

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of ExteNet Systems, Inc., for
a Certificate of Public Convenience and
Necessity to Provide Full Facilities-
Based and Resold Competitive Local
Exchange and Interexchange Services.

Application 18-11-002

**DECISION GRANTING EXTENET SYSTEMS, INC. A CERTIFICATE OF
PUBLIC CONVENIENCE AND NECESSITY IN ORDER TO PROVIDE FULL
FACILITIES-BASED AND RESOLD COMPETITIVE LOCAL EXCHANGE AND
INTEREXCHANGE SERVICE**

Summary

Pursuant to Public Utilities Code § 1001, we grant ExteNet Services, Inc., a certificate of public convenience and necessity to provide full facilities-based and resold competitive local exchange and interexchange service in California subject to the terms and conditions set forth in the Ordering Paragraphs.

This proceeding is closed.

1. Background

On November 1, 2018, ExteNet Services, Inc. (ESI), a corporation authorized to do business in California, filed an application for a certificate of public convenience and necessity (CPCN) to provide full facilities-based and resold Local Exchange and Interexchange competitive services in the service territories of Pacific Bell Telephone Company d/b/a AT&T California (AT&T California), Frontier California Inc. (Frontier California),¹ Citizens Telecommunications Company of California, Inc. d/b/a Frontier Communications of California (Frontier Communications), and Consolidated Communications of California Company (Consolidated Communications, formerly SureWest Telephone)² and interexchange service in California.

ESI is a privately held Delaware corporation which has operating permits in most states throughout the United States.³ ESI's principal place of business is in Lisle, Illinois. The ultimate parent of ESI is Mount Royal Holdings, LLC, a Delaware limited liability company which is owned by multiple private equity firms and individuals in the management of ESI, none of which own a majority share.⁴

¹ Frontier California was formerly Verizon California, Inc. (Verizon). As of April 1, 2016, Verizon's operations in California were acquired and are now operated by Frontier California, Inc., pursuant to Decision (D.) 15-12-005.

² SureWest Telephone was acquired by Consolidated Communications Inc. in 2012, pursuant to D.12-06-004, and SureWest Telephone changed its name to Consolidated Communications of California Company as of January 1, 2016.

³ See Application at 2. ESI represents in its application that it holds authorizations to provide telecommunications services in 43 states, plus the District of Columbia.

⁴ *Ibid.*

ESI itself is the sole owner of six subsidiaries, each one authorized to provide intrastate telecommunications services in at least one state.⁵ Among these six subsidiaries is one holding a certificate authorizing it to conduct business as a telephone corporation in California; that entity is known as ExteNet Systems (California) LLC (U6959C) (hereinafter, ESI-CA).

Originally, in 2005, ESI-CA's certificate and utility designation number (U6959C) were issued to its parent, ESI. ESI-CA did not exist at the time. In two decisions, one (D.05-07-004) issued shortly after ESI was initially authorized to operate as a telephone corporation in California and the other (D.06-04-063) a year later, the Commission increased ESI's operating authority to allow ESI to provide full facilities-based and resold competitive local exchange and non-dominant interexchange services.

In November 2006, ESI organized ESI-CA as its wholly owned subsidiary.⁶ In April 2007, the Commission granted ESI permission to transfer its CPCN to ESI-CA.⁷

ESI explains in its current application that it desires a CPCN of its own, again, which it will use to provide the same services in California as ESI-CA, even while ESI-CA continues to operate in California.⁸ Documents, sent by ESI to the Communications Division of the Commission, indicate that ESI's purpose for seeking another CPCN while ESI-CA continues to hold the original CPCN is

⁵ Application at 2.

⁶ Advice Letter No. 4, dated April 3, 2007, at 2.

⁷ On April 24, 2007 the Commission approved the transfer requested in Advice Letter No. 4.

⁸ Application at 7 ("... Applicant will offer similar services at the same rates and on the same conditions as currently provided by [ESI-CA] ..."); *see also*, ESI's Response to ALJ Request for Additional Information, filed May 29, 2019, at 2 ("ESI and ESI CA will provide identical services in California following issuance of a CPCN to ESI").

“to align the [ESI-CA and ESI] companies with their current and future customer focus ... and to obtain debt financing.”⁹

ESI represents that it and ESI-CA will pursue two new debt financing transactions, each to a separate lender. According to ESI, its subsidiary, ESI-CA, will pledge some of its California assets to secure financing from one source and other of its California assets to secure financing from a different source; however, ESI will provide the services associated with some of the pledged assets while ESI-CA continues to provide services associated with the remainder of the newly pledged assets.¹⁰

ESI provides services to the following types of business customers: wireless carriers, broadband providers, commercial property owners, enterprises, communities and Internet of Things (IoT) companies. It has a comparatively small number of core customers which provide significant, aggregate, annual, consolidated revenue. If its application for a CPCN is granted, ESI intends to provide infrastructure facilities, such as dark fiber and metro cell nodes, to transport and transmit communications from wireless and wireline carriers in California. ESI states that it expects that any outside plant construction will be small scale, such as short conduit routes, installation of poles

⁹ Advice Letter No. 141, dated June 7, 2019, at 3. This advice letter sought permission to transfer control of ESI-CA to a newly created, indirect subsidiary of ESI, called ExteNet Issuer, LLC. The Commission granted permission for the change of control on June 10, 2019.

¹⁰ See ESI’s Response to ALJ Request for Additional Information, filed May 29, 2019, at 2 (“Certain assets currently held in California by ESI CA will be pledged to one financing party and other assets currently held by ESI CA will be pledged to a separate financing party[;] ... both ESI and ESI CA will need CPCNs in order to allow them to provide the services associated with those pledged assets”).

or conduit where existing facilities are inadequate and small, above-ground facilities in roadways and other previously developed rights of way.¹¹

ESI filed its application on November 1, 2018. On November 29, 2018 the Commission determined the proceeding should be characterized as ratesetting and a hearing would be necessary. The proceeding was assigned to Commissioner Liane Randolph and Administrative Law Judge (ALJ) Charles Ferguson.

A prehearing conference was held before the assigned ALJ on April 22, 2019 at which only ESI appeared. On May 29, 2019 ESI supplemented its application by submitting further confidential financial information requested by the assigned ALJ at the April 22 prehearing conference.

A scoping memo was issued by the assigned Commissioner on August 12, 2019.

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.”

ESI proposes to provide full facilities-based and resold competitive services throughout California.

ESI is a Common Carrier as defined by § 153 of the Federal Telecommunications Act of 1996 (Act) eligible to interconnect with the public switched telephone network pursuant to §§ 251 and 252 of the Act, and that if granted a CPCN, it will operate as a telephone corporation under Pub. Util. Code

¹¹ See Application, Exh. D.

§ 234(a), and obey the Public Utility Code and all Commission rules, decisions, and orders applicable to telephone corporations.

3. California Environmental Quality Act (CEQA)

Pursuant to CEQA and Rule 2.4¹² of the Commission's Rules of Practice and Procedure, the Commission examines projects to determine any potential environmental impacts in order that adverse effects are avoided, and environmental quality is fully restored or enhanced as much as possible under CEQA.

As noted above, ESI's proposed construction activities will generally include the installation of dark fiber and metro cell nodes, to transport and transmit communications by wireless and wireline carriers in California. These will be small scale, such as short conduit routes, installation of poles, or conduit where existing facilities are inadequate, and small, above-ground facilities in roadways and other previously developed rights of way.

These activities fall within the following classes of projects that are exempt from CEQA and for which neither an Environmental Impact Report nor a Negative Declaration is required.

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

¹² Unless otherwise noted, items labeled "Rule" are from the Commission's Rules of Practice and Procedure.

ESI's proposed activities involve construction of reasonably short utility extensions (Class 3). In order to provide its service, ESI will install its dark fiber and metro cell nodes in existing roadways and rights of way. The fiber will either be attached to existing poles or will be placed underground in existing conduits or, if there are no poles and no underground conduit, ESI will add them to the existing right of way. Exemption of these activities is consistent with Commission precedent. ESI's proposed new construction activities are like those undertaken by other carriers that we have decided are categorically exempt from CEQA. *See, e.g.,* D.06-04-063 (*ClearLinx Network Corporation*); D.06-04-067 (*CA-CLEC LLC*).

ESI requests approval to utilize a procedure for expedited review of its projects once it is aware of a specific site(s) in which it plans construction. The proposed procedure tracks the expedited review procedure that we have approved for other carriers. Such a process will expedite CEQA review and is appropriate for the type of construction outlined here, which will be categorically exempt. By establishing this expedited review process, we can 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 ESI to undertake construction of its projects in an efficient manner without experiencing delays caused by an unnecessarily protracted CEQA review.

As we provided for other carriers, the following procedure will be used to obtain Commission approval of ESI's claimed CEQA exemptions for proposed construction projects:

- ESI will provide the Commission's Energy Division with:

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

- Within 21 days from the date of ESI'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 find that:

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

ESI 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.

4. Financial Qualifications

To be granted a CPCN, an applicant for authority to provide full facilities-based and resold competitive local exchange and interexchange services must demonstrate that it has a minimum of \$100,000 cash or cash equivalent, reasonably liquid and readily available to meet the firm's start-up expenses.¹³ 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.¹⁴ In this proceeding, ESI provided its audited financial statements for 2017 and 2018 showing that \$100,000, plus an amount equal to the deposits required by AT&T California, Frontier California, Frontier Communications, and Consolidated Communications would be available to ESI for one year following certification. Since ESI has provided documentation that it possesses a minimum of \$100,000

¹³ 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.

¹⁴ The requirement for Competitive Local Carrier (CLC) applicants to demonstrate that they have additional financial resources to meet any deposits required by underlying Local Exchange Carriers (LEC) and/or IECs is set forth in D.95-12-056, Appendix C. For NDIECs, the requirement is found in D.93-05-010.

that is reasonably liquid and available, it has demonstrated that it has enough funds to meet its start-up expenses and has fulfilled this requirement. ESI's financial documentation will be subject to verification and review by the Commission for one year to ensure that such funds are available.

5. 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.¹⁵ ESI has been a part of the telecommunications industry nationwide for many years and supplied biographical information on its management in Exhibit I (eye) to its application that demonstrates it and they have sufficient expertise and training to operate as a telecommunications provider in California. Furthermore, ESI's wholly owned subsidiary, ESI-CA, has been providing telecommunications service in California for several years. There are no outstanding complaints against ESI-CA at this Commission and no notices of deficiencies have ever been issued against ESI-CA by this Commission. ESI represents in its application that it will share the same management team with ESI-CA, thereby benefitting from that team's knowledge and experience with the California market.¹⁶

In its application, ESI verified that no one associated with or employed by ESI as an affiliate, officer, director, partner, or owner of more than 10 percent of ESI, or anyone acting in a management capacity for ESI:

- (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

¹⁵ D.95-12-056 at Appendix C, Rule 4.A.

¹⁶ Application at 8, section II, subsection 10.

consumers or others; (c) been convicted of a felony; (d) been (to his/her knowledge) the subject of a criminal referral by judge or public agency; (e) had a telecommunications license or operating authority denied, suspended, revoked, or limited in any jurisdiction; (f) personally entered into a settlement, or held one of these positions with a company that has entered into settlement of criminal or civil claims involving violations of §§ 17000 et seq., §§ 17200 et seq., or §§ 17500 et seq. of the California Business & Professions Code, or of any other statute, regulation, or decisional law relating to fraud, dishonesty, failure to disclose, or misrepresentations to consumers or others; or (g) been found to have violated any statute, law, or rule pertaining to public utilities or other regulated industries; or (h) entered into any settlement agreements or made any voluntary payments or agreed to any other type of monetary forfeitures in resolution of any action by any regulatory body, agency, or attorney general.¹⁷

Also, to the best of ESI's knowledge, neither ESI, nor any affiliate, officer, director, partner, nor owner of more than 10 percent of ESI, nor any person acting in such capacity whether or not formally appointed, is being, or has been investigated by the Federal Communications Commission or any law enforcement or regulatory agency for failure to comply with any law, rule or order.¹⁸

For the above reasons, we find that ESI has complied with the requirements of D.13-05-035.

¹⁷ See Application, Exhibit J, par. 4. These certifications are required by D.13-05-035, Ordering Paragraph 14.

¹⁸ Application, Exh. J, par. 4.

ESI represents that no deposit is required by AT&T California, Frontier California, Frontier Communications, and Consolidated Communications.¹⁹ Therefore, no additional resources are required at this time to cover deposits.

6. Tariffs

ESI has requested detariffed status. In its application, ESI states that it does not intend to offer basic service or switched access. It represents that it will provide the services described above in section one on a non-discriminatory, individual customer basis and at competitive rates.²⁰ ESI further represents that it will comply with all consumer protection rules identified in D.98-08-031 to the extent they are applicable to the services ESI provides. Furthermore, ESI represents that it will first comply with all tariffing obligations should it ever decide to offer basic services or switched access.²¹ Exemption from tariffing obligations is therefore appropriate.

7. 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.²² In Exhibit F to its application, ESI provided a map of the location of its proposed service territory, in compliance with this requirement.

8. 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. ESI states that it is not aware of any reportable matters

¹⁹ Application at 8 - 9.

²⁰ *Id.* at 9, section II, subsection 13.

²¹ Application 9, Section II, Subsection 13.

²² D.95-12-056 at Appendix C, Rule 4.E.

pursuant to General Order 104-A, Section 2.²³ ESI, therefore, has nothing to report under this rule. On a going forward basis, though, ESI must file all reports required of a public utility under Commission jurisdiction and it has represented that it will do so.²⁴

9. Expected Customer Base

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

10. Requests for Non-dominant Carrier Treatment and for Exemptions

ESI requests treatment as a non-dominant interexchange carrier, which would include exemption from the requirements of Pub. Util. Code §§ 816-830 concerning stocks and securities and § 851 concerning the encumbrance and transfer of utility property. While the Commission has granted exemption from §§ 816 – 830 to others, exemption from § 851 is not commonly granted unless the exemption is expressly limited to issuances of securities and transfers or encumbrances of a utility's assets for purposes of securing debt.²⁵ The Commission issued detailed rules regarding exemption of non-dominant carriers in D.85-01-008, which it subsequently modified in D.85-07-081 and D.85-11-044.

ESI represents that it will provide service to business customers only, specifically, wireless service providers, and that it seeks exemption from § 851 for the limited purposes of securing debt. We grant ESI's request for non-dominant interexchange carrier status, which provides an exemption from Pub. Util.

²³ Application at 9, section II, subsection 14.

²⁴ *Ibid.*

²⁵ See D.85-07-081; D.85-11-044; D.86-08-057 and D.90-09-032.

Code §§ 816-830, as well as ESI's request for a limited exemption from § 851 in order to use stocks and securities to secure debt, provided that it follows all rules detailed in the above referenced decisions.

ESI also requests exemption from any requirement to maintain its books and records in accordance with the Uniform System of Accounts specified in Title 47 C.F.R. Part 32. Consistent with D.99-02-038, which relieved competitive local carriers that are not part of an incumbent local exchange carrier corporate entity from the requirement to keep their books of account in conformance with the Uniform System of Accounts, we will extend similar relief to ESI.

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. The Commission is satisfied that ESI will meet the Commission's minimum safety goals and expectations of competitive local exchange carriers (CLECs) because: (1) ESI has taken steps to meet the financial requirements as set forth in this decision for a facilities-based CLEC, and (2) ESI 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 ESI's application conforms to our rules for certification as a competitive local exchange and interexchange carrier. Accordingly, we grant ESI a CPCN to provide resold and competitive full facilities-based local exchange telecommunications service in the service territory of AT&T California, Frontier California, Frontier Communications, and Consolidated Communications and interexchange 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 ESI and corresponding obligations. ESI receives authority to operate in the prescribed service territory, and this authority enables ESI, pursuant to 251 of the 1934 Communications Act, as amended by the 1996 Telecommunications Act (47 U.S.C. § 251), to interconnect with telecommunications carriers.²⁶ This authority also enables ESI 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, ESI is obligated to comply with all Public Utilities Code provisions, Commission rules, General Orders, and decisions applicable to telephone corporations 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, ESI 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

²⁶ The California Public Utilities Code uses the term "telephone corporation." Its counterpart in federal law is a "telecommunications carrier."

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."

13. Requests to File Under Seal

Pursuant to Rule 11.4 of the Commission's Rules of Practice and Procedure, ESI has filed motions for leave to file Exhibits G, H and K to its application as confidential materials under seal. ESI represents that the information is sensitive, and disclosure could place ESI at an unfair business disadvantage. We have granted similar requests in the past and do so here.

14. Categorization and Need for Hearings

In Resolution ALJ 176-3328, dated November 29, 2018, the Commission preliminarily categorized this application as ratesetting, and preliminarily determined that hearings were necessary. No party filed a protest to the application. On April 22, 2019, the assigned ALJ held a pre-hearing conference. On August 12, 2019, the assigned Commissioner issued a scoping memo stating no hearing was necessary, as no one had appeared to oppose ESI's application. Therefore, there will be no evidentiary hearing in this matter.

15. Waiver of Comment Period

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

Liane Randolph is the assigned Commissioner and Charles Ferguson is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. ESI is a telephone corporation and a public utility as defined in Pub. Util. Code § 234(a) and § 216(a).
2. ESI's proposed construction activities appear to fall within one or more CEQA categorical exemptions.
3. ESI has a minimum of \$100,000 of cash or cash equivalent that is reasonably liquid and readily available to meet its start-up expenses.
4. ESI has enough additional cash or cash equivalent to cover deposits that may be required by other telephone corporations in order to provide the proposed service.
5. ESI's management possesses enough experience, knowledge, and technical expertise to provide local exchange services to the public.
6. No one associated with or employed by ESI as an affiliate, officer, director, partner, agent, or owner (directly or indirectly) of more than 10 percent of ESI, or anyone acting in a management capacity for ESI: (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; or (h) entered into any settlement agreements or made any voluntary payments or agreed to any other type of monetary forfeitures in resolution of any action by any regulatory body, agency, or attorney general.

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

8. ESI requested and is eligible for exemption from tariffing requirements and must observe the consumer protection rules adopted in D.98-08-031.

9. ESI provided a map of the location of its proposed service territory.

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

11. ESI provided an estimate of its customer base for the first and fifth year of operation.

12. Pursuant to Rule 11.4, ESI filed motions for leave to file confidential materials under seal, including Exhibits G, H and K to ESI's application in this proceeding.

Conclusions of Law

1. ESI should be granted a CPCN to provide resold, full facilities-based local exchange telecommunications service in the service territories of AT&T California, Frontier California, Frontier Communications, Consolidated Communications and interexchange service in California, subject to the terms and conditions set forth in the Ordering Paragraphs.

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

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

4. ESI should be granted an exemption from the requirement to file tariffs.

5. ESI's motion to file under seal its Exhibits G, H and K to its application, should be granted for three years.

6. ESI should be granted non-dominant carrier status, subject to Commission rules and regulations as detailed in D.85-01-008 and modified in D.85-07-081 and D.85-11-044.

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

1. A certificate of public convenience and necessity is granted to ExteNet Services, Inc. to provide resold and competitive full facilities-based local exchange telecommunications services in the territories of Pacific Bell Telephone Company d/b/a AT&T California, Frontier California Inc., Citizens Telecommunications Company of California, Inc. d/b/a/ Frontier Communications of California, and Consolidated Communications of California

Company, and interexchange service in California, subject to the terms and conditions set forth below.

2. The corporate identification number assigned to ExteNet Services, Inc., U7363C, 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. ExteNet Services, Inc., 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. The certificate granted by this decision will expire if not exercised within 12 months of the effective date of this decision.

5. ExteNet Services, Inc. must notify the Director of the Communications Division of the date that local exchange service is first rendered to the public, no later than five days after service first begins, by email to cdcompliance@cpuc.ca.gov.

6. ExteNet Services, Inc. (ESI) 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, ESI 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.

7. ExteNet Services, Inc. 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 Communications Division.

8. 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, ExteNet Services, Inc. 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.

9. ExteNet Services, Inc. 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.

10. ExteNet Services, Inc. must pay an annual minimum user fee of \$100 or 0.30 percent of gross intrastate revenue, whichever is greater. Under Public Utilities Code § 405, carriers that are in default of reporting and submitting user fees for a period of 30 days or more will be subject to penalties including suspension or revocation of their authority to operate in California.

11. Prior to initiating service, ExteNet Services, Inc. must provide the Commission's Consumer Affairs Branch with the name(s), address(es), and telephone number(s) of its designated contact person(s) for purposes of resolving consumer complaints. This information must be updated if the name(s), address(es), or telephone number(s) change, or at least annually.

12. Prior to initiating service, ExteNet Services, Inc. must provide the Commission's Communications Division with the name(s), address(es), and telephone number(s) 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.

13. ExteNet Services, Inc. must submit an affiliate transaction report to the Director of the Communications Division, by e-mail to cdcompliance@cpuc.ca.gov, in compliance with Decision 93-02-019, on a calendar year basis using the form contained in Attachment D.

14. ExteNet Services, Inc. must submit an annual report to the Director of the Communications Division, by email to 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.

15. ExteNet Services, Inc. must apply for expanded authority to operate without Non-dominant Interexchange Carrier status prior to construction of full facilities.

16. The staff of the Commission’s Energy Division is authorized to review, process, and act upon ExteNet Services, Inc. ’s requests for a determination that its full facilities-based construction activities are exempt from the requirements of the California Environmental Quality Act.

17. If ExteNet Services, Inc. (ESI) wishes to engage in full facilities-based construction activities and believes that these activities are exempt from California Environmental Quality Act, ESI 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 ESI of either its approval or its denial of ESI's claim for exemption from California Environmental Quality Act review within 21 days from the time that ESI's submittal is complete.

18. If the Energy Division approves ExteNet Services, Inc. (ESI's) claimed California Environmental Quality Act 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 ESI's claimed California Environmental Quality Act exemptions, the staff shall issue to ESI a letter which states the specific reasons that the claimed California Environmental Quality Act exemptions do not apply to the proposed project.

19. If the Energy Division disapproves ExteNet Services, Inc. (ESI's) claimed California Environmental Quality Act exemption(s), ESI shall either re-design the specific project and facilities and then reapply for a finding of exemption from California Environmental Quality Act, or file a formal application with the Commission seeking the requisite approval and full California Environmental Quality Act review, before commencing any full facilities-based construction activities.

20. ExteNet Services, Inc. (ESI's) motion to file under seal its Exhibits G, H and K 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 ESI believes that it is necessary for this information to remain under seal for longer than three years, ESI may file a new motion showing good cause for extending this order by no later than 30 days before the expiration of this order.

21. Application 18-11-002 is closed.

This decision is effective today.

Dated _____, 2019 at San Francisco, California.

ATTACHMENT A

This Attachment Is Intentionally Left Blank.

(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, a written acceptance of the certificate granted in this proceeding within 30 days of the effective date of this order. (Please note, written acceptance filed in this docket does not re-open the proceeding.)

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);

- 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 (d/b/a 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>.

- i. 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 Telcosurcharge@cpuc.ca.gov.
- ii. Carriers must submit and pay the PUC User Fee (see Item 3.g above) upon receiving the User Fee statement sent by the Commission Instructions for reporting and filing are available at <http://www.cpuc.ca.gov/General.aspx?id=1009>. Please send an email to userfees@cpuc.ca.gov for additional questions regarding User Fee reporting and payment.

4. If Applicant is a competitive local exchange carrier, the effectiveness of its future competitive local exchange carrier 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, the effectiveness of its future non-dominant interexchange carrier tariffs is subject to the requirement of General Order 96-B and the Telecommunications Industry Rules (D.07-09-019).

6. Tariff filings must reflect all fees and surcharges to which Applicant is subject, as reflected in Item 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 Communications Division.

9. Applicants providing local exchange service must submit a service area map as part of their initial tariff to the Communications Division.

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

11. In addition, Applicant must provide the Commission's Communications Division with the name(s), address(es), and telephone number(s) 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(s), address(es), and telephone number(s) change, or at least annually.

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

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 of its compliance in writing, by email to cdcompliance@cpuc.ca.gov.

19. If Applicant is 90 days or more late in submitting an annual report, or in remitting the surcharges and fee listed in Item 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's Rules of Practice and Procedure.

21. Applicant is exempt from Pub. Util. Code §§ 816-830, and 851.

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

23. 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, Communications Division, 505 Van Ness Avenue, San Francisco, CA 94102-3298, no later than March 31st of the year following the calendar year for which the annual report is submitted. In addition, an electronic copy of the report must be emailed to cdcompliance@cpuc.ca.gov.

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 any questions concerning this report, please send an email to cdcompliance@cpuca.ca.gov with a subject line that includes: "CD Annual Reports."

(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, Communications Division, 505 Van Ness Avenue, San Francisco, CA 94102-3298, no later than May 1st of the year following the calendar year for which the annual report is submitted. In addition, an electronic copy of the report must be emailed to cdcompliance@cpuc.ca.gov.

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 Item 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 Items 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.

For any questions concerning this report, please send an email to cdcompliance@cpuca.ca.gov with a subject line that includes: “CD Annual Reports.”

(END OF ATTACHMENT D)