

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking
Proceeding to Consider Changes to
Licensing Status and Obligations of
Interconnected Voice over Internet
Protocol Carriers.

Rulemaking _____

**ORDER INSITUTING RULEMAKING PROCEEDING TO CONSIDER
CHANGES TO LICENSING STATUS OF INTERCONNECTED
VOICE OVER INTERNET PROTOCOL CARRIERS**

Summary

This Order institutes a rulemaking to consider changes to address the license status of interconnected Voice over Internet Protocol (VoIP) carriers in California that, pursuant to Public Utilities Code section 285, obtained a utility identification number under this Commission’s previously used Informal VoIP Registration Process. The Order Instituting Rulemaking also will consider other ongoing obligations for interconnected VoIP carriers and ministerial licensing reforms.

1. Background and Jurisdiction

The California Public Utilities Commission (Commission) has jurisdiction over public utilities, including public utility services and facilities for telephone

corporations.¹ Under Public Utilities (Pub. Util.) Code² Section 216, a “public utility” includes every “telephone corporation”³ where service is performed, or a commodity is delivered to the public or any portion thereof. A “telephone corporation” includes “every corporation or person owning, controlling, operating, or managing any telephone line for compensation in this state.”⁴ A “telephone line” includes “all conduits, ducts, poles, wires, cables, instruments, and appliances, and all other real estate, fixtures, and personal property owned, or controlled, operated, or managed in connection with or to facilitate communication by telephone, whether such communication is had with or without the use of transmission wires.”⁵ California’s Constitution specifically extends the Commission’s jurisdiction to companies engaged in “the transmission of telephone and telegraph messages.”⁶ This includes services delivered over any technology, including but not limited to, traditional copper lines, coaxial cable, fiber optic cable, and mobile or fixed wireless radios. The Commission’s authority over public utilities includes oversight over both public utility services and facilities.⁷

The Commission is required to ensure that utilities, including telephone corporations, “furnish and maintain such adequate, efficient, just and reasonable service, instrumentalities, equipment, and facilities ... as are necessary to

¹ See Cal. Const., Art. XII, §§ 1-6; Pub. Util. Code § 701.

² All subsequent references are to the Public Utilities Code unless otherwise specified.

³ Pub. Util. Code § 234.

⁴ *Id.*

⁵ Pub. Util. Code § 233.

⁶ Cal. Const., Art. XII, § 3.

⁷ See Cal. Const., Art. XII, §§ 1-6; Pub.Util. Code § 701.

promote the safety, health, comfort, and convenience of its patrons, employees, and the public.”⁸ The Commission also has an ongoing responsibility to ensure the reasonableness and sufficiency of utility facilities⁹ and may order “additions, extensions, repairs, or improvements to, or changes in” utility facilities that the Commission finds “ought reasonably to be made.”¹⁰

This Commission alone can grant operating authority to California utilities and issue a certificate of public convenience and necessity (CPCN) to wireline utilities seeking to operate in California pursuant to Pub. Util. Code § 1001, or issue a “registration” license to companies the Commission has determined lack “monopoly power or market power in a relevant market or markets” under Pub. Util. Code § 1013. A CPCN or § 1013 registration (also known as simplified registration) confers upon a public utility telephone corporation numerous benefits, as well as obligations under the Pub. Util. Code, Commission decisions, and regulations. For instance, telephone corporations have the right to interconnect with other telephone corporations¹¹ and the ability to access the public rights-of-ways to build or install facilities to provide their services.¹² Facilities-based carriers are required to apply for a CPCN pursuant to Pub. Util. Code § 1001.

All resellers, including non-dominant interexchange carriers (NDIECs) and competitive local exchange carriers (CLECs), are exempt from § 1001 and subject

⁸ Pub. Util. Code § 451.

⁹ *Id.* at § 761.

¹⁰ *Id.* at § 762.

¹¹ State certification/registration entitles the telephone corporation to interconnect with other telephone corporations under 47 USC §§ 251 and 252 and analogous state law.

¹² *See e.g.*, Pub. Util. Code § 7901.

to the § 1013 registration requirement, with a few exceptions discussed below. The passage and enactment of Senate Bill (SB) 1161 in 2012, which was codified as § 710, limited the Commission's ability to regulate Voice over Internet Protocol (VoIP) service carriers for a certain period of time. Section 710 expired on January 1, 2020.

The passage and enactment of Assembly Bill (AB) 841 in 2011, codified as § 285, requires interconnected VoIP carriers to collect and remit surcharges in support of public purpose programs.¹³ Section 285 further states that the "sole purpose" of this section is to require the Commission to impose Public Purpose Program surcharges (surcharges) on VoIP carriers. Carriers covered by § 285, but without a CPCN or § 1013 registration, are referred to as "Section 285 Carriers."

Under California law, the means by which service is provided, whether it be traditional landline, wireless technology, or IP-enabled, does not affect whether the provider meets the definition of a public utility telephone corporation. VoIP service providers fall within the definition of "Telephone Corporation" under § 234, and their facilities fall within the definition of "Telephone Line" pursuant to § 233.31. Thus, VoIP carriers are subject to the Commission's jurisdiction.

Interconnected VoIP providers generally fall into two categories, fixed VoIP providers and nomadic VoIP providers.¹⁴ Fixed VoIP service is defined by the FCC as "the functional equivalent of fixed telephone service by means of a

¹³ Most Interconnected VoIP carriers (as opposed to nomadic VoIP carriers like Vonage and Skype) are covered by § 285. This bill was put forward to forestall CPUC efforts to regulate VoIP carriers.

¹⁴ See FCC, Frequently Asked Questions: Dispatchable Location Requirements for Fixed Telephony, Interconnected VoIP, Telecommunications Relay Services (TRS), and Mobile Text, available as of this writing at: <https://www.fcc.gov/file/18440/download>. See also FCC website at: <https://www.fcc.gov/consumers/guides/voice-over-internet-protocol-voip>.

device that connects to a single access point and is not capable of being moved by the end user.” Nomadic or non-fixed VoIP service “enables the end user to connect a handset or other IP-enabled device to multiple access points. In this proceeding, the Commission intends to examine its authority to regulate nomadic VoIP providers, particularly regarding the Commission’s authority to (a) collect Universal Service Fund (USF) and other surcharges from nomadic VoIP providers and (b) adopt licensing requirements for nomadic VoIP providers.

On November 9, 2011, the Commission’s Executive Director directed Section 285 Carriers to register informally and obtain a utility identification (ID) number to report and remit surcharges to the Commission.

This Informal VoIP Registration Process, which the Commission no longer uses, required each interconnected VoIP carrier to complete and submit a registration form that provided basic information about the entity.¹⁵ CD Staff reviewed the registration form for completeness and accuracy and followed up with each carrier as needed to address any inconsistencies in the information provided on the registration form. Once all the registration requirements were met, CD Staff sent the carrier an email with a utility ID number assignment.¹⁶ Carriers were not required to pay registration fees, and registration did not grant the carriers formal operating authority. A follow-up e-mail provided information regarding the process for carriers to report and remit surcharges using the Telecommunications and User Fee Filing System (TUFFS).

¹⁵ The Informal VoIP Registration Process did not request information regarding status as facilities-based or reseller.

¹⁶ Staff established a dedicated series of Utility ID numbers ranging from 1100-1999 for VoIP carriers.

Currently, if a Section 285 Carrier no longer intends to provide interconnected VoIP services, it must request deactivation of its assigned utility ID via email to CD Staff. Prior to deactivation, CD Staff must verify that the carrier has no outstanding reporting or payment obligations. If such items are outstanding, CD Staff notifies the Section 285 Carrier that it must fulfill these obligations to the Commission before deactivation.

Because registration under § 285 is required only for purposes of collecting surcharges, the Commission has not actively regulated this group of VoIP carriers.¹⁷ Even while § 710 was still in effect, the Commission declared that VoIP carriers are telephone corporations, and are therefore public utilities, and affirmed this statement in Decision (D.) 20-09-012¹⁸ and D.21-02-029.¹⁹ With the expiration of § 710, the Commission opens this proceeding to consider changes to the treatment of Section 285 Carriers, including any obligations.

2. Preliminary Scoping Memo

The preliminary scope of issues in the proceeding is set forth below. (See the Commission's Rules of Practice and Procedure (Rules), Rule 7.1(d).²⁰)

1. Licensing Requirements

- a. Should the Commission grant Section 285 Carriers' status as competitive local exchange and interexchange

¹⁷ However, in the Service Quality rules, adopted in August 2016 and upheld in a rehearing order in October, 2018, the CPUC required Section 285 carriers to report major service interruptions. See GO 133-D, Rule 4(a)(IV); see also D.16-08-021, *Decision Adopting General Order 133-D and D.18-10-058, Order Modifying D.16-08-021 on Issue of Fines for CLECs and Denying Rehearing of Decision as Modified.*

¹⁸ See D.19-08-025 at COL 27: "VoIP carriers clearly fit within the plain language of the definition of a public utility 'telephone corporation.'"

¹⁹ D.21-02-029 at 10-11.

²⁰ All references to "Rules" are to the Commission's Rules of Practice and Procedure unless otherwise indicated.

- carriers, unless the carrier indicates that it wishes to offer only one of the two types of services?
- b. If a Section 285 Carrier has existing wireline operating authority, should the Commission allow it to deactivate its VoIP utility ID, utilize its existing wireline operating authority, and begin reporting and payment of surcharges under the wireline operating authority?
 - c. Should the Commission automatically deactivate the utility IDs of Section 285 Carriers that do not take an affirmative action to notify the Commission of their intent to continue operating in California?
 - d. Should the Commission provide an expedited process for Section 285 carriers required to obtain operating authority through the CPCN application or simplified registration processes?
 - e. What information should the Commission require from the Section 285 carriers to help expedite obtaining their operating authority (*e.g.*, status as facilities-based or reseller, location of services, etc.)?
 - f. Is it still necessary, pursuant to D.16-10-039 Ordering Paragraph 4, for the Commission to create a Registration Form and an Affidavit for Fixed-Voice over Internet Protocol Service Providers who do not have a CPCN and make that form and affidavit available on the Commission's website?
 - g. Should the Commission require nomadic interconnected VoIP providers to pay surcharges such as USF surcharges?
 - h. Should the Commission adopt licensing requirements for nomadic interconnected VoIP providers? If not, should the Commission adopt a separate registration mechanism for the purpose of collection surcharges?
2. Ongoing Requirements: What additional reporting requirements should be imposed on interconnected VoIP carriers?

3. Penalty for Section 285 Carriers that have not reported and remitted surcharges
 - a. To Obtain Operating Authority: Should a penalty be imposed on Section 285 Carriers that have not reported and remitted surcharges since obtaining their utility ID before approving a wireline operating authority through the CPCN applications or simplified registration processes?
 - b. Should a penalty be imposed on carriers who acquire a Section 285 Carrier without first obtaining Commission approval of the transfer? Should carriers who failed to obtain Commission approval for an acquisition of a Section 285 Carrier be permitted to apply for Section 1013 or Section 1001 authority? What information should they be required to disclose in their applications?
4. Additional Licensing Reforms
 - a. Should the Commission delegate to Communications Division Staff ministerial authority to perform administrative changes, as needed, to the simplified registration form and instructions used by carriers to obtain operating authority from the Commission pursuant to § 1013, and the Wireless Identification Registration (WIR) form and instructions, used by commercial mobile radio service (CMRS) providers to obtain operating authority from the Commission pursuant to D.94-10-031 and D.13-05-025, as long as those changes are consistent with existing Commission rules and requirements? If so, what changes should be made to the simplified registration and WIR forms?
 - b. Should all registration license holders be required to file performance bonds via a Tier 1 Advice Letters instead of information-only filings in order to be consistent with the requirements for CPCN holders? Should additional requirements be imposed to all carriers for performance bond submissions?

- c. Should each VoIP carrier be required to pay an additional \$250 if its simplified registration, pursuant to § 1013, is converted to a CPCN Application if it fails to meet the requirements for use of the simplified registration process?

Attachment A contains a proposal prepared by the Commission's Communications Division regarding how to resolve the issues identified preliminarily as within the scope of this proceeding. As an initial matter, the Commission invites comments on this Order Instituting Rulemaking (OIR), including the aforementioned proposal, as well as alternative approaches. Pursuant to Rule 6.2, comments on an OIR shall state any objections to the preliminary scoping memo regarding the category, issues to be considered, or schedule. The precise issues to be addressed and the process for addressing those issues will be set forth in an assigned Commissioner's Scoping Memo.

3. Categorization; Ex Parte Communications; Need for Hearing

The Commission's Rules of Practice and Procedure require that an order instituting rulemaking preliminarily determine the category of the proceeding and the need for a hearing. As a preliminary matter, we determine that this proceeding is quasi-legislative because our consideration and approval of this matter would establish policy or rules affecting a class of regulated entities. Accordingly, *ex parte* communications are permitted without restriction or reporting requirement pursuant to Article 8 of the Rules.

We preliminarily determine that hearings are not necessary. However, the assigned Commissioner may re-evaluate the need for hearings when issuing the scoping memo for this proceeding.

4. Preliminary Schedule

The preliminary schedule is set forth below. The assigned Commissioner and Administrative Law Judge (ALJ) have the authority to set other dates in the proceeding or modify those below as necessary.

Day 1	Order Instituting Rulemaking issued
Day 20	Deadline for requests to be on service list
Day 46	Initial Comments on OIR filed and served
Day 61	Reply Comments on OIR filed and served

The determination on the need for further procedural measures, including the scheduling of a pre-hearing conference, discovery, technical workshops, and/or evidentiary hearings will be made in one or more rulings issued by the assigned Commissioner. Any party that believes an evidentiary hearing is required may address such need for hearing in comments and reply comments on this OIR.

The assigned Commissioner or the assigned ALJ may change the schedule to promote efficient and fair administration of this proceeding. Today's decision sets a due date for comments and reply comments on the OIR. The schedule for the remainder of the proceeding will be adopted in the assigned Commissioner's Scoping Memo.

It is the Commission's intent to complete this proceeding within 18 months of the date this decision is adopted. (Pub. Util. Code § 1701.5(b).)

If there are any workshops in this proceeding, notice of such workshops will be posted on the Commission's Daily Calendar to inform the public that a decision-maker or an advisor may be present at those meetings or workshops. Parties shall check the Daily Calendar regularly for such notices.

5. Service of OIR

We provide service to the Service Lists of the following proceedings Rulemaking (R.) 11-11-006 (Licensing), R.11-03-013 (Lifeline), and R.22-03-016 (Service Quality). Communications Division will provide notice of the OIR to all active telephone carriers. Service of the OIR does not confer party status or place any person who has received such service on the Official Service List for this proceeding. Instructions for obtaining party status or being placed on the official service list are given below.

6. Filing and Service of Comments and Other Documents

Filing and service of comments and other documents in the proceeding are governed by the Commission's Rules of Practice and Procedure. Parties are instructed to only serve documents on the assigned Commissioner, advisors to the assigned Commissioner, and the assigned ALJ(s) by electronic copy and not by paper copy, unless specifically instructed to do otherwise.

7. Addition to Official Service List

Addition to the official service list is governed by Rule 1.9(f) of the Commission's Rules of Practice and Procedure.

Any person will be added to the "Information Only" category of the official service list upon request, for electronic service of all documents in the proceeding, and should do so promptly in order to ensure timely service of comments and other documents and correspondence in the proceeding. (*See* Rule 1.9(f).) The request must be sent to the Process Office by e-mail (process_office@cpuc.ca.gov) or letter (Process Office, California Public Utilities Commission, 505 Van Ness Avenue, San Francisco, California 94102). Please include the Docket Number of this rulemaking in the request.

Persons who file responsive comments thereby become parties to the proceeding (*see* Rule 1.4(a)(2)) and will be added to the “Parties” category of the official service list upon such filing. *In order to assure service of comments and other documents and correspondence in advance of obtaining party status, persons should promptly request addition to the “Information Only” category as described above; they will be removed from that category upon obtaining party status.*

8. Subscription Service

Persons may monitor the proceeding by subscribing to receive electronic copies of documents in this proceeding that are published on the Commission’s website. There is no need to be on the official service list in order to use the subscription service. Instructions for enrolling in the subscription service are available on the Commission’s website at <http://subscribecpuc.cpuc.ca.gov/>.

9. Intervenor Compensation

Intervenor Compensation is permitted in this proceeding. Pursuant to Pub. Util. Code § 1804(a)(1), a customer who intends to seek an award of compensation must file and serve a notice of intent to claim compensation within 30 days after the prehearing conference. Parties new to participating in Commission proceedings may contact the Commission’s Public Advisor.

10. Public Advisor

Any person or entity interested in participating in this rulemaking who is unfamiliar with the Commission’s procedures should contact the Commission’s Public Advisor in San Francisco at (415) 703-2074 or (866) 849-8390 or e-mail public.advisor@cpuc.ca.gov. The TTY number is (866) 836-7825.

11. Public Outreach

Pub. Util. Code § 1711(a) states:

Where feasible and appropriate, except for adjudication cases, before determining the scope of the proceeding, the

commission shall seek the participation of those who are likely to be affected, including those who are likely to benefit from, and those who are potentially subject to, a decision in that proceeding. The commission shall demonstrate its efforts to comply with this section in the text of the initial scoping memo of the proceeding.

As noted in Section 5, this OIR was served on every licensed voice, wireless, and broadband provider in California. Any additional public outreach will be described in the scoping memo of the assigned Commissioner.

O R D E R

IT IS ORDERED that:

1. This Order Instituting Rulemaking is adopted pursuant to Rule 6 of the Commission's Rules of Practice and Procedure.
2. The preliminary categorization is quasi-legislative.
3. The preliminary determination is that a hearing is not needed.
4. The preliminary scope of issues is as stated above in Section 2.
5. Any party that expects to claim intervenor compensation for its participation in this Rulemaking must file its notice of intent to claim intervenor compensation in accordance with Public Utilities Code § 1804(a)(1) and Rule 17.1(a)(2).

This order is effective today.

Dated _____, at San Francisco, California.

ATTACHMENT A
Communications Division Staff Proposal

Communications Division staff (Staff) proposes the following to address the preliminary scope of issues of this OIR:

1. Licensing Requirements

- a. Should the Commission grant Section 285 Carriers' status as competitive local exchange and interexchange carriers unless the carrier indicates that it wishes to offer only one of the two types of services?**

Staff proposes that during the OIR timeframe the Commission treat all Section 285 Carriers as carriers offering both competitive local exchange and interexchange services. Each Section 285 Carrier should specify in its application for authority if it intends to offer only one of these two types of services along with which service it intends to offer.

- b. If a Section 285 Carrier has existing wireline operating authority, should the Commission allow it to deactivate its VoIP utility ID, utilize its existing wireline operating authority, and begin payment of surcharges under the wireline operating authority?**

Staff proposes that the Commission require Section 285 Carriers that do not currently hold a separate wireline operating authority to apply for authority consistent with the Commission's current requirements: 1) Facilities-based Section 285 Carriers would be required to file a Certificate of Public Convenience and Necessity (CPCN) application pursuant to Pub. Util. Code § 1001; and 2) non-facilities-based Section 285 Carriers would file a simplified registration under Pub. Util. Code § 1013.

Staff proposes that the Commission direct Section 285 Carriers that already have wireline operating authority to utilize their existing operating authority granted via CPCN application or simplified registration and to begin operating and meeting obligations under their wireline CPCN utility IDs, and notify staff that their utility IDs Section 285 Carriers be deactivated automatically.

However, depending on the facilities-based/ non-facilities-based (reseller) status of the Section 285 Carriers and the service for which the carrier is already authorized to provide, an expansion of authority may be needed. The following are the scenarios that a Section 285 Carrier can use to determine the process to use to obtain an operating authority:

- 1) No CPCN Application or simplified registration is required in the following circumstances:
 - If the Section 285 Carrier is a facilities-based competitive local exchange carrier, and the existing wireline operating authority allows full facilities-based competitive local exchange services.
 - If the Section 285 Carrier is a full facilities-based interexchange carrier, and the existing wireline operating authority allows full facilities-based interexchange services.
 - If the Section 285 Carrier is a non-facilities-based competitive local exchange carrier, and the existing wireline operating authority allows non-facilities-based competitive local exchange service.
 - If the Section 285 Carrier is a reseller of interexchange carrier, and the existing wireline operating authority allows reseller interexchange service.
 - 2) Staff proposes that a Section 285 Carrier that is facilities-based, and the existing wireline operating authority only allows reselling of competitive local exchange services and/or interexchange services should be directed to obtain an expansion of its wireline operating authority via a CPCN application (§ 1001).
 - 3) Staff proposes that a Section 285 Carrier that is not facilities-based and is a reseller only and the existing wireline operating authority allows facilities-based competitive local exchange and/or interexchange services should be directed to obtain an expansion of its wireline authority via a simplified registration (section 1013).
- c. Should the Commission automatically deactivate the utility IDs of Section 285 Carriers that do not take an affirmative action to notify**

the Commission of their intent to continue operating in California?

Staff proposes that all Section 285 Carriers should be instructed to submit a request to CD Staff via email to cdcompliance@cpuc.ca.gov to deactivate their utility ID within a specific time during the OIR. Section 285 Carriers must submit the utility name, utility ID number, requested effective date of deactivation and attestation that it has no customers and no outstanding monies (e.g., surcharges, interest and penalties) owed to the Commission. Staff will evaluate the information provided to determine whether to approve the deactivation request.

Any Section 285 Carrier that either does not submit a written request to voluntarily surrender its utility ID number or does not provide information about its intention to obtain an operating authority by a submission deadline would have their utility ID numbers deactivated by Staff and would be deemed to lack appropriate authority to operate in California. For transparency and notice, Staff would issue a letter to all Section 285 Carriers that have deactivated utility ID numbers and post this information on the Commission website. Staff would also immediately deactivate the access of Section 285 Carriers with deactivated utility ID numbers from the Telecommunications and User Fees Filing System (TUFFS) which is used to report and remit surcharges and user fees. All Section 285 Carriers that have deactivated utility ID numbers but wish to provide service in California in the future would be required to obtain an operating authority and pay the applicable application or registration fees. Any Section 285 Carrier that was not compliant with surcharge reporting and remittance requirements prior to its utility ID number being deactivated would be required to obtain an operating authority via the CPCN application process and be required to pay any

unpaid surcharge revenue plus any applicable penalties and fines prior to the Commission granting a new operating authority.

If, in the future, staff determines that a Section 285 Carrier has continued operations and did not obtain the necessary operating authority, the carrier may be subject to enforcement action by the Commission, including possible fines or other sanctions. Pursuant to Commission Resolution T-17601 the Commission has the authority to assess fines of \$1,000 per month a carrier has been operating without authority in California. The full Commission may levy additional penalties pursuant to Public Utilities Code sections 2107 and 2108. The Commission may also report non-compliance with its rules to the Secretary of State.

d. Should the Commission provide an expedited process for Section 285 Carriers required to obtain operating authority through the CPCN application or simplified registration processes?

Once an OIR decision is rendered, Staff proposes that applications for new or expanded operating authority be accepted on a quarterly basis. The submission deadline will be based on each carrier's Utility ID number. Any existing Section 285 Carrier that wishes to file earlier may submit a request for a waiver and submit its application in an earlier batch.

Staff propose that the review CPCN applications, or simplified registrations, from Section 285 Carriers be expedited and allow quarterly CPCN and Simplified Registration batch approvals of operating authority (e.g., consolidate applications and registrations into one proceeding and grant operating authority for multiple carriers in a single decision for CPCNs and a single decision for simplified registrations).

Further, Staff recommends that all Section 285 Carriers obtain an operating authority via CPCN application or simplified registration within an 18-to-24-month timeframe after the effective date of the OIR decision. Doing so will ensure that all carriers have the appropriate operating authority in California.

During the CPCN application and simplified registration review, each Section 285 Carrier would continue to operate and report surcharges under its existing utility ID number. If the application for expansion of authority is granted, carriers would be required to begin to report and remit surcharge revenues within a specified period of time after being granted the expanded authority. Staff proposes that the Section 285 Carrier submit a written statement to Communications Division Director via cdcompliance@cpuc.ca.gov within 90 days after issuance of the decision granting their expanded authority attesting that the carrier is continuing operations under their existing wireline authority and is surrendering their VoIP utility ID number. The written statement would include the date the carrier began to report and remit all surcharges under the wireline authority and the requested effective date of service deactivation under the VoIP utility ID number. The two dates must match. Upon receipt, Staff would confirm the outstanding surcharge remittances owed, if any. Once its surcharge remittance is confirmed, the Section 285 Carrier utility ID number would be archived. Written confirmation of archiving would be emailed to the carrier.

- e. What information should the Commission require from the Section 285 Carriers to help expedite obtaining their operating authority (e.g., status as facilities-based or reseller, location of services, etc.)?**

Staff proposes obtaining additional information about the status of the current Section 285 Carriers to help address the issues in this OIR. Each Section

285 Carrier should be required to provide the information below to the Communications Division Director via email to cdcompliance@cpuc.ca.gov within 30 days of a ruling from the assigned ALJ. All Section 285 Carriers that do not provide a timely response will be identified as non-responsive and will be considered for deactivation based on this staff proposal. The Commission intends that the relevant information collected by Staff will be included in the record for the proceeding.

- Utility ID and Utility Name.
- Identify its facilities status: facilities-based or non-facilities-based (reseller or limited-facilities based).
- Identify the type of interconnected VoIP service offered: fixed or nomadic.
- Identify if it already has an existing wireline operating authority granted via CPCN application or simplified registration.
- Identify if it is compliant with its surcharge reporting and remittance obligations.
- Identify if it plans to continue operating as an interconnected VoIP carrier in California; and
- Identify the type of services each carrier currently provides to its end users (i.e., competitive local exchange services and/ or interexchange services).

f. Is it still necessary, pursuant to D.16-10-039 Operating Paragraph 4, for the Commission to create a Registration Form and an Affidavit for Fixed-Voice over Internet Protocol Service Providers who do not have a CPCN and make that form and affidavit available on the Commission's website?

Staff believes that there is no need to create a new registration form and affidavit for Fixed Voice over Internet Protocol (VoIP) Service Providers so it can voluntarily participate as a LifeLine service provider pursuant to D.16-10-039. The Commission already requires interconnected VoIP service providers to obtain an operating authority via the CPCN application or simplified registration process. The Ordering Paragraph 4 of D.16-10-039 is met.

g. Should the Commission require nomadic interconnected VoIP providers to pay surcharges such as USF surcharges?

Staff recommends obtaining information from parties of this OIR to help address this matter.

h. Should the Commission adopt licensing requirements for nomadic interconnected VoIP providers? If not, should the Commission adopt a separate registration mechanism for the purpose of collection surcharges?

Staff recommends obtaining information from parties of this OIR to help address this matter.

2. Ongoing Requirements

a. What additional reporting requirements should be imposed on interconnected VoIP carriers?

Staff proposes that the Commission require all interconnected VoIP carriers (including Section 285 Carriers granted operating authority through the CPCN application or simplified registration processes) to comply with all obligations imposed upon carriers with wireline operating authority including but not limited to: performance bond requirements, annual financial and operational reports pursuant to General Order 104-A; annual affiliate transaction reports pursuant to D.93-02-019, Tariff filing consistent with Basic Service requirements of D.12-12-038 and payment of PUC user fees.

3. Penalty for Section 285 Carriers that have not reported and remitted surcharges

a. To Obtain Operating Authority: Should a penalty be imposed on Section 285 Carriers that have not reported and remitted surcharges since obtaining their utility ID before approving a wireline operating authority through the CPCN applications or simplified registration processes?

The Commission has authority to levy penalties pursuant to Pub. Util. Code §§ 2107 and 2108. Staff proposes that the Commission impose penalties on Section 285 carriers that have not reported and remitted surcharges since obtaining their utility ID before approving any request for wireline operating authority through the CPCN applications or simplified registration processes. In addition to the ten percent surcharge late payment fee, Section 285 carriers should be penalized \$1000 per year of surcharge non-reporting and remittance up to a maximum of \$3000. A twenty-five percent user fee late payment penalty should also apply in accordance with Pub. Util. Code § 405.

- b. Should a penalty be imposed on carriers who acquire a Section 285 Carrier without first obtaining Commission approval of the transfer? Should carriers who failed to obtain Commission approval for an acquisition of a Section 285 Carrier be permitted to apply for Section 1013 or Section 1001 authority? What information should they be required to disclose in their applications?**

A transfer of control application should be required prior to acquiring either a Section 285 Carrier or an interconnected VoIP that has been operating since the establishment of Pub. Util. Code § 285 and did not obtain an informal registration. Staff proposes that a penalty be imposed on carriers who acquire either a Section 285 Carrier or interconnected VoIP that has been operating since the establishment of Pub. Util. Code § 285 and did not obtain an informal registration without first obtaining Commission approval of the transfer. The acquisition should be disclosed in the application.

Additionally, surcharges and PUC user fees should also be reported and remitted. In addition to the ten percent surcharge late payment fee, carriers should also be penalized \$1000 per year of surcharge non-reporting and

remittance up to a maximum of \$3000. A twenty-five percent user fee late payment penalty should also apply in accordance with Pub. Util. Code § 405.

If the carrier who acquired the Section 285 Carrier does not hold an operating authority, they should be required to apply for an operating authority. The acquisition should be disclosed in the application.

4. Additional Licensing Reforms

- a. Should the Commission delegate to Communications Division staff ministerial authority to perform administrative changes, as needed, to the simplified registration form and instructions used by carriers to obtain operating authority from the Commission pursuant to § 1013, and the Wireless Identification Registration (WIR) form and instructions, used by to commercial mobile radio service (CMRS) providers to obtain operating authority from the Commission pursuant to Decisions 94-10-031 and 13-05-025, as long as those changes are consistent with existing Commission rules and requirements? If so, what changes should be made to the simplified registration and WIR forms?

Staff proposes that the Commission delegate to the Communications Division the authority to perform administrative changes, as needed, to the simplified registration form and instructions used by carriers to obtain operating authority from the Commission pursuant to Pub. Util. Code § 1013, and to the WIR form and instructions used by to commercial mobile radio service (CMRS) providers to obtain operating authority from the Commission pursuant to Decisions 94-10-031 and 13-05-025, as long as it is consistent with existing Commission rules and requirements. The simplified registration process is intended to be an "expedited and inexpensive means of securing operating authority"²¹ while the WIR is used in what the Commission deemed a

²¹ D.97-06-107 at 9.

"ministerial act" for approval of operating authority to CMRS providers.²² Delays in review of the simplified registration and WIR processes are largely due to common application deficiencies and/or questions from applicants to Staff from ambiguous or outdated language on the forms and instructions. The Commission can further expedite both processes, consistent with its original intent, by delegating to staff the ability to update and clarify registration requirements on the forms and instructions from these most common deficiencies and applicant inquiries.

All changes to the simplified registration and WIR forms and instructions will be posted on the Commission's website under the Communications Division Licensing and Registration Information Section. Applicants are directed to review and utilize the latest forms and instructions provided on the Commission's website prior to submitting its request to the Commission.

In addition to granting staff authority to perform administrative changes, as needed, to the simplified registration and WIR forms and instructions, Staff recommends the following the administrative changes to the simplified registration form template and instructions. Staff does not have specific recommendations for changes to the WIR form at this time.

- 1) Clarify that the simplified registration can be utilized by both interexchange and competitive local exchange carriers as long as they are not seeking authority as a facilities-based carrier that requires California Environmental Quality Act (CEQA) review.
- 2) Update Registration form section 1 from "Application of [Name of Applicant] for Registration as an Interexchange Carrier Telephone Pursuant to the Provision of Public Utilities Code Section 1013" to "Application of [Name of Applicant] Registration as a Telephone

²² D.95-10-032 at 12.

Corporation Pursuant to the Provisions of Public Utilities Code Section 1013.”

- 3) Update Registration form section 10 to direct carriers to submit an attestation that they will obtain a performance bond as an attachment to the registration form. Corresponding Instruction 8 should be modified to say that Applicant must file a copy of its executed bond within five business days after the effective date of the issuance of a registration license via Tier 1 Advice Letter.
- 4) Update Registration form section 12 from “Applicant has the required expertise to operate as an interexchange carrier of the type indicated in the application” to “Applicant has the required expertise to operate as a Telephone Corporation of the type indicated in the application.”
- 5) Update registration form and instruction 4 to better clarify that facilities-based carriers who may require CEQA review cannot use the simplified registration process.
- 6) Update instruction 11 to “material changes in the entries for this application, such as discontinuing operation or bankruptcy, or change of name (DBA) should be reported by advice letter. Carriers should refer to the Telecommunications Industry Rules in General Order 96-B for the appropriate advice letter tier. For changes in contact information a regulatory contact information update request form should be submitted.”
- 7) Update the instructions to ensure it matches the appropriate sections of the form being described.

b. Should all registration license holders be required to file performance bonds via a Tier 1 advice letters instead of information-only filings in order to be consistent with the requirements for CPCN holders? Should additional requirements be imposed to all carriers for performance bond submissions?

Staff proposes that all registration license holders be required to file performance bonds via a Tier 1 advice letter instead of an information-only filing consistent with requirements for CPCN holders in order to align requirements

and make the process consistent between simplified registration and CPCN holders.

Additionally, Staff proposes that all carriers that are required to obtain a new performance bond must submit the original hard copy of the performance bond to the Commission's Communications Division-Licensing and Compliance Section (or its successor) for record keeping. The hard copy document must be sent to the following:

California Public Utilities Commission
ATTN: Communications Division - Licensing and Compliance
505 Van Ness Avenue, Third Floor
San Francisco, California 94102

This requirement is in addition to submitting the performance bond via the advice letter process.²³ However, if only an electronic performance bond is available, the carrier must submit an attestation with its advice letter filing stating that there is no original hard copy provided by the surety company and that the electronic bond is the same legal instrument as a paper bond.

Lastly, Staff proposes that carriers submit additional supporting documentations with its annual performance bond advice letter including, but not limited to, a continuation certificate, payment invoice, or other documentation that shows the performance bond is still in full force and effect to facilitate staff review and confirm the bond is still in effect.

- a. Should each VoIP carrier be required to pay an additional \$250 if its simplified registration, pursuant to § 1013, is converted to a**

²³ As of January 1, 2020, CD implemented a new streamlined advice letter process that is more efficient and environmentally friendly. [Resolution T-17670](#) (effective November 7, 2019) authorized CD to modify the current advice letter process. Additional information is available at <https://www.cpuc.ca.gov/industries-and-topics/internet-and-phone/advice-letter-information>.

CPCN Application if it fails to meet the requirements for use of the simplified registration process?

Staff proposes that carriers should be required to pay an additional \$250 when its simplified registration is converted to a CPCN application because it failed to meet the requirements to use the simplified registration process. D. 97-06-107 identified that “the objective [of the simplified registration process] is to allow applicants which have no history of questionable behavior, and which present noncontroversial applications to rely on a[n] expedited and inexpensive means of securing operating authority. Applicants that do not meet these standards, but which nevertheless may be suitable for being granted operating authority, will not be excluded from applying but will have to use the more extensive application process.”²⁴ Staff performs the review and analysis of these filings; however, in the event that issues concerning the applicants are discovered, staff would need to request reassignment to the ALJ Division and the filing is converted to undergo a full CPCN application review. Additional Commission staff resources are now expended to address the request of a carrier to obtain an operating authority in California. Staff believes that the collection of the additional \$250 is appropriate to compensate the additional work associated with the filing and is consistent with the application fee for a CPCN application, currently at \$500.

(END OF ATTACHMENT A)

²⁴ Decision 97-06-107 at p. 9