

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Netly, LLC for a certificate of public convenience and necessity to provide (i) full facilities-based and resold competitive local exchange service throughout the service territories of AT&T California, Frontier California Inc., Consolidated Communications of California Company, and Citizens Telecommunications Company of California; and (ii) full facilities-based and resold non-dominant interexchange services on a statewide basis.

Application 18-01-014

**DECISION GRANTING NETLY, LLC A
CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY
IN ORDER TO PROVIDE COMPETITIVE FULL FACILITIES-BASED AND
RESOLD COMPETITIVE LOCAL EXCHANGE NON-DOMINANT
INTEREXCHANGE SERVICE WITHIN CALIFORNIA**

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**DECISION GRANTING NETLY, LLC A
CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY
IN ORDER TO PROVIDE COMPETITIVE FULL FACILITIES-BASED AND
RESOLD COMPETITIVE LOCAL EXCHANGE AND NON-DOMINANT
INTEREXCHANGE SERVICE WITHIN CALIFORNIA**

Summary

Pursuant to Public Utilities Code § 1001, we grant Netly, LLC a Certificate of Public Convenience and Necessity (CPCN) to provide competitive full facilities-based and resold local and exchange telecommunications services and non-dominant interexchange service in California subject to the terms and conditions set forth in the Ordering Paragraphs.

This proceeding is closed.

1. Background

On January 24, 2018, Netly, LLC (Netly, LLC or Applicant), a Delaware Limited Liability Company authorized to do business in California, filed an application requesting a Certificate of Public Convenience and Necessity (CPCN) to provide competitive full facilities-based and resold local exchange telecommunications services and non-dominant interexchange service within California, specifically in the service territories of AT&T California (AT&T), Frontier California, Inc. (Frontier), Consolidated Communications of California Company (Consolidated, and Citizens Telecommunications Company of California (Citizens). No parties protested or responded to the Application.

Netly, LLC. Netly, LLC principal place of business is located at 1612 burgundy Road, Encinitas, California 92024.

No protests or responses to the application were filed. On April 26, 2018, a telephonic prehearing conference (PHC) was held to determine parties, discuss the scope, the schedule, and other procedural matters. On May 9, 2018, the

Assigned Commissioner's Scoping Memo and Ruling (Scoping Memo) was issued. All rulings by the assigned Commissioner and the ALJ are affirmed herein.

2. Jurisdiction

Public Utilities Code (Pub. Util. Code) § 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."

Netly, LLC proposes to provide high speed fiber to commercial and governmental entities on an "open access"¹ basis. Access will be granted to multiple service providers so they can provide wholesale services to their subscribers in the local access network, without the need for each service provider to install their own fiber access network to the premises. Netly proposes to provide these services through a combination of its own facilities and facilities to be leased from a variety of entities consisting of telecommunications carriers, governmental entities, and utilities. When available at commercially reasonable rates, Netly will use existing street furniture, traffic lights, light poles, utility poles, buildings and other support structures as well as existing fiber and conduit in the rights-of-way. Otherwise, Netly seeks to engage in the installation of new poles and underground conduit (though which it will install fiber) primarily in existing public

¹ The fiber will be made available to commercial services providers (not individual residents) on terms where the service providers offer their subscribers high speed (~1GB;/second) connectivity to premises such as residences, schools, businesses, and government facilities (FTTP).

rights-of-way, existing private utility easements or new easements or license agreements with the individual premises owner.

Netly, LLC is a telephone corporation and a public utility subject to our jurisdiction.

3. Full Facilities-Based CPCN

In its application, Netly, LLC requests authorization for a CPCN to provide competitive full facilities-based and resold competitive local exchange and non-dominant interexchange telecommunications services. A Proponent's Environmental Assessment (PEA) is required for a full facilities-based CPCN. In the PEA Netly, LLC provided in its Application, Netly, LLC proposes to install its facilities: 1) in or on existing street furniture, traffic lights, light poles, utility poles, towers, buildings, fiber conduits, ducts, rights-of-way, trenches and other facilities and structures of other entities; and 2) minor ground-disturbing activities primarily in existing, well-used rights-of-way and utility easements in developed areas.

In addition to installation of fiber and related equipment areas as discussed in the previous paragraph, Netly, LLC's activities will include:

1. Installation of or replacement of a limited number of new poles in existing rights-of-way and utility easements for the attachment of its fiber ("new pole installation");
2. Small-scale trenching (at a typical depth of 1-3 feet and typical width of 1-6 inches) and installation of underground conduit (average diameter of 1-4 inches) in existing rights-of-way and utility easements, typically extending less than 1 mile but in some instances up to 5 miles ("small-scale trenching and underground conduit installation") (occasionally, a portion of this activity will take place on private property in existing easements); and

3. Micro-trenching (sometimes using a directional bore method) and installation of small segments of underground conduit in existing rights-of-way to make lateral connections between equipment on a pole and underground fiber runs to the individual premises (“micro- trenching and installation of laterals”).

4. California Environmental Quality Act (CEQA)

Pursuant to CEQA and Rule 2.4² of the Commission’s Rules of Practice and Procedure (Rules), 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 PEA, Netly, LLC proposed construction activities will generally include: 1) installations in or on existing street furniture, traffic lights, light poles, utility poles, towers, buildings, fiber conduits, ducts, rights-of-way, trenches and other facilities and structures of other entities; and 2) minor ground-disturbing activities primarily in existing, well-used rights-of-way and utility easements in developed areas. Netly, LLC asserts that its proposed construction qualifies for a CEQA exemption.³

The Commission finds that 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

² Unless otherwise noted, items labeled “Rule” are from the Commission’s Rules of Practice and Procedure.

³ See D.09-11-021 and D.13-07-032.

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.
- Class 4 Exemption: minor public or private alterations in the condition of land, water, and/or vegetation which do not involve the removal of healthy, mature, scenic trees except for forestry and agricultural purposes. Among other things, this includes filling of earth into previously excavated land with material compatible with the natural features of the site, and minor trenching and backfilling where the surface is restored. 14 CCR Section 304.
- Class 32 (“in fill”) Exemption: applies where: i) the projects are consistent with the applicable general plan designation and applicable general plan policies and applicable zoning designation and regulation; ii) proposed development occurs within city limits on a project site of no more than five acres substantially surrounded by urban uses; iii) the project site has no value as habitat for endangered, rare or threatened species; iv) approval of the project would not result in significant effects relating to traffic, noise, air quality or water quality; and v) the site can be adequately served by all required utilities and public services. 14 CCR Section 15332.

Netly’s proposed activities involve minor alteration of existing structures and facilities (Class 1), and construction of reasonably short utility extensions and installation of a limited number of poles (Class 3). The primary ground-disturbing activity will be limited to minor trenching and backfilling (Class 4) and often will occur in heavily-developed urban and suburban areas meeting the criteria for urban in-fill (Class 32).

Exemption of the above described activities is consistent with Commission precedent. Netly, LLC's proposed new construction activities are similar to those undertaken by other carriers that we have found to be categorically exempt from CEQA. *See, e.g.,* D.09-11-021 and D.13-07-032.

Netly does not know at this time all of the specific areas where it may have to undertake construction because additional construction will be contingent upon specific customer requests. Netly therefore requests approval to utilize a procedure for expedited review of Netly's 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 Netly, LLC 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 Netly, LLC's claimed CEQA exemptions for proposed construction projects:

- Netly, LLC 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 work-plan, 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 Netly, LLC's submission for the proposed project to confirm that the claimed exemption(s) from CEQA are applicable.
- Within 21 days from the date of Netly, LLC'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 supplemental information and find that:

- Netly, LLC'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 Netly, LLC'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 Netly, LLC 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 Netly, LLC's proposed process for Commission review of claimed CEQA exemptions for construction projects undertaken pursuant to Netly, LLC'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 Netly, LLC's claimed CEQA exemption(s) and issues a letter of denial to Netly, LLC, Netly, LLC 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.

Netly, LLC 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 95-04-043/Investigation 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 competitive full facilities-based and resold local exchange services must demonstrate that it has a minimum of \$100,000⁴ cash or cash equivalent, reasonably liquid and readily available to meet the firm's start-up expenses.⁵ An applicant must also demonstrate that it has sufficient additional resources to cover all deposits required by local exchange carriers (LEC) and/or interexchange carriers in order to provide the proposed service.⁶ Netly, LLC provided a bank statement showing that a certificate of deposit of \$100,000 would be available to Netly, LLC for one year following certification, for start-up expenses and sufficient funds to cover start-up expenses. Since Netly states that it is not required to post deposits with its underlying telecommunications carriers, it does not need to demonstrate that it has resources to cover deposits required by LECs. Since Netly, LLC has provided documentation that it possesses a minimum of \$100,000 for start-up

⁴ See A.18-01-014 at pg. 10-11 and Exhibit D.

⁵ 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.

⁶ The requirement for Competitive Local Carrier (CLC) applicants to demonstrate that they have additional financial resources to meet any deposits required by underlying LECs and/or

Footnote continued on next page

expenses, it has demonstrated that it has sufficient funds to meet its start-up expenses and has fulfilled this requirement.

Netly, LLC's financial documentation will be subject to verification and review by the Commission for one year to ensure that such funds are available.

6. Technical Qualifications

To be granted a CPCN for authority to provide competitive local exchange and interexchange service, an applicant must make a reasonable showing of managerial and technical expertise in telecommunications or a related business.⁷ Netly, LLC supplied biographical information on its management in Exhibit D to its application, that demonstrates it has sufficient expertise and training to operate as a telecommunications provider.

In its application, Netly, LLC verified that no one associated with or employed by Netly, LLC as an affiliate, officer, director, partner, or owner of more than ten percent of Netly, LLC: (a) held one of these positions with a company that filed for bankruptcy; (b) been personally found liable, or held one of these positions with a company that has been found liable, for fraud, dishonesty, failure to disclose, or misrepresentations to consumers or others; (c) been convicted of a felony; (d) been the subject of a criminal referral by judge or public agency; (e) had a telecommunications license or operating authority denied, suspended, revoked, or limited in any jurisdiction; (f) personally entered into a settlement, or held one of these positions with a company that has entered into settlement of criminal or civil claims involving violations of §§ 17000, *et seq.*,

IECs is set forth in D.95-12-056, Appendix C. For NDIECs, the requirement is found in D.93-05-010.

⁷ D.95-12-056 at Appendix C, Rule 4.A.

§§ 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; (g) been found to have violated any statute, law, or rule pertaining to public utilities or other regulated industries; (h) entered into any settlement agreements or made any voluntary payments or agreed to any other type of monetary forfeitures in resolution of any action by any regulatory body, agency, or attorney general; or (i) is being, or has been investigated by the Federal Communications Commission or any law enforcement or regulatory agency for failure to comply with any law, rule or order.⁸

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

7. Tariffs

Netly, LLC has requested detariffed status and may be exempt from the requirement to file tariffs provided that Netly, LLC complies with the consumer protection rules identified in D.98-08-031.

8. Map of Service Territory

To be granted a CPCN for authority to provide competitive local exchange service, an applicant must provide a map of the service territories it proposes to serve.⁹ In its application, Netly, LLC provided a map of the location of its proposed service territory, in compliance with this requirement.

⁸ These certifications are required by D.13-05-035, Ordering Paragraph 14.

⁹ D.95-12-056 at Appendix C, Rule 4.E.

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. Netly, LLC states that it is not aware of any reportable matters pursuant to GO 104-A, Section 2; but in the future, Netly LLC may sell services and/or lease fiber to other companies, including Netly, LLC, in which the officers, directors, or members of Netly, LLC are also the officers, directors, or stockholders of the purchasing/leasing company. Netly, LLC, therefore, has nothing to report under this rule at this time.

On a going forward basis, though, Netly, LLC must file all reports required of a public utility under Commission jurisdiction.

10. Expected Customer Base

Netly, LLC provided its estimated customer base for the first and fifth years of operation in Section XV of its application. Therefore, Netly, LLC has complied with this requirement.

11. Safety Considerations

With the adoption of the *Safety Policy Statement of the California Public Utilities Commission* on July 10, 2014, the Commission has, among other things, heightened its focus on the potential safety implications of every proceeding. We have considered the potential safety implications here. We feel satisfied that Netly, LLC will meet the Commission's minimum safety goals and expectations of competitive local exchange carriers (CLECs) because: (1) Netly, LLC has taken steps to meet the financial requirements as set forth in this decision for a facilities-based CLEC, and (2) Netly, LLC is a public utility that is required pursuant to Pub. Util. Code § 451 to "... furnish and maintain such adequate, efficient, just and reasonable service, instrumentalities, equipment, and facilities,

including telephone facilities ... as are necessary to promote the safety, health, comfort, and convenience of its patrons, employees, and the public.”

12. Conclusion

We conclude that the application conforms to our rules for certification as a competitive local exchange carrier. Accordingly, we grant Netly, LLC a CPCN to provide competitive full facilities-based and resold local exchange telecommunications services and non-dominant interexchange service within California, specifically in the service territories of AT&T, Frontier, Consolidated, and Citizens, as set forth in the Ordering Paragraphs.

The CPCN granted by this decision provides benefits to Netly, LLC and corresponding obligations. Netly, LLC receives authority to operate in the prescribed service territory, and this authority enables Netly, LLC, pursuant to section 251 of the 1934 Communications Act, as amended by the 1996 Telecommunications Act (47 U.S.C. 251), to interconnect with telecommunications carriers.¹⁰ This authority also enables Netly, LLC to obtain 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, Netly, LLC is obligated to comply with all applicable Public Utilities Codes and Commission Rules, GOs, and decisions applicable to telephone corporation providing approved services. The applicable statutes, rules, General Orders, and decisions include, but are not limited to consumer protection rules, tariffing, and reporting requirements. Moreover, Netly, LLC is obligated to pay all Commission

¹⁰ The California Public Utilities Code uses the term “telephone corporation.” Its counterpart in federal law is a “telecommunications carrier.”

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 § 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 § 54.1 of the Civil Code, as are necessary to promote the safety, health, comfort, and convenience of its patrons, employees, and the public."

Netly, LLC must obtain a performance bond of at least \$25,000 in accordance with Decision (D.) 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 its CPCN, Netly, LLC must submit a Tier 1 advice letter to the Communications Division, containing a copy of the license holder's executed performance bond, and subsequently submit a Tier 1 advice letter annually, but not later than March 31 of each subsequent year, with a copy of the executed bond.

Netly, LLC must not allow its performance bond to lapse during any period of its operation. Pursuant to D.13-05-035, the Commission may revoke a CPCN if Netly, LLC is more than 120 days late in providing the Director of the Communications Division a copy of its executed performance bond and has not been granted an extension of time by the Director of the Communications Division.

The corporate identification number assigned to Netly, LLC, U-7344-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.

13. Request to File Under Seal

Pursuant to Rule 11.4 of the Commission's Rules of Practice and Procedure, Pub. Util. Code §583, and General Order 66-C, Netly, LLC filed a motion for leave to file its Exhibits D and E to the application as confidential materials under seal. Netly, LLC represents that the information is sensitive, and disclosure could substantial harm its ability to compete, as well as its ability to negotiate contracts with vendors and customers. We have granted similar requests in the past and do so here.

14. Categorization and Need for Hearings

In Resolution ALJ 176-3412 dated February 8, 2018, the Commission preliminarily categorized this application as ratesetting, and preliminarily determined that hearings were necessary. No protests have been received. Since no protests were filed and we required no further information from Netly, LLC, it was determined that hearings were not necessary. This change to the preliminary determination was made in the Scoping Memo, issued on October 13, 2017, and is affirmed herein.

15. Waiver of Comments

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to § 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

Clifford Rechtschaffen is the assigned Commissioner and Dan Burcham is the assigned ALJ in this proceeding.

Findings of Fact

1. Netly, LLC is a telephone corporation and a public utility as defined in Pub. Util. Code § 234(a) and § 216(a).
2. Netly, LLC's proposed construction activities appear to fall within one or more CEQA categorical exemptions.
3. Netly, LLC's authority to provide telecommunications services will not have a significant adverse effect upon the environment.
4. Netly, LLC has a minimum of \$100,000 of cash or cash equivalent that is reasonably liquid and readily available to meet its start-up expenses and to cover deposits that may be required.
5. Netly, LLC's management possesses sufficient experience, knowledge, and technical expertise to provide local exchange services to the public.
6. No one associated with or employed by Netly, LLC as an affiliate, officer, director, partner, agent, or owner of more than 10 percent of Netly, LLC: (a) held one of these positions with a company that filed for bankruptcy; (b) been personally found liable, or held one of these positions with a company that has been found liable, for fraud, dishonesty, failure to disclose, or misrepresentations to consumers or others; (c) been convicted of a felony; (d) been the subject of a criminal referral by judge or public agency; (e) had a telecommunications license or operating authority denied, suspended, revoked, or limited in any jurisdiction; (f) personally entered into a settlement, or held one of these positions with a company that has entered into settlement of criminal or civil claims involving violations of §§ 17000, *et seq.*, §§ 17200, *et seq.*, or §§ 17500, *et seq.*, of the California Business & Professions Code, or of any other statute, regulation, or decisional law relating to fraud, dishonesty, failure to disclose, or misrepresentations to consumers or others; or (g) been found to have violated

any statute, law, or rule pertaining to public utilities or other regulated industries; (h) entered into any settlement agreements or made any voluntary payments or agreed to any other type of monetary forfeitures in resolution of any action by any regulatory body, agency, or attorney general; or (i) is being, or has been investigated by the Federal Communications Commission or any law enforcement or regulatory agency for failure to comply with any law, rule or order.

7. Netly, LLC provided a map of the location of its proposed service territory.

8. Netly, LLC 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 General Order (GO) 104-A, Section 2.

9. Netly, LLC provided an estimate of its customer base for the first and fifth year of operation.

Conclusions of Law

1. Netly, LLC should be granted a CPCN to provide competitive full facilities-based local and resold local exchange telecommunications services and non-dominant interexchange service in the State of California, subject to the terms and conditions set forth in the Ordering Paragraphs.

2. Netly, LLC should be allowed to use the Energy Division 21-day CEQA exemption process.

3. Netly, LLC, once granted a CPCN, should be subject to the applicable Commission rules, decisions, General Orders, and statutes that pertain to California public utilities.

4. The corporate identification number assigned to Netly LLC, U7344C, should be included in the caption of all original filings with this Commission, and in the titles of other pleadings filed in existing cases.

5. Netly, LLC should be granted an exemption from the requirement to file tariffs.

6. Netly, LLC's motion to file under seal its Exhibit D to the application as well as its January 30, 2018 response to the ALJ's ruling requesting information, should be granted for three years.

O R D E R

IT IS ORDERED that:

1. A Certificate of Public Convenience and Necessity is granted to Netly, LLC to provide competitive full facilities-based and resold local exchange telecommunications services and non-dominant inter exchange service in the State of California, subject to the terms and conditions set forth below.

2. The corporate identification number assigned to Netly, LLC, U-7344-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.

3. Netly, LLC must file, in this docket, a written acceptance of the certificate granted in this proceeding within 30 days of the effective date of this decision. Written acceptance filed in this docket does not reopen the proceeding.

4. Netly, LLC is exempt from the requirement to file tariffs provided that it complies with the consumer protection rules identified in Decision 98-08-031.

5. The certificate granted by this decision will expire if not exercised within 12 months of the effective date of this decision.

6. Netly, LLC must notify the Director of the Communications Division in writing at cdcompliance@cpuc.ca.gov of the date that local exchange service is first rendered to the public, no later than five days after service first begins.

7. Netly, LLC shall be granted an exemption from the requirement to file tariffs.

8. Netly, LLC 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 its certificate of public convenience and necessity authority, Netly, LLC must submit a Tier 1 advice letter to the Communications Division, 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.

9. Netly, LLC 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 of the Communications Division a copy of its executed performance bond and the carrier has not been granted an extension of time by the Director of the Communications Division.

10. 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, Netly, LLC 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.

11. Netly, LLC must pay the public purpose surcharges specified in Attachment B, and the Combined California Public Utilities Commission Telephone Surcharge Transmittal Form must be submitted even if the amount due is \$0.

12. Netly, LLC must pay an annual minimum user fee of \$100 or 0.23 percent 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. Prior to initiating service, Netly, LLC 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.

14. Prior to initiating service, Netly, LLC must provide the Commission's Communications Division with the name and address of its designated regulatory/official contact person(s). This information must be provided electronically, using the "Regulatory/Official Contact Information Update Request" found at <http://www.cpuc.ca.gov/communications> . This information must be updated if the name or telephone number changes, or at least annually.

15. Netly, LLC must submit an affiliate transaction report to the Director of the Communications Division at cdcompliance@cpuc.ca.gov, in compliance with Decision 93-02-019, on a calendar year basis using the form contained in Attachment D.

16. Netly, LLC must submit an annual report to the Director of the Communications Division at cdcompliance@cpuc.ca.gov, in compliance with General Order 104-A, on a calendar-year basis with the information contained in Attachment C to this decision.

17. The staff of the Commission's Energy Division is authorized to review, process, and act upon Netly, LLC requests for a determination that its full

facilities-based construction activities are exempt from the requirements of the California Environmental Quality Act.

18. If Netly, LLC wishes to engage in full facilities-based construction activities and believes that these activities are exempt from California Environmental Quality Act, Netly, LLC shall first apply to the Commission's Energy Division staff for a determination of exemption from California Environmental Quality Act by providing the Commission's Energy Division (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 Netly, LLC of either its approval or its denial of Netly, LLC's claim for exemption from California Environmental Quality Act review within 21 days from the time that Silica submittal is complete.

19. If the Commission's Energy Division approves Netly, LLC claimed California Environmental Quality Act (CEQA) exemption(s), the staff shall prepare a Notice to Proceed and file a Notice of Exemption with the State Clearinghouse, Office of Planning and Research. If the Energy Division disapproves Netly, LLC's claimed CEQA exemptions, the staff shall issue to Netly, LLC a letter which states the specific reasons that the claimed CEQA exemptions do not apply to the proposed project.

20. If the Commission's Energy Division rejects Netly, LLC claimed California Environmental Quality Act (CEQA) exemption(s), Netly, LLC shall 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 full facilities-based construction activities.

21. Netly, LLC's motion to file under seal its Exhibits D and E to the application is granted for a period of three years after the date of this decision. During this three year period, this information shall not be publicly disclosed except on further Commission order or Administrative Law Judge ruling. If Netly, LLC believes that it is necessary for this information to remain under seal for longer than three years, Netly, LLC may file a new motion showing good cause for extending this order by no later than 30 days before the expiration of this order.

22. Application 18-01-014 is closed.

This decision is effective today.

Dated _____, at Sacramento, California.

A.18-01-014 ALJ/DB3/mph

ATTACHMENT A

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(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,¹¹ a written acceptance of the certificate granted in this proceeding within 30 days of the effective date of this order.
2. The certificate granted and the authority to render service under the rates, charges, and rules authorized will expire if not exercised within 12 months of the date of this decision.
3. 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).

¹¹ Written acceptance filed in this docket does not reopen the proceeding.

- 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 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/General.aspx?id=1124>.

- 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/General.aspx?id=1010>. To request a user ID and password for TUFFS online filing and for questions, please e-mail Telco_surcharges@cpuc.ca.gov.
- Carriers must submit and pay the PUC User Fee (see above item 3g) upon receiving the User Fee statement sent by the Commission. Instructions for reporting filing are available at <http://www.cpuc.ca.gov/General.aspx?id=1009>. Please call (415) 703-2470 for questions regarding User Fee reporting and payment.

4. If 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).

5. If 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).

6. Tariff submissions must reflect all fees and surcharges to which Applicant is subject, as reflected in #3 above.

7. 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 its certificate of public convenience and necessity authority, Applicant must submit a Tier-1 advice letter to the Communications Division, 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.

8. 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 Communications Division a copy of its executed performance bond and the carrier has not been granted an extension of time by the Director of the Communications Division.

9. Applicants providing local exchange service must include a service area map as part of their initial tariff.

10. 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.

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

12. Applicant must notify the Director of the Communications Division in writing at cdcompliance@cpuc.ca.gov of the date that local exchange service is first rendered to the public, no later than five days after service first begins.

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

14. 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.

15. Applicant must submit an annual report to the Director of the Communications Division at cdcompliance@cpuc.ca.gov, in compliance with GO 104-A, on a calendar-year basis with the information contained in Attachment C to this decision.

16. Applicant must submit an affiliate transaction report to the Director of the Communications Division at cdcompliance@cpuc.ca.gov, in compliance with D.93-02-019, on a calendar-year basis using the form contained in Attachment D.

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

18. 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 at cdcompliance@cpuc.ca.gov of its compliance.

19. If Applicant is 90 days or more late in filing an annual report, or in remitting the surcharges and fee listed in #3 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.

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

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

22. 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.

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

24. 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 submitted to 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 submit 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 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 submitted to 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 submit, 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)