non-dominant

interexchange carriers including, D.85-01-008, D.85-07-081, D.85-11-044, and D.10-09-017.

8. Five9's motion to file under seal its confidential version of the application including supplemental information to the application marked as confidential should be granted for three years.

9. Because of the public interest in competitive interexchange services, the following order should be effective immediately.

### **O R D E R**

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

1. The Joint Motion for Approval of Settlement Agreement between Five9, Incorporated (Five9) and the California Public Utilities Commission's Safety and Enforcement Division that was filed on January 26, 2015 is granted. Five9 shall comply with the terms and conditions set forth in the Settlement Agreement provided in Attachment E.

2. Five9 Incorporated shall pay retroactive surcharges and user fees in the amount of \$148,021 within 30 days of the issuance of this decision. Payment shall be made payable to the California Public Utilities Commission and mailed or delivered to the Commission's Fiscal Office at 505 Van Ness Avenue, Room 3000, San Francisco, CA 94102. The check or money order shall include the statement "For deposit to the Commission program budgets per Decision XX-XX-XXX."

3. Five9 Incorporated shall pay \$14,000 in interest for the retroactive surcharge remittances at an interest rate of 10 percent, consistent with Commission General Order 153, section 11.4. Payment shall be made within 30 days of the issuance of this decision. Payment shall be made payable to the

California Public Utilities Commission and mailed or delivered to the Commission's Fiscal Office at 505 Van Ness Avenue, Room 3000, San Francisco, CA 94102. Each check or money order shall include the statement "For deposit to the Commission program budgets per Decision XX-XX-XXX."

4. Five9 Incorporated shall pay a penalty of \$10,000 to the State of California General Fund within 30 days of the issuance of this decision. Payment shall be made payable to the California Public Utilities Commission and mailed or delivered to the Commission's Fiscal Office at 505 Van Ness Avenue, Room 3000, San Francisco, CA 94102. Each check or money order shall include the statement "For deposit to the General Fund per Decision XX-XX-XXX."

5. A certificate of public convenience and necessity is granted to Five9, Incorporated to provide limited facilities-based and resold interexchange telecommunications services in California, subject to the terms and conditions set forth below.

6. Five9, Incorporated (Five9) must provide all detariffed rates, terms, and conditions of service on an internet site pursuant to Rule 5.2 of the Telecommunications Industry Rules in General Order 96-B to each customer but may require identifying information to gain access to this information. Five9 shall file a Tier-1 Advice Letter with the Communications Division of the California Public Utilities Commission showing compliance with this requirement within 120 days of the issuance of this decision.

7. The corporate identification number assigned to Five9 Incorporated, Unsold 7275-C, must be included in the caption of all original filings with the California Public Utilities Commission, and in the titles of other pleadings filed in existing cases.

8. Five9, Incorporated (Five9) 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 California Public Utilities Commission must be listed as the obligee on the bond. Within five days of acceptance of its certificate of public convenience and necessity authority, Five9, must submit a Tier-1 Advice Letter (AL) to the Director of Communications, containing a copy of the license holder's executed bond, and submit a Tier-1 AL annually, but not later than March 31, 2015 with a copy of the executed bond.

9. Five9, Incorporated must not allow its performance bond to lapse during any period of its operation. Pursuant to Decision 13-05-035, the California Public Utilities 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.

10. In addition to all the requirements applicable to interexchange carriers included in Attachments B, C, and D to this decision, Five9, Incorporated is subject to the Consumer Protection Rules contained in General Order 168, and all applicable Commission rules, decisions, General Orders, and statutes that pertain to California Public Utilities.

11. Five9, Incorporated 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.

12. Five9, Incorporated 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. Applicant must pay a minimum user fee of \$100 or 0.18% of gross intrastate revenue, whichever is greater. Under Public Utilities Code Section 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.

13. Within 10 days of the issuance of this Decision, Five9, Incorporated must provide the California Public Utilities 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.

14. Five9, Incorporated must provide the California Public Utilities Commission's Communications Division with the name and address of its designated regulatory/official contact persons(s) within ten (10) days of the issuance of this Decision. This information must be provided electronically, using the "Regulatory/Official Contact Information Update Request" found at <http://www.cpuc.ca.gov/PUC/telco/Information+for+providing+service/>. This information must be updated if the name or telephone number changes, or at least annually.

15. Five9, Incorporated 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.

16. Five9, Incorporated 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.

17. Five9, Incorporated's motion to file under seal the confidential version of the Application, including supplemental information marked as confidential, is granted for a period of three years after the date of this order. During this three year period, this information shall not be publicly disclosed except on further California Public Utilities Commission order or Administrative Law Judge ruling. If Five9, Incorporated (Five 9) believes that it is necessary for this information to remain under seal for longer than three years, Five9, Incorporated may file a new motion showing good cause for extending this order by no later than 30 days before the expiration of this order.

18. Application 14-08-025 is closed.

This order is effective today.

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

**ATTACHMENT A**

**Five9, Incorporated is exempt from the requirement to file a tariff. Five 9 is assigned Utility number U-7275-C.**

**(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>14</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

---

<sup>14</sup> Written acceptance filed in this docket does not reopen the proceeding.



the joint tariff for surcharges and fees filed by Pacific Bell Telephone Company (dba AT&T California) and apply the current surcharge and fee amounts in that joint tariff on end-user bills until further revised. 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/Surcharge+Remittance.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 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).

4. 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. In addition, Applicant must provide the Commission's Communications Division with the name and address of its designated regulatory/official contact persons(s). This information must be provided electronically, using the "Regulatory/Official Contact

Information Update Request” found at

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

This information must be updated if the name or telephone number changes, or at least annually.

5. 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.

6. 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.

7. Applicant must keep its books and records in accordance with the Generally Accepted Accounting Principles.

8. 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.

9. 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.

10. 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.

11. Applicant must ensure that its employees comply with the provisions of Pub. Util. Code § 2889.5 regarding solicitation of customers.

12. 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.

13. 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.

14. Applicant is exempt from Rule 3.1(b) of the Commission Rules of Practice and Procedure

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

16. 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.

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

18. 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:

1. Exact legal name and U # of the reporting utility.
2. Address.
3. Name, title, address, and telephone number of the person to be contacted concerning the reported information.
4. Name and title of the officer having custody of the general books of account and the address of the office where such books are kept.
5. Type of organization (*e.g.*, corporation, partnership, sole proprietorship, etc.).

If incorporated, specify:

- a. Date of filing articles of incorporation with the Secretary of State.
- b. State in which incorporated.
6. Number and date of the Commission decision granting the Certificate of Public Convenience and Necessity.
7. Date operations were begun.
8. Description of other business activities in which the utility is engaged.
9. List of all affiliated companies and their relationship to the utility. State if affiliate is a:
  - a. Regulated public utility.
  - b. Publicly held corporation.
10. Balance sheet as of December 31st of the year for which information is submitted.

11. Income statement for California operations for the calendar year for which information is submitted.
12. Cash Flow statement as of December 31<sup>st</sup> 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.

- Form of organization (*e.g.*, corporation, partnership, joint venture, strategic alliance, etc.);
- Brief description of business activities engaged in;
- Relationship to the utility (*e.g.*, controlling corporation, subsidiary, regulated subsidiary, affiliate);
- Ownership of the utility (including type and percent ownership)
- Voting rights held by the utility and percent; and
- Corporate officers.

2. The utility 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.

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

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

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

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

**(END OF ATTACHMENT D)**