

Decision 10-09-017 September 2, 2010

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking on the
Commission's Own Motion to Revise the
Simplified Registration Process for
Non-dominant Interexchange Carriers
Established by Decision 97-06-107.

Rulemaking 09-07-009
(Filed July 9, 2009)

**DECISION ADDRESSING REVISIONS TO THE REQUIREMENTS
ESTABLISHED BY DECISION 97-06-107 FOR REGISTRATION OF
NON-DOMINANT INTEREXCHANGE CARRIERS**

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**DECISION ADDRESSING REVISIONS TO THE REQUIREMENTS
ESTABLISHED BY DECISION 97-06-107 FOR REGISTRATION OF
NON-DOMINANT INTEREXCHANGE CARRIERS**

Summary

This decision (Decision) adopts revisions to the registration process for non-dominant interexchange carriers (NDIECs) established by Decision 97-06-107. The adopted revisions are in response to the State Controller's 2007 Audit Report that found that the Commission's registration process did not sufficiently scrutinize registration applicants, and the Commission's collection efforts were ineffective against companies that ceased to operate or filed for bankruptcy when fines were imposed.

The Decision:

- Renames the interexchange authority granted pursuant to Pub. Util. Code § 1013¹ through the simplified registration process established by D.97-06-107 a "registration license" (previously referred to as a "certificate of public convenience and necessity"). A "registration license holder," "registration licensee" or "registrant" is an entity that obtained or obtains interexchange authority pursuant to § 1013 through the simplified registration process established by D.97-06-107 that does not hold interexchange authority pursuant to § 1001;
- Requires all registrants to post a bond to facilitate the collection of fines, penalties, and restitution. The bond amount for existing registrants must be equal to or greater than 10% of intrastate revenues reported to the Commission during the preceding calendar year or \$25,000, whichever is greater. The bond amount for new

¹ All statutory references are to the Public Utilities Code unless otherwise indicated.

registrants that have not yet reported annual intrastate revenues to the Commission is \$25,000;

- Requires registration license applicants to provide resumes of all key officers, directors, and owners of 10% or more of outstanding shares, listing all employment, from officers and directors of applicant, and to provide information on prior or current known investigations by governmental agencies, and any settlement agreements, voluntary payments, or any other type of monetary forfeitures;
- Requires applicants seeking to transfer registration licenses to verify compliance with Commission reporting, fee, and surcharge transmittals;
- Increases the application fee for new and transferred registration licenses from \$75 to \$250, and
- Establishes a minimum annual user fee of \$100 for registrants, including those registrants reporting no intrastate revenues. As a result, registrants must pay an annual user fee based on the Commission-established rate in effect at that time (currently set at 0.18% of gross intrastate revenue) or \$100, whichever is greater.

The Decision does not adopt the proposal to require renewal of registration licenses, and does not adopt the proposal to require fingerprinting of registration applicants' officers and directors.

The changes to the registration process adopted by the Decision should reduce the likelihood that enforcement actions against NDIECs will be necessary, and, when enforcement actions against a carrier are necessary, should improve the Commission's ability to collect fines, penalties, and bring about restitution.

1. Background

This Order Instituting Rulemaking (OIR) was initiated to revise the requirements established by Decision (D.) 97-06-107 for the registration of non-dominant interexchange carriers (NDIECs), including those that provide long distance, high-speed data services, operator services and prepaid debit card

services. The simplified registration process established by D.97-06-107 allows telephone corporations that do not have market power, have no history of questionable behavior, and that present noncontroversial applications, to rely on an expedited and inexpensive means of securing operating authority.

This OIR was initiated in response to issues raised in the State Controller's 2007 Audit Report that found that the Commission's collection efforts were ineffective against companies that ceased to operate or filed for bankruptcy when fines were imposed (Audit Report).² The Audit Report recommended, among other things, that the Commission conduct more stringent background and financial viability reviews of individuals or companies registering with the Commission, and that the Commission require the posting of a performance bond for NDIEC registration.

The OIR sought comments on proposals to require a performance bond as a condition of registration, limit the duration and require renewal of the authority granted to registrants, conduct criminal background checks and expanded fiscal/civil responsibility checks of registration applicants, increase application and user fees, and rename the authority granted to registrants.

² John Chiang, California State Controller, "California Public Utilities Commission - Report of Review, Fines and Restitution Accounting and Collection," August 2007.

On August 19, 2009, comments were filed by the California Association of Competitive Telecommunications Companies (CALTEL), Division of Ratepayer Advocates (DRA), ExteNet Systems (ExteNet), Sempra Broadband (Sempra), Utility Consumers' Action Network (UCAN), and the Verizon Companies (Verizon).³ On September 2, 2009, reply comments were filed by CALTEL, DRA, and UCAN.⁴

2. Scope of OIR

CALTEL asserts that high-speed data services are information services over which the Federal Communications Commission (FCC) asserts sole jurisdiction, and, therefore, high-speed data services should be removed from the scope of the OIR. CALTEL also contends that the reference to "ordinary voice and data communications" contained in Instruction No. 6 of the Commission's current Form of Application for Registration (Application Form) is vague and unhelpful. No other party raised this concern.

We clarify that the OIR applies only to "telecommunications services," as defined in statute and by the FCC.⁵

³ The Verizon Companies include Verizon Long Distance LLC (U-5732-C); MCI Communications Services, Inc., d/b/a Verizon Business Services (U-5378-C); TTI National, Inc., d/b/a Verizon Business Services (U-5403-C); Teleconnect Long Distance Services & Systems Company, d/b/a Telecom*USA (U-5152-C); Verizon Enterprise Solutions LLC (U-5658-C); and Verizon Select Services Inc. (U-5494-C).

⁴ On September 17, 2009, UCAN also filed a Notice of Intent to Claim Intervenor Compensation.

⁵ See 47 USC 153 (44).

3. Should the Commission Revise the NDIEC Registration Process?

Before addressing the specific proposals put forth in the OIR, we first address challenges to the need to revise the NDIEC registration process established by D.97-06-107.

DRA and UCAN support the OIR's proposals to revise the NDIEC registration process to require applicants to undergo a more thorough review because, according to DRA and UCAN, adopting more stringent registration requirements for NDIECs will help screen out illegitimate providers and reduce the number of defrauded consumers. UCAN states that stricter NDIEC registration requirements will make it more difficult for applicants to disguise financial instability or hide past violations, and that additional safeguards to identify illegitimate providers will reduce the Commission's work load because the Commission will have fewer consumer complaints to investigate, fewer fines and less restitution to pursue, and fewer certificates to revoke.

UCAN recommends, however, that the Commission determine if the simplified registration process should be eliminated altogether and instead require all carriers to use the Certificate of Public Convenience and Necessity (CPCN) application process. UCAN also requests that the Commission expand the OIR or open a new proceeding to consider whether the CPCN process is sufficient to address the issues raised in the Audit Report.

Parties representing NDIECs assert that the OIR is based on stale data, and contend that there is currently not a problem with NDIECs or the NDIEC registration process that requires correction. ExteNet states that the Audit Report focused on deficiencies in the Commission's collection process, not the Commission's certification processes, and ExteNet opposes additional NDIEC registration requirements.

CALTEL states that the current NDIEC registration process is working, and that selecting NDIEC registrants for increased regulation is not competitively neutral. CALTEL recommends that the Commission first determine if there is a problem with NDIECs before undertaking potentially unnecessary revisions. CALTEL states, however, that, based on its conversations with the Commission's Consumer Protection and Safety Division (CPSD), CALTEL supports CPSD's desire to revise the NDIEC registration form to provide information to help the Commission better evaluate new NDIEC applications.

According to CALTEL, there are fewer and larger telecommunications companies as a result of industry consolidation occurring since the late 1990s, and "fly-by-night" companies that appeared at that time no longer exist. CALTEL states that it is unable to identify any Orders Instituting Investigation (OII)s issued against a registered NDIEC since 1999.

DRA disagrees with CALTEL's assertions that the OIR is based on stale data and that there is currently not a problem with NDIECs. According to DRA, CPSD has protested 16 registration applications since 2007. Some of the protests were settled, some applications were withdrawn as a result of CPSD's protests, and some applications resulted in settlements for the payment of penalties. Thus, DRA asserts that there are ongoing problems with NDIEC registrants and, therefore, the OIR is timely and necessary.

CALTEL asserts that most remaining NDIECs also hold CPCNs as competitive local exchange carriers (CLCs) or incumbent local exchange carriers (ILECs). As a result, according to CALTEL, NDIECs with CPCNs have undergone a more thorough review and are subject to more stringent regulations than registration-only NDIECs.

CALTEL recommends that, before revising the NDIEC registration process, the Commission first review the Commission's utility (U-Number) database to determine how many NDIEC-only carriers continue to operate in California, and then provide carriers an opportunity to review and update obsolete or duplicative information in the U-Number database. CALTEL asserts that cleaning up the U-Number database will show that most remaining NDIECs also hold CPCNs to operate as CLCs or ILECs.

CALTEL further recommends that the Commission conduct a review to determine if there have been Commission enforcement actions against NDIECs in recent years, and whether the NDIEC-specific problems identified by the Audit Report still exist. CALTEL recommends that the Commission consider revising the NDIEC registration process only after the Commission knows how many NDIEC registrants remain and whether these registrants are creating enforcement problems. CALTEL contends that, without current information, parties cannot determine if there is sufficient justification for revising the NDIEC registration process.

The Audit Report clearly documented the issues that the OIR seeks to address, including, in particular, the need to more carefully review the background of registration applicants to identify unscrupulous individuals or companies, and to improve the Commission's ability to successfully collect fines and bring about restitution. The concerns identified in the Audit Report, and addressed in the OIR, exist whether or not the Commission has recently undertaken enforcement actions.

The Audit Report stated that the Commission has little leverage to collect fines or restitution from companies that engaged in fraudulent or inappropriate practices and ceased to operate or filed bankruptcy after the Commission

initiated investigations or shortly after the Commission imposed fines.⁶ The Audit Report found that the intervening time required to conduct an investigation, and to impose fines on, or require restitution from a carrier, provides violators ample opportunity to evade sanctions and to hide or shield ill-gotten assets from recovery.

The Audit Report also stated that the current registration process is inadequate because registration applicants need provide only minimal information and pay a nominal application fee to register as a telecommunication provider.⁷ The Audit Report recommended that the Commission conduct more stringent background and financial viability reviews of registration applicants, and require registration applicants to post a performance bond. Thus, according to the Audit Report, while the Commission may not be able to ensure that fines are paid or restitution is made in every case of wrongdoing, the current registration process remains insufficiently rigorous to prevent unscrupulous individuals or companies from obtaining authority to operate in California in the first place.

The purpose of the OIR is to consider revisions to the registration process to reduce the potential for fraud or other inappropriate practices. Obtaining

⁶ Audit Report, at 7.

⁷ We note that none of the instances cited in the Audit Report involved a carrier that obtained authority through the CPCN application process (although we do not conclude from this fact that the current CPCN application process is flawless). One of the three instances cited in the Audit Report involved a carrier that obtained authority through the simplified registration process (Accutel Communications), one involved a billing aggregator that did not offer regulated telecommunications services (USP&C), and one involved a carrier that operated without Commission authority (Coral Communications).

additional relevant data on registration applicants during the application process and establishing other requirements proposed in the OIR should reduce the likelihood that subsequent enforcement actions against a carrier will be necessary, and, when enforcement actions against a carrier are necessary, should improve the Commission's ability to collect fines, assess penalties, and bring about restitution.

In light of the problems identified in the Audit Report, it is unreasonable to refrain from action at this time merely because there may have been fewer recent enforcement proceedings, or to delay revising the NDIEC registration process until we again find that we are unable to collect fines or ensure that a carrier makes restitution. The Commission does not need to make a showing of recent failures to collect fines or effect restitution, in order to justify revising the registration process.

We agree with the Audit Report that, once an investigation is launched, it is "inherently difficult" in many cases – particularly involving less established carriers – to ensure the collection of fines or payment of restitution.⁸ Therefore, it is reasonable and prudent to take steps now, both to reduce the need for future enforcement actions, and to increase the likelihood of successfully collecting fines or bringing about restitution once an enforcement action is initiated.

The Commission's Communications Division (Communications Division) reports that there are currently 551 active NDIECs in California, of which 257 (47%) hold CPCNs obtained through a full application process (i.e., pursuant to § 1001), 232 (42%) are registered through the streamlined process pursuant to

⁸ Audit Report at 7.

§ 1013 (registration-only),⁹ and 62 (11 %) are both registered and hold a CPCN. Thus, a large portion of active NDIECs are registration-only, and registration-only NDIECs will likely remain a significant portion of active NDIECs for the foreseeable future. Therefore, we are persuaded that revisions to the NDIEC registration process will be worthwhile.

We will not adopt CALTEL's recommendation to first determine how many NDIEC-only carriers continue to operate in California and provide carriers an opportunity to review and update obsolete or duplicative information before revising the registration process. Carriers may review and update obsolete or duplicative information at any time, and we urge them to do so. However, to postpone revisions to the registration process while conducting CALTEL's recommended review will delay changes to the registration process that may help prevent unscrupulous individuals or companies from imminently operating in California. Ultimately, the outcome of such an exercise will not improve the Commission's ability to collect fines or bring about restitution.

In their joint comments on the proposed decision (PD), CALTEL and ExteNet recommend that, before requiring registration license holders to submit an Information-Only advice letter containing proof of an executed performance bond, the Commission list all carriers that the Commission believes are registration license holders as of the date of the Decision, and establish a process for the listed carriers to initiate an inquiry and work with the Communications Division to resolve any disputes regarding their "registration-only" status.

⁹ As a result of this Decision, the CPCNs issued since D.97-06-107, pursuant to § 1013, are now referred to as "registration licenses."

We do not adopt this recommendation for the same reasons we do not adopt CALTEL's recommendation to review and update obsolete or duplicative carrier information before revising the registration process. A carrier that disputes its status as a registrant, pursuant to § 1013, need only provide documentation showing that it has interexchange authority, pursuant to § 1001, that is currently in effect.

ExteNet recommends that any additional requirements the Commission may adopt should be imposed only prospectively on new applicants. ExteNet states that it provides service only to other carriers and does not serve mass market consumers like those carriers of concern in the Audit Report. ExteNet states that the OIR does not analyze or identify particular risk factors that justify revising the registration process, and that the instances of carrier misconduct identified in the Audit Report do not justify new requirements for NDIECs such as ExteNet. ExteNet recommends that, before making changes to the NDIECs registration process, the Commission collect sufficient data to determine which, if any, categories of NDIECs pose a risk of financial failure or consumer harm.

We will not limit the scope of the rules established in this OIR to registrants serving only mass market consumers, or conduct analysis to determine if NDIECs serving particular types of customers pose special risks, as ExteNet recommends. The Commission does not limit the types of customers that NDIECs may serve. Thus, an NDIEC, such as ExteNet, serving wholesale

customers today may choose to serve other types of customers, including mass market consumers, at any time without additional authorization.¹⁰

Because NDIECs may serve wholesale customers, mass market customers, or both kinds of customers, and may change their business strategy at any time, it would be administratively impossible to exempt from any revised rules certain registrants based on the type of customers served. Therefore, we will not adopt ExteNet's recommendation to assess the risk of financial failure or consumer harm by the type of service offered or type of customer served by registration-based NDIECs before making changes to the NDIECs registration process.

CALTEL and ExteNet assert that the Commission cannot legally impose new registration, bonding and other requirements on carriers that registered under existing rules, and changes to the registration requirements can be made only prospectively for new entrants. At the same time, however, CALTEL contends that any changes to the registration process that impose additional burdens only on new registrants creates barriers to entry and gives existing carriers an unfair competitive advantage.

CALTEL and ExteNet misstate the law. The Commission may at any time, upon notice to the parties, and with opportunity to be heard as provided in the case of complaints, rescind, alter, or amend any order or decision made by it.¹¹

¹⁰ Moreover, this Commission has seen instances where wholesale carriers – once authorized – use the authorization to compel interconnection with incumbent and competitive carriers, and then refuse to pay interconnection charges, plead indigence, and generally ignore Commission orders, rules and regulations. (See, for example, D.07-06-044.)

¹¹ § 1708.

The simplified registration process has not been substantially revised in more than a decade, and changes that the Commission determines to be appropriate are within the Commission's authority to make and to apply to those carriers under its jurisdiction.

We will not adopt UCAN's recommendation to consider at this time eliminating the simplified registration process altogether and require all carriers to instead use the CPCN application process that we conduct pursuant to § 1001. As stated in D.97-06-107, our objective with the simplified registration process is to allow applicants that have no history of questionable behavior and that present noncontroversial applications to rely on an expedited and inexpensive means of securing operating authority. Before discontinuing the simplified registration process we should first consider reasonable modifications to better protect consumers while retaining the benefits of an expedited process.

We will not adopt UCAN's recommendation to expand the OIR or open a new proceeding to consider whether the CPCN application process undertaken pursuant to § 1001 is sufficient to address the issues raised in the Audit Report. The Audit Report does not specifically raise concerns about the adequacy of the Commission's CPCN application process, and none of the instances cited in the Audit Report involved a carrier that obtained authority through the CPCN application process.¹²

In its comments on the PD, DRA recommends that all NDIECs be required to use the registration process conducted pursuant to § 1013, and not be allowed

¹² We noted in the OIR, however, that CLCs were on notice that any rules adopted here may in the future be applied to other carriers certificated under Pub. Util. Code § 1001. (Slip Op. at 9.)

to use the CPCN application process that the Commission conducts pursuant to § 1001 so carriers can not avoid posting a bond or complying with the additional disclosures requirements that we adopt. DRA alternatively recommends that the new requirements proposed in the PD also apply to NDIECs that apply for authority through the CPCN application process conducted pursuant to § 1001.

In reply comments on the PD, CALTEL and ExteNet oppose DRA's recommendation because, among other things, DRA's recommendations are beyond the scope of this proceeding.

This proceeding is limited to considering revisions to the simplified registration process established by D.97-06-107. Modifications to the CPCN process conducted pursuant to § 1001, including DRA's recommendations, are beyond the scope of this proceeding.

4. Should the Registration Certificate of Public Convenience and Necessity be renamed?

The OIR proposed to rename the "registration Certificate of Public Convenience and Necessity" a "registration certificate" or a "registration license" to clearly distinguish between the certification granted under § 1001 and the registration authorized by § 1013.

Sempra states that the term "registration CPCN" is potentially confusing, and that a designation such as "registration certificate" or "registration license" will help prevent confusion.

UCAN also recommends that the Commission identify the authorizing document as a "registration certificate" to reduce confusion. UCAN further recommends that the Commission not designate the authorizing document a "registration license" because, according to UCAN, the term "license" implies that the registration certificate holder has passed a qualifying examination and

acquired a special status such as a drivers' license, real estate license, or contractor license.

ExteNet opposes changing the name of the authorizing document to the extent the Commission intends to retroactively convert existing NDIECs' unlimited certificates to limited-duration licenses.

DRA states that the Public Utilities Code adequately differentiates a CPCN from a registration certificate of an NDIEC.

As stated in the OIR, the designation of the authorizing registration document as a "CPCN" has resulted in confusion. Because § 1013(a) provides that a telephone corporation operating in California must either have a CPCN or be registered, we conclude that it is not appropriate to refer to the authority granted to registrants as a "CPCN." We believe that either "registration license" or "registration certificate" is a more appropriate designation. However, because a CPCN is sometimes also referred to as a "certificate," we prefer the term "registration license" to minimize any potential confusion between it and a CPCN granted pursuant to § 1001. Therefore, we rename the authorization granted through the simplified registration process, pursuant to § 1013, a "registration license."¹³

¹³ Telephone corporations obtaining operating authority in this way remain subject to all the obligations of a public utility under the Public Utilities Code.

We define a “registration license” as the interexchange authority granted pursuant to § 1013 through the simplified registration process established by D.97-06-107, (previously referred to as a “CPCN”).

The terms “registration license holder”, “registration licensee”, or “registrant” are used interchangeably, and refer to an entity (i.e., a prepaid debit card provider required by § 885 to register, or an interexchange carrier) that obtained or obtains interexchange authority through the simplified registration process established by D.97-06-107 pursuant to § 1013, that does not hold interexchange authority obtained through the Commission’s application process pursuant to § 1001.

Thus, an entity with interexchange authority obtained through the Commission’s regular application process pursuant to § 1001, even if the entity is also registered through the simplified registration process pursuant to § 1013, is not a registration license holder, registration licensee or registrant that is subject to the requirements of this Decision.

5. Should Registration Licenses Be Granted for a Limited Duration?

DRA states that limiting the duration of registration licenses to three years and requiring renewal of licenses will help detect and limit wrongdoing, and allows the Commission to eliminate inactive carriers from its database to improve the accuracy of the Commission’s records. DRA asserts that, because existing NDIEC registration licenses have no expiration date, the Commission does not know which NDIEC registrants are currently providing service in California.

UCAN states that individuals and companies change over time, and limiting the duration of registration licenses will allow the Commission an

opportunity to reconsider the qualifications of registrants subsequent to initial registration.

ExteNet opposes the OIR's proposal to limit the duration of registration licenses, and asserts this will impose administrative burdens on small NDIECs and the Commission.

As stated in D.97-06-107, our objective in establishing the simplified registration process is to allow applicants that have no history of questionable behavior and that present noncontroversial applications to rely on an expedited and inexpensive means of securing operating authority. To require registrants with no history of questionable behavior and noncontroversial applications to periodically renew their registration license undermines the objective of the simplified registration process and imposes on registrants a recurring obligation that is not borne by CPCN holders.

In response to Audit Report comments that it takes years for the Commission to investigate and penalize wrongdoing committed by registrants, the OIR proposed that requiring periodic renewal of registration licenses would help to more timely detect and limit or prevent wrongdoing by registrants. However, even with periodic renewal of registration licenses, the Commission would still need to investigate and prosecute violators using the same time-consuming processes that the Audit Report notes take years to complete (e.g., issuing an Order to Show Cause, initiate an investigation, etc.).

Moreover, periodic renewal would require the Communications Division to process hundreds of renewal applications each year, and, as a result, would require renewal applications to be submitted approximately six months prior to expiration of existing licenses. The substantial lead-time required for renewal

applications further undermines our objective of providing an expedited and inexpensive means of securing operating authority.

Although substantial Commission resources would be required to administer a license renewal process, it is not clear that a renewal process would be any more effective at detecting or limiting wrongdoing than other tools already available to the Commission (e.g., the complaint process).

Therefore, for the reasons discussed above, we will not adopt the OIR's proposal to require the renewal of a registration license every three years.

6. Should a Performance Bond Be Required as a Condition of Registration?

Two different kinds of performance bonds are provided for in § 1013. First, § 1013(e) provides that the Commission require, as a precondition to registration, the procurement of a performance bond sufficient to cover taxes or fees, or both, collected from customers and held for remittance and advances or deposits the telecommunications company may collect from its customers, or order that those advances or deposits be held in escrow or trust. Second, § 1013(f) permits the Commission to require, as a precondition to registration, the procurement of a performance bond sufficient to facilitate the collection of fines, penalties, and restitution related to enforcement actions that can be taken against a telecommunications company.

Performance bonds are surety bonds issued by an insurance company or a bank to guarantee satisfactory completion of a project by a contractor. Although § 1013 uses the term "performance bond", the purpose of the bond described in § 1013(e) is to facilitate the collection of taxes or fees, and customer advances or deposits, and the purpose of the bond described in § 1013(f) is to facilitate the collection of fines, penalties and restitution.

The OIR states that the Commission would reconsider the determination made in D.97-06-107 that no performance bond is necessary to ensure payment of fees or taxes or to protect consumers, and sought comment on the type of bond(s) registration applicants should be required to post and the amount of the bond that should be posted. The OIR also asks whether prepaid debit card providers that are required to register pursuant to Pub. Util. Code § 885(a) should be subject to the same performance bond requirement as other NDIEC registrants that provide only long distance services.¹⁴

CALTEL states that the Commission previously determined that no performance bond was necessary to ensure payment of fees or taxes or to protect consumers because the Commission ordered NDIECs to establish escrow accounts to hold advances or deposits from customers. CALTEL contends that the Commission requires sufficient evidence in this proceeding before the Commission could implement a new bonding requirement pursuant to § 1013(e).

ExteNet asserts that the Commission may require a bond as a precondition of registration but not as a retroactive qualification to keep a certificate. ExteNet contends that retroactively imposing a bond requirement exceeds the Commission's authority and is equivalent to penalizing NDIECs that have done nothing wrong.

UCAN recommends that the Commission adopt a performance bond requirement to address the concern raised in the Audit Report about the Commission's inability to collect fines and restitution. UCAN asserts that a bonding requirement will deter some unscrupulous companies, and the

¹⁴ *Id.*, Finding of Fact 9.

availability of a bond will help protect consumers. UCAN recommends that any bond requirements also apply to the services of telephone prepaid debit card providers to ensure consumers are equally protected regardless of the type of NDIEC they choose for service.

DRA recommends that the Commission require performance bonds. DRA contends that performance bonds are required by statute, and that the Commission must bring the current registration process into compliance with State law. DRA states that a bond requirement will increase scrutiny of registration applicants because these applicants will also be screened by the bonding company.

We affirm the determination reached in D.97-06-107, and will not require performance bonds to cover fees, taxes, advances or deposits, pursuant to § 1013(e). Section 1013(e) directs the Commission to require, as a condition of registration, the procurement of a performance bond sufficient to cover taxes or fees, or both, collected from customers and held for remittance and advances or deposits the telecommunications company may collect from its customers, or order that those advances or deposits be held in escrow or trust.

D.97-06-107 determined that no bond was necessary to ensure payment of fees because nonpayment of fees is cause for revocation of the authority granted pursuant to § 1013, and the prospect of revocation was a sufficient deterrent to ensure the payment of fees. D.97-06-107 also determined that no performance bond was necessary to ensure payment of taxes because the Commission does not collect or impose taxes, and because there was no evidence that utility taxes were not being timely remitted. D.97-06-107, however, required any advances or deposits collected from customers be held in escrow or trust for those customers, and, in doing so, exercised the Commission's discretion to choose between

requiring a bond to cover customer advances or deposits or ordering that the advances or deposits be held in escrow or trust.

The Audit Report raised concerns about the Commission's ability to collect fines and restitution but does not raise concerns about the Commission's ability to collect fees or concerns with the handling of customer advances or deposits. There is no indication in the record of this proceeding that the determinations made in D.97-06-107 concerning performance bonds to cover fees, taxes, advances or deposits have hindered the Commission's ability to collect fees or to protect customer advances or deposits. Therefore, we find no basis at this time for changing the determinations reached in D.97-06-107 concerning the implementation of § 1013(e). We turn now to § 1013(f).

CALTEL states that § 1013(f) permits but does not obligate the Commission to require performance bonds to facilitate the collection of fines and penalties. While CALTEL acknowledges that the Commission is permitted to impose performance bonds pursuant to § 1013(f) as a hedge against penalties and fines, CALTEL recommends that the Commission not require such bonds because of what CALTEL sees as their anticompetitive effects.

We are not persuaded that requiring registrants to obtain and maintain a bond to facilitate the collection of fines, penalties and restitution is anticompetitive, as NDIECs will continue to have a choice to either register through the simplified registration process or to obtain a CPCN through a formal CPCN application. CALTEL does not explain how changing the requirements for registration licenses, including requiring performance bonds, creates barriers to entry when prospective NDIECs may simply choose to instead obtain a CPCN, as CALTEL contends most existing NDIECs have already done.

Section 1013(f) was enacted by the Legislature in 2008 as a part of Assembly Bill (AB) 2578. AB 2578 was authored in response to the Audit Report in order to improve the Commission's ability to collect fines and restitution from public utilities and common carriers, and to allow the Commission to implement the recommendations of the Audit Report.¹⁵

Requiring the procurement of a performance bond, as a precondition to registration, is consistent with the authority granted to the Commission pursuant to § 1013(f), and will facilitate the collection of fines, penalties, and restitution. The requirement to obtain and maintain a performance bond should also apply to the services of telephone prepaid debit card providers to improve the Commission's ability to collect fines and restitution from prepaid telephone services debit card providers. Therefore, pursuant to § 1013(f), we establish a performance bond requirement on all registrants, including prepaid telephone services debit card providers that are required to register pursuant to § 885(a), to facilitate the collection of fines, penalties and restitution.

As stated above, D.97-06-107 determined that the prospect of having a CPCN revoked was a sufficient deterrent to ensure the payment of fees. However, revocation of a registration license is not a deterrent to an unscrupulous carrier engaged in fraudulent practices who may cease operations or file bankruptcy before the Commission is able to collect fines or bring about restitution. Requiring the posting of a bond may deter some unscrupulous companies from registering in the first place, and will help protect consumers and the Commission by ensuring that funds will be available to cover at least

¹⁵ Assembly Committee Bill Analysis, April 14, 2008.

some portion of any fines, penalties, or restitution that may be imposed. Therefore, requiring registrants to post a bond to facilitate the collection of fines, penalties and restitution is appropriate due to the inherent difficulty in collecting fines or restitution from companies that engage in fraudulent or inappropriate practices and cease operations or file for bankruptcy before the Commission is able to collect fines or bring about restitution.

We reject ExteNet's assertion that establishing a requirement to obtain a performance bond creates a retroactive qualification to keep a license. The requirement to obtain a performance bond is applied only prospectively. No past authority is revoked and no prior conduct will become illegal.

DRA states that a "license bond" is the appropriate type of bond for a carrier to obtain because a "performance bond" is usually associated with the completion of construction projects. According to DRA, however, the Commission does not need to specify the type of bond. DRA recommends instead that the Commission require only that a bond be obtained, and allow each carrier and corporate surety company to determine the appropriate type.

We agree that the Commission does not need to specify the type of bond. However, we will continue to refer to the requirement as a "performance bond," consistent with its usage in § 1013(f), and clarify that its purpose is to facilitate the collection of fines, penalties and restitution, pursuant to § 1013(f).

DRA and UCAN recommend that any performance bond requirements should be similar to those adopted in D.07-03-014, addressing the Digital Infrastructure and Video Competition Act of 2006. In particular, DRA recommends that the bond be issued by a corporate surety company authorized to transact business in California and that the Commission be listed as the sole obligee on the bond. DRA also recommends that the Commission require

registrants to obtain a bond large enough to cover surcharges due, fines owed, and to compensate customers in cases of fraud or bankruptcy of not less than \$25,000. DRA states that \$25,000 is the amount that switchless resellers are currently required to show they have in reasonably liquid assets when applying for their NDIEC registration certificate, and requiring carriers to post a bond in at least this amount will ensure that they have available at least the minimum amount initially required to become a licensed carrier.

We have previously not required registration applicants to post performance bonds to facilitate the collection of fines, penalties and restitution, and, therefore, have not established a procedure for determining the bond amount. The level of fines and penalties the Commission may impose will depend on a number of factors, including 1) severity of the offense, 2) conduct of the utility in detecting, preventing and rectifying a violation, 3) financial resources of the carrier and the need to deter future violations, 4) the totality of the circumstances in furtherance of the public interest, and 5) precedent.¹⁶

Some of these factors are related, in part, to the amount of revenues collected. For example, the severity of the offense includes the economic harm (i.e., the amount of expense which was imposed upon the victims), and any unlawful benefits gained by the carrier.

Because the bond we require registration license holders to obtain is to facilitate the collection of fines, penalties and restitution to customers, the size of the bond should bear some relationship to the fines, penalties and restitution that may potentially be imposed. For example, the purpose of restitution is to return

¹⁶ See D.98-12-075.

funds to victims that were unlawfully collected by a carrier, and the amount of restitution the Commission may require is likely to be related to the amount of revenues collected by a carrier.

Therefore, until we have more experience with the performance bond requirement, it is reasonable to base the amount of the performance bond on a registrant's reported annual intrastate revenues, and, as discussed below, to establish a minimum bond amount for registrant that have not reported or do not report annual intrastate revenues to the Commission.

Initially, we will require an existing registrant to post a bond that reflects, at a minimum, 10% of its intrastate revenues. We believe that this amount balances our objectives to ensure that funds will be available to cover at least some portion of any fines, penalties, or restitution that may be imposed while not unduly burdening registrants.

We further conclude that it would be appropriate to establish a minimum bond amount for all registrants. We currently require applicants seeking authority to become non-facilities-based carriers to demonstrate that they possess a minimum of \$ 25,000 of cash or cash equivalent, reasonably liquid and readily available to meet the new firm's expenses. DRA has recommended that this amount be the minimum amount that should be required for a bond. Since no other parties expressed opposition to this recommendation, we adopt DRA's proposal.

All registrants are required to obtain a performance bond, pursuant to § 1013(f), equal to or greater than 10 percent of intrastate revenues reported on the Commission's User Fee Statement during the preceding calendar year or \$25,000, whichever is greater. Within 90 days after the effective date of this Decision, each existing registration license holder must submit an

Information-Only advice letter to the Director of the Communications Division containing a copy of the registration license holder's executed performance bond.

New registration license applicants that have not previously reported revenues to the Commission or submitted surcharges will be required to obtain a performance bond in the amount of \$25,000 for the first year. In its application, the registration applicant must attest to the amount of the bond that will be obtained and that the required performance bond will be executed within five business days after the effective date of the issuance of a registration license. Accordingly, a new question (Question No. 10) is added to the Application Form requiring the applicant to verify that the applicant will obtain a continuous bond, issued by a corporate surety company authorized to transact surety business in California, in the amount of \$25,000 that will be in effect during all periods of operation, and lists the California Public Utilities Commission as the obligee.

Within five business days after the effective date of the issuance of the registration license, the new registration licensee must submit an Information-Only advice letter to the Director of the Communications Division, pursuant to General Order 96-B, Telecommunication Industry Rule No. 2,¹⁷ containing a copy of the registration license holder's executed bond.

¹⁷ See D.07-09-019.

A registration license holder may not allow its performance bond to lapse during any period of its operation, and during all periods of operation a registration license holder must continue to possess the requisite legal, technical, and financial qualifications. Not later than March 31 of each year, each registration license holder must submit an Information-Only advice letter to the Director of the Communications Division containing a copy of its executed performance bond.¹⁸ In all cases, the 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.

A registration license holder will be deemed delinquent if it is more than ninety days late in submitting to the Director of the Communications Division an Information-Only advice letter containing a copy of its executed bond. However, the Communications Division may grant requests for additional time for a registration license holder to submit a copy of the executed bond if the license holder makes a written request to the Communications Division before license holder is deemed delinquent. A registration license holder must provide an explanation in its request for additional time that demonstrates good cause for the additional time needed to comply with the requirement to submit to the Commission a copy of the executed bond.

¹⁸ In some cases, a registrant may be required to provide the Director of the Communications Division a copy of its executed performance bond more than once in a year. For example, a new registration licensee granted authority on June 1 is required to provide the Director of the Communications Division a copy of its executed bond by June 6, and by March 31 of the following year.

The Communications Division will prepare for Commission consideration a resolution revoking the registration license of any registration license holder that is more than 120 days late in providing the Director of the Communications Division a copy of its executed performance bond and that has not been granted an extension of time by the Communications Division.

7. Should Registration Applicants Be Subject to Expanded Fiscal and Civil Responsibility Checks? Should Fingerprints, Criminal Background Checks and/or Other Showings Be Required For Registration Applicants?

The Audit Report found that the Commission's collection difficulties, discussed above, are compounded by other processing shortcomings and control deficiencies.¹⁹ In particular, the Audit Report states that the Application Form requires an applicant to provide only minimal information and advises that the Commission does not adequately review the background and financial viability of applicants. The Audit Report identifies one instance where an unscrupulous company began billing consumers for millions of dollars in unauthorized charges shortly after being registered by the Commission.

We find that the Application Form currently does not require registration applicants to disclose certain information that might well be pertinent to an applicant's fitness for a grant of operating authority. We conclude that we should require registration license applicants to provide additional information, and undergo expanded fiscal and civil responsibility checks. However, we will not require fingerprinting as a part of applicant background checks.

¹⁹ Audit Report, Finding 1, at 7-10.

The current registration process requires applicants to complete the Application Form, consisting of questions concerning the identity of the applicant, place of business, proposed service area, type of organizational structure, types of service to be offered, proof of requisite financing, eligibility for tariff exemptions, and declarations affirming that no principal owning more than 10% of the applicant has been the subject of a civil or criminal court order as to Business Code violations or has been sanctioned by a regulatory agency, and that no principal has been associated with a carrier that filed for bankruptcy.²⁰

CPSD conducts background checks based on the responses to the questions in the Application Form. CPSD then files a protest if it believes that an applicant has untruthfully answered any question.

If a protest is filed, the application is automatically removed from the expedited process and is assigned to an Administrative Law Judge (ALJ) for further review, including possible hearings. This process allows applicants with no history of questionable behavior and that present noncontroversial applications to rely on an expedited and inexpensive means of securing operating authority.²¹

UCAN recommends that applicant background checks include fingerprinting of all corporate officers and directors (for corporations), members, managers, and officers (for limited liability corporations), general and managing partners (for partnerships), and of the proprietor of sole proprietorships. UCAN further recommends that the Commission conduct its own independent review of court and regulatory agency records to verify good standing (regulatory

²⁰ The current Application Form is attached to this Decision as Attachment A.

compliance and fiscal solvency), including a review of an applicant's officers and directors, partners, or members, and to impose fees to cover the costs for these investigations. UCAN recommends that a change of ownership or transfer of registration licenses be treated as new applications.

DRA supports the OIR's proposed revisions to the registration process, and recommends that the Commission also review the Commission's Consumer Affairs Branch database for complaints as evidence of lack of fitness, as is done for CPCN applications. However, DRA does not recommend that the Commission require fingerprinting as a part of applicant background checks because, according to DRA, the Commission currently does not have access to the United States Department of Justice fingerprint database, and, therefore, fingerprinting would be of little use.

CALTEL and ExteNet oppose the OIR's proposal to require fingerprinting and criminal background checks of NDIECs' officers or directors. CALTEL states that the Audit Report did not recommend criminal background checks or fingerprinting. CALTEL asserts that NDIECs do not present the kinds of risks to public safety and welfare that would justify fingerprinting NDIEC principals as the Commission does with charter party and household goods carriers.

ExteNet states that criminal background checks and fingerprinting overreach because such requirements are not targeted to offenses related to telecommunications operations. ExteNet recommends that the Commission limit its inquiry to the conduct of the carrier, including searching FCC and other state regulatory databases for evidence of regulatory sanctions.

²¹ D.97-06-107, Finding Of Fact No. 8.

Verizon states that it would be burdensome and resource intensive to require an applicant to disclose whether it has been previously or is currently being investigated by any governmental agency, has entered into any settlement agreements or made any voluntary payments in resolution of any action by any regulatory body, agency, or attorney general, or court. Verizon recommends that the Commission narrowly tailor any new rules to address specific, identified problems, avoid duplication of existing reporting requirements, and avoid imposing new requirements of questionable usefulness.

Sempra states that background checks should not be so onerous as to discourage potential officers and directors from serving, or to discourage potential registration license holders from seeking to offer services in California. Sempra states, however, that it is reasonable to inquiry into whether an applicant has entered into any settlements with any regulatory agency over its business conduct or practices.

DRA contends that the Commission should consider additional facts concerning any other type of monetary forfeitures, including settlements and other voluntary payments, that are not currently and explicitly required to be reported on the Application Form but which are pertinent to a registrant's fitness for a grant of operating authority.

According to DRA, CPSD previously protested certain registration applications for failing to disclose pending civil litigation, settlements, or monetary forfeitures that CPSD believed were relevant to an applicant's fitness. However, because the Application Form does not specifically require registration applicants to report settlements and other monetary forfeitures or voluntary

payments, prior Commission decisions have found that applicants' failure to disclose this information does not violate our rules.²² Thus, the extent of CPSD's background check is effectively limited to the questions contained in the Application Form.

We conclude that we should require registration applicants to provide additional information to enable more thorough fiscal and civil responsibility checks. Therefore, we require applicants to disclose any type of settlement of claims brought against applicants or applicants' principals by any regulatory body, agency, district attorney, states' attorney general, Department of Justice, or other enforcement body, whether that settlement is monetary or conduct-based. This information is in addition to currently required information concerning adjudications by those bodies, and judgments or settlements entered into in civil courts related to claims of fraud, non-disclosure or unfair, deceptive, and/or illegal business consumer practices.

Information concerning prior or current investigations of an applicant or its principals by governmental agencies that applicant is aware of and information concerning settlement agreements entered into or voluntary payments made by an applicant or its principals to resolve action by regulatory agencies, attorneys general, or courts is relevant to determining an applicant's eligibility to use the registration process. Requiring registration applicants to provide this additional information during the registration process is consistent with the Audit Report recommendation for the Commission to conduct more

²² See, for example, D.08-12-027, D.09-07-034, and D.09-10-034. Other Commission decisions, however, have treated failure to disclose an applicant's regulatory history as sanctionable conduct. (See, for example, D.09-06-013.)

stringent background reviews of individuals and companies applying for registration.

In particular, information on other types of monetary forfeitures will alert the Commission to an applicant's settlements and forfeitures, as well as investigations underway but not completed, to help the Commission identify whether an applicant has a prior history of questionable behavior. Requiring applicants to provide information on other types of monetary forfeitures will also expand the scope of the background checks that CPSD conducts. Therefore, we revise Questions Nos. 7 and 8 of the Application Form as follows:

Question No. 7 (Question No. 8 on the revised Application Form):

"Neither applicant, any of its affiliates, officers, directors, partners, agents, or owners (directly or indirectly) of more than 10% of applicant, or anyone acting in a management capacity for applicant: (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 (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 sections 17000 *et seq.*, 17200 *et seq.*, or 17500 *et seq.* of the California Business & Professions Code, or of any other statute, regulation, or decisional law relating to fraud, dishonesty, failure to disclose, or misrepresentations to consumers or others; or (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.

If your answer to this question is anything other than an unqualified "True," please attach documentation and describe any such bankruptcies, findings, judgments, convictions, referrals, denials, suspensions, revocations, limitations, settlements, voluntary payments or any other type of monetary forfeitures."

Question No. 8 (Question No. 9 on the revised Application Form):

"To the best of applicant's knowledge, neither applicant, any affiliate, officer, director, partner, nor owner of more than 10% of applicant, 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.

If your answer to this question is anything other than an unqualified "True," please attach documentation and describe all such investigations, whether pending, settled voluntarily or resolved in another manner."

In its comments on the PD, DRA recommends that the revised Application Form include a provision to "attach documentation" in response to Questions 8 and 9. We agree. Questions 8 and 9 on the revised Application Form have been revised accordingly.

The additional disclosures that we require do not change the objective of providing an expedited and inexpensive means for applicants with no history of questionable behavior to secure operating authority pursuant to § 1013. The additional disclosures will provide the Commission with relevant information to assure the Commission that registration applicants have no history of questionable behavior and present noncontroversial applications. Applicants which do not meet these standards (or whose applications are protested) 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 CPCN application process conducted pursuant to § 1001.

Notwithstanding CALTEL's and ExteNet's general objections to the Commission imposing any new requirements on NDIECs, no party opposes the proposal, in particular, to require resumes, listing all employment, from officers and directors of registration applicants. Requiring resumes from officers and directors of applicants will provide important information about an applicant's principals but should not discourage potential officers and directors from serving, and should not discourage registrants from seeking to offer services in California. Therefore, the proposal to require resumes, listing all employment, from officers and directors of registration applicants is adopted and the Application Form is revised accordingly.²³

In its comments on the PD, DRA recommends that registration applicants be required to also provide the social security numbers of its principals and officers, because, according to DRA, this information will allow the enforcement staff to perform background checks more quickly.

Requiring registration applicants to provide the social security numbers of its principals and officers could be of value while performing background checks. However, DRA makes this recommendation for the first time in its comments on the PD, and the Commission has not had the opportunity to carefully consider the recommendation. We do not adopt it.

²³ Question No. 2 of the Application Form has been revised to require resumes, listing all employment, from officers and directors of registration applicants.

Question No. 1 of the Application Form currently requires applicants to attach a list of fictitious names used, if any. To provide more clear instructions to applicants, and to enable the Commission to conduct more thorough fiscal and civil responsibility checks, the Application Form is revised to require applicants to list the fictitious business names under which a registration applicant has done business in the last five years.²⁴

As discussed below, the Commission will not require fingerprinting of registration NDIECs' principals as a part of the simplified registration process. The Commission currently requires electric service providers registering with the Commission and applicants for a permit to operate as a household goods carrier to submit fingerprints for each owner, partner, officer, and director, pursuant to § 394(b)(8) and § 5135(d), respectively.

In 1996, the legislature adopted AB 1890 addressing the transition to a more competitive electric industry, and in 1997, the legislature adopted Senate Bill (SB) 477 to facilitate restructuring of the electric industry. Pursuant to AB 1890 and SB 477, D.98-03-072 established interim standards for determining financial viability, and technical and operational ability for applicants seeking to become electric service providers in California. Among other things, D.98-03-072 required the officers and directors of electric service providers to submit fingerprints to enable the Commission to conduct the background checks contemplated by § 394(b)(8).

In 1999, AB 1658 added a specific fingerprinting requirement to § 394 as part of the electric service provider registration process. AB 1658 also established

²⁴ Question No. 1.A on the revised Application Form.

§ 5135(d), requiring fingerprints from the owners, partners, officers, and directors of household goods carriers in order to mirror the fingerprinting requirement applicable to electric service providers.

D.99-05-034 subsequently eliminated the requirement to submit fingerprints of the directors of electric service providers but continued to require submission of fingerprints of electric service provider officers. D.99-05-034 found that fingerprinting electric service provider officers would be useful in screening out persons intending to defraud consumers. D.99-05-034 stated that, when balancing the need to maximize competition by reducing barriers to entry with the need to protect small consumers against deceptive, unfair, or abusive business practices, fingerprinting was not an undue barrier to entry given the legislature's expressed intent to protect small consumers, embodied in § 391.²⁵

The fingerprinting of electric service provider officers is justified given the legislature's declaration that electricity is essential to the health, safety, and economic well-being of all California consumers, and that consumers be provided with mechanisms to protect themselves from marketing practices that are unfair or abusive. Fingerprinting the owners, partners, officers, and directors of household goods carriers is also appropriate because these carriers are entrusted with the moving publics' most cherished and valuable possessions.

However, the risks to the public presented by registrants do not justify fingerprinting of registration applicants' principals. The Commission does not require fingerprinting of CPCN applicants' principals. To require the principals

²⁵ Section 391(a) states, among other things, that electricity is essential to the health, safety, and economic well-being of all California consumers, and § 391(g)(2) states that

Footnote continued on next page

of registration applicants to undergo fingerprinting would be more onerous than what we currently require for CPCN applicants.

Moreover, while telecommunications carriers may be viewed as providing essential services, the additional information we require from applicants is sufficient to allow the Commission to conduct more thorough background and financial viability reviews of individuals or companies registering with the Commission, consistent with the Audit Report recommendations.

In its comments on the PD, DRA states that the PD does not discuss the possible sanctions faced by registrants who either withhold information or willfully mislead the Commission. DRA recommends that the Commission provide guidelines to NDIECs and Commission Staff as to what the consequences are for failing to disclose the required information.

We need not set forth guidelines on the consequences of withholding information or willfully misleading the Commission, except to note that the Application Form requires a signed verification by the applicant. Consequently, any misrepresentation in the application would be a violation of Rule 1.1 of the Commission's Rules of Practice and Procedure and subject to sanctions under the Public Utilities Code.

No party commented on the OIR's proposal to have an applicant state when the applicant will begin providing service in California. This proposal is adopted. A new question (Question No. 6 on the revised Application Form) is added to the Application Form requiring the applicant to provide the date on

it is the intent of the legislature that consumers be provided with mechanisms to protect themselves from marketing practices that are unfair or abusive.

which applicant expects to begin offering service in California, and the remaining questions on the Application Form are renumbered, accordingly.

In its comments on the PD, DRA recommends that an additional question be added to the Application Form to require applicants to identify the other states where they conducted, applied to conduct, or currently conducts business. DRA states that this information will assist staff performing background checks. DRA makes this recommendation for the first time in its comments on the PD. The Commission has not had the opportunity to carefully consider the recommendation, and does not adopt it.

It is not necessary for the Commission to take further comment on how the additional information obtained through the revised registration process will be used, as UCAN asserts the Commission must do. As described above, if a registration application is protested, the registration application is automatically removed from the expedited process and is assigned to an ALJ for further review, including possible hearings.²⁶ Thus, the additional information we require from registration applicants will be used to verify a registration applicant's eligibility to use the simplified registration process.

In its comments on the PD, DRA recommends that the Commission require that an application for an NDIEC registration license filed pursuant to § 1013 be dismissed without prejudice and be required to be re-filed pursuant to § 1001, if Commission staff determines that an applicant has not fully disclosed

²⁶ Registration applications that are filed with the Commission are noticed in the Commission's Daily Calendar. The Daily Calendar is available on the Commission's website (<http://www.cpuc.ca.gov>). Any person concerned about the accuracy, completeness or content of an application may file a protest within 30 days after publication of the notice in the Daily Calendar.

its negative corporate history. DRA recommends that the re-filed applications be closely scrutinized and the applicant be required to explain why the negative information was previously withheld. DRA does not explain how its recommendation is substantively different from the existing process.

As discussed earlier, CPSD currently conducts background checks based on the responses to the questions in the Application Form, and files a protest if it believes that an applicant has untruthfully answered any question. If a protest is filed, the application is automatically removed from the expedited process and is assigned to an ALJ for further review, including possible hearings.

DRA appears to be proposing that staff be authorized to reject an application as the result of an informal staff review. DRA's recommendation would inappropriately delegate to staff discretionary authority, and, therefore, the recommendation is not adopted.

The revisions made to the Application Form and instructions, pursuant to this Decision, are shown in the markup contained in Attachment B. The revised Application Form and instructions are included as Attachment C.²⁷

In its comments on the PD, DRA recommends that the title of the revised Application Form (currently titled "Form of Application for Registration") be renamed the "Registration License Form." The Commission prefers that the revised Application Form be called the "Application for Registration License" to more clearly identify its purpose, and makes this non-substantive change.

²⁷ The instructions for the revised Application Form also include a non-substantive change in order to be consistent with the revised Commission's Rules of Practice and Procedure adopted in D.06-07-006.

8. Should Registration License Holders Be Required to Prove Good Standing as a Condition for Renewal or Transfer of Registration Licenses?

The OIR proposed requiring registrants, as part of the license renewal process or an application to transfer a registration license, to demonstrate compliance with all Commission reporting, fee, and surcharge transmittal requirements, have no record of criminal activities, citations, financial irregularities, etc., and to disclose any past or pending regulatory sanctions from the FCC or another state regulatory agency.

Sempra recommends that any showing to prove good standing that the Commission may require as a condition of renewal or transfer of a registration license should be limited to demonstrating that there are no outstanding investigations or customer complaints alleging fraud or unlawful business practice, and registration license holders should have an opportunity to correct any administrative or minor technical problems the Commission may identify.

UCAN recommends that the Commission require license renewal applicants to demonstrate good standing, including demonstrating compliance with all Commission reporting, fee, and surcharge transmittal requirements, having no record of criminal activities, citations or financial irregularities, and disclosing any past or pending regulatory sanctions from the FCC or another state regulatory agency. UCAN recommends that, in addition to the Commission conducting its own independent review through civil court and regulatory agency records to verify good standing, any officers or directors not with the company at the time of initial registration or last renewal should be required to submit to all of the fingerprinting, background checks, and other

showings adopted in this proceeding. UCAN recommends that an applicant requesting a change in ownership should be treated as a new applicant.

DRA agrees that, as a condition of license renewal or transfer, registration license holders must have no record of criminal activities, citations or financial irregularities, and be required to disclose any past or pending regulatory sanctions from the FCC or other regulatory agencies. However, DRA recommends that the Commission conduct its own background checks of applicants, including applicants' officers and directors, rather than rely on applicants to demonstrate fitness.

As discussed above, we will not require the periodic renewal of a registration license, and, therefore, requiring a showing of good standing as a part of the application renewal process is no longer an issue before us. However, we will require a showing of good standing for applications to transfer registration licenses.²⁸

Applications to transfer registration licenses will continue to be filed as Tier 2 Advice Letters, pursuant to General Order (GO) 96-B.²⁹ Because an applicant seeking to transfer a registration license (transferor) may have operated in California for some period of time prior to filing an application to transfer a registration license, transferors will be required to show good standing by, among other things, verifying compliance with Commission reporting, fee, and surcharge transmittal requirements.

Applications to transfer registration licenses will continue to be noticed in the Commission's Daily Calendar, and protests or responses to an application to

²⁸ GO 96-B, Telecommunications Industry Rule 1.13, defines "transfers."

transfer a registration license may be filed within 20 days of the date of filing of the advice letter, pursuant to Rule 7.1 of GO 96-B General Rules.

Currently, registrants that are granted operating authority are required to submit a written acceptance of the grant to the Director of the Communications Division. This requirement will continue to apply to new registration licenses and transferred licenses, and registrants that are granted a new or transferred license must provide the Director of the Communications Division a written acceptance of the license before exercising the authority granted by that license.

9. Should the Nominal \$75 Application Fee Be Increased? Should We Require a Minimum Annual User Fee, and If So, How Much Should That Annual Fee Be?

DRA and UCAN support the OIR's proposal to increase the current registration fee to \$500 to help offset the additional expense for expanded background checks and reviews of civil and regulatory records. According to UCAN, this fee increase will not deter law-abiding applicants from registering. UCAN also supports the OIR's proposal to adopt a minimum annual fee to fund Commission regulatory activities and to help reduce the number of NDIECs who are not actually providing services.

DRA states that it has surveyed other states and found application fees ranging from \$0 to \$1000, and that increasing the application fee for a new license to \$500 will not be a substantial burden to registration applicants. DRA also recommends that all registrants, including those reporting no intrastate revenues, pay a \$300 license renewal user fee.

²⁹ See GO 96-B, Telecommunications Industry Rules 7.2, 7.4 and 8.6.2.

CALTEL states that the OIR's proposals, including the proposal to require license renewal and to charge renewal fees, impose a penalty on existing NDIECs without evidence of wrongdoing.

We will increase the fee to obtain or transfer a license to help offset the costs of processing registration license applications, including the additional costs associated with expanded background checks. However, we will not at this time increase the application fee to \$500. Instead, we find that it is reasonable to increase the application fee for new and transferred licenses to \$250 until we have more experience with the revised rules adopted in this Decision. Increasing the application fee to \$250 for new and transferred registration licenses will not be a substantial burden on registration applicants and will help offset the costs of processing registration license applications.

We also adopt the OIR's proposal to establish a minimum annual user fee of \$100 for registration licensees. A minimum annual user fee for registration license holders will ensure that all registrants contribute a fair share toward the Commission's annual operating budget.

Currently, the Commission determines annually the user fee to be paid by the telecommunications carriers based on a carrier's gross intrastate revenue, excluding inter-carrier sales, equipment sales and directory advertising.³⁰ The current user fee is set at a rate of 0.18% of gross intrastate revenues.³¹ However, carriers, including registrants, reporting no intrastate revenues pay no fee, even though the Commission incurs ongoing costs to maintain records and databases, and to perform other regulatory activities that benefit those carriers. Therefore,

³⁰ See Pub. Util. Code §§ 401-10, 431-435.

establishing a minimum annual user fee of \$100 for registration license holders to help fund Commission regulatory activities is reasonable.

Registration license holders must pay an annual user fee based on the Commission-established rate in effect at the time (currently set at 0.18% of gross intrastate revenue) or \$100, whichever is greater. This minimum annual user fee of \$100 applies only to registration license holders at this time.

Although this Decision approves an increase from \$75 to \$250 for the NDIEC registration application fee, we believe that the application fees for all telecommunications carriers, including CLCs, NDIECs that obtained CPCNs through formal application, and others, should be increased from \$75 to \$250. We also believe that the minimum annual user fee of \$100 for registration license holders established in this Decision should be applicable to all telecommunications providers.

The OIR made all other telecommunications carriers respondents to this rulemaking so that they have notice that proposed changes adopted in this rulemaking may be extended in the future to competitive local exchange carriers CLCs, NDIECs that obtained CPCNs through formal application, or others. We intend to consider increasing the application fee for telecommunications carriers to \$250 and to establish a minimum annual user fee of \$100 for all telecommunications providers, and will seek legislative authority to the extent required to implement these proposed fee increases.

In its comments on the PD, DRA recommends that the Commission explicitly delegate authority to the Director of the Communications Division to

³¹ See Resolution M-4819.

administratively revoke or suspend a registration license, effective immediately, without the need for further Commission action, if a registration license holder fails to pay the annual user fee, and to administratively reinstate a registration license holder's operating authority upon the payment of the fee and a late fee.

The Commission has not had the opportunity to carefully consider the recommendation, and does not adopt it.

10. Comments on Proposed Decision

The proposed decision of the Commissioner in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were filed on August 23, 2010 by DRA and jointly by CALTEL and ExteNet, and reply comments were filed on August 30, 2010 by DRA and jointly by CALTEL and ExteNet. The comments have been considered and appropriate changes have been made.

11. Assignment of Proceeding

John A. Bohn is the assigned Commissioner and Richard Smith is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. The Audit Report documents the need to more carefully review the background of registration applicants to identify unscrupulous individuals or companies, and to improve the Commission's ability to successfully collect fines and bring about restitutions.

2. The concerns identified in the Audit Report that the OIR seeks to address continue to exist even if the Commission has not recently undertaken enforcement actions.

3. The Audit Report does not specifically raise concerns about the adequacy of the Commission's CPCN application process, and none of the instances cited in the Audit Report involved a carrier that obtained authority through the CPCN application process.

4. The authorization granted pursuant to § 1013 through the simplified registration process established by D.97-06-107 is renamed a "registration license."

5. It is not clear that a renewal process would be any more effective at detecting or limiting wrongdoing than other tools already available to the Commission (e.g., the complaint process).

6. Requiring the procurement of a performance bond, as a precondition to registration, is consistent with the authority granted to the Commission pursuant to § 1013(f), and will facilitate the collection of fines, penalties, and restitution.

7. A performance bond requirement is established for all registrants, including prepaid telephone services debit card providers that are required to register pursuant to § 885(a), to facilitate the collection of fines, penalties and restitution.

8. DRA recommends that the Commission require registrants to obtain a bond large enough to cover surcharges due, fines owed, and to compensate customers in cases of fraud or bankruptcy of not less than \$25,000.

9. Because the bond we require registration license holders to obtain is to facilitate the collection of fines, penalties and restitution to customers, the size of the bond should bear some relationship to the fines, penalties and restitution that may potentially be imposed.

10. The Commission establishes a minimum performance bond amount of \$25,000, as recommended by DRA.

11. A registration license holder may not allow its performance bond to lapse during any period of its operation, and during all periods of operation a registration license holder must continue to possess the requisite legal, technical, and financial qualifications.

12. Revocation of a registration license is not a deterrent to an unscrupulous carrier engaged in fraudulent practices who may cease operations or file bankruptcy before the Commission is able to collect fines or bring about restitution.

13. The Application Form currently does not require registration applicants to disclose certain information that might well be pertinent to an applicant's fitness for a grant of operating authority.

14. The extent of CPSD's background check is limited to the questions contained in the Application Form.

15. Requiring registration applicants to provide additional information will enable the Commission to conduct more thorough fiscal and civil responsibility checks.

16. Requiring registration applicants to provide additional information during the registration process is consistent with the Audit Report recommendation for the Commission to conduct more stringent background reviews of individuals and companies applying for registration.

17. Information concerning prior or current investigations of an applicant or its principals by governmental agencies that applicant is aware of and information concerning settlement agreements entered into or voluntary payments made by an applicant or its principals to resolve action by regulatory agencies, attorneys general, or courts is relevant to determining an applicant's eligibility to use the registration process.

18. Requiring applicants to provide information concerning prior or current investigations of an applicant or its principals by governmental agencies that applicant is aware of and information concerning settlement agreements entered into or voluntary payments made by an applicant or its principals to resolve action by regulatory agencies, attorneys general, or courts will expand the scope of the background checks that CPSD conducts.

19. Requiring resumes from officers and directors of applicants will provide important information about an applicant's principals but should not discourage potential officers and directors from serving, and should not discourage registrants from seeking to offer services in California.

20. The proposal to require resumes, listing all employment, from officers and directors of registration applicants is adopted and the Application Form is revised accordingly.

21. To require the principals of registration applicants to undergo fingerprinting would be more onerous than what we currently require for CPCN applicants.

22. A showing of good standing will be required for applications to transfer registration licenses.

23. The purpose of the annual user fee is to finance the Commission's annual operating budget.

24. A minimum annual user fee for registration license holders will ensure that all registrants contribute a fair share toward the Commission's annual operating budget.

25. Carriers, including registrants, reporting no intrastate revenues pay no annual user fee, even though the Commission incurs ongoing costs to maintain

records and databases, and to perform other regulatory activities that benefit those carriers.

Conclusions of Law

1. Evidentiary hearings are not necessary.
2. Obtaining additional relevant data on registration applicants during the application process and establishing other requirements proposed in the OIR should reduce the likelihood that subsequent enforcement actions against a carrier will be necessary, and, when enforcement actions against a carrier are necessary, should improve the Commission's ability to collect fines, penalties and bring about restitution.
3. In light of the Audit Report findings, it is unreasonable to refrain from revising the registration process at this time merely because there may have been few recent enforcement proceedings.
4. It is reasonable and prudent to take steps now to reduce the likelihood for the need of future enforcement actions, and to increase the likelihood of successfully collecting fines or compelling restitution once an enforcement action is initiated.
5. Because § 1013(a) provides that a telephone corporation operating in California must either have a CPCN or be registered, it is not appropriate to refer to the authority granted to registrants as a "CPCN."
6. The term "registration license" should minimize any potential confusion between it and a CPCN.
7. A "registration license" is defined as the interexchange authority granted pursuant to § 1013 through the simplified registration process established by D.97-06-107 (previously referred to as a "CPCN"), and the interexchange authority granted pursuant to § 1013 through the simplified registration process

established by D.97-06-107, as modified by this Decision. The terms “registration license holder,” “registration licensee,” or “registrant” are used interchangeably, and refer to an entity (i.e., a prepaid debit card provider required by § 885 to register, or an interexchange carrier) that obtained or obtains interexchange authority pursuant to § 1013 through the simplified registration process established by D.97-06-107 that does not hold interexchange authority pursuant to § 1001 obtained through the Commission’s application process.

8. An entity with interexchange authority pursuant to § 1001 obtained through the Commission’s regular application process, even if the entity is also registered through the simplified registration process pursuant to § 1013, is not a registration license holder, registration licensee, or registrant that is subject to the requirements of this Decision.

9. To require registrants with no history of questionable behavior and noncontroversial applications to periodically renew their registration license undermines the objective of the simplified registration process and imposes on registrants a recurring obligation that is not borne by CPCN holders.

10. Applications to transfer registration licenses should continue to be filed as Tier 2 Advice Letters, pursuant to GO 96-B.

11. Registrants that are granted a new or transferred license should provide the Director of the Communications Division a written acceptance of the license before exercising the authority granted by that license.

12. There is no basis for changing the determinations reached in D.97-06-107 concerning the implementation of § 1013(e).

13. Pursuant to § 1013(f), the Commission may require all registrants, including prepaid telephone services debit card providers that are required to

register pursuant to § 885(a), to obtain and maintain a performance bond to facilitate the collection of fines, penalties and restitution.

14. Requiring the procurement of a performance bond may deter some unscrupulous companies from registering in the first place, and will help protect consumers and the Commission by ensuring that funds will be available to cover at least some portion of any fines, penalties, or restitution that may be imposed.

15. The requirement to obtain and maintain a performance bond should apply to prepaid telephone services debit card providers that are required to register pursuant to § 885(a) to improve the Commission's ability to collect fines and restitution from prepaid telephone services debit card providers.

16. Requiring registrants to post a bond to facilitate the collection of fines, penalties and restitution is appropriate due to the inherent difficulty in collecting fines or restitution from companies that engage in fraudulent or inappropriate practices and cease operations or file for bankruptcy before the Commission is able to collect fines or bring about restitution.

17. It is reasonable to base the amount of the performance bond on a registrant's reported annual intrastate revenues and to establish a minimum bond amount of \$25,000.

18. Registrants should be required to obtain a performance bond equal to or greater than 10 percent of intrastate revenues reported on the Commission's User Fee Statement during the preceding calendar year or \$25,000, whichever is greater.

19. New registration license applicants applying for the first time which have not previously reported revenues or submitted surcharges to the Commission should be required to obtain a performance bond in the amount of \$25,000 for the first year. In the affidavit included in its application, the registration applicant

should be required to attest to the amount of the bond that will be obtained and that the required performance bond will be executed within five business days after the effective date of the issuance of a registration license.

20. In all cases, the performance bond should 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 should be listed as the obligee on the bond.

21. Each registration license holder should be required to submit an Information-Only advice letter to the Director of the Communications Division containing a copy of the registration license holder's executed performance bond annually not later than March 31. A new registration applicant should submit an Information-Only advice letter to the Director of the Communications Division containing a copy of the registration license holder's executed bond within five business days after the effective date of the issuance of a registration license.

22. Within 90 days after the effective date of this Decision, each existing registration license holder should be required to submit an Information-Only advice letter to the Director of the Communications Division containing a copy of the registration license holder's executed performance bond.

23. A registration license holder may not allow its performance bond to lapse during any period of its operation, and during all periods of operation a registration license holder should continue to possess the requisite legal, technical, and financial qualifications.

24. A registration license holder should be deemed delinquent if it is more than ninety days late in submitting to the Director of the Communications Division an Information-Only advice letter containing a copy of its executed bond.

25. The Communications Division should be authorized grant requests for additional time for registration license holders to submit a copy of the executed bond if the license holder makes a written request to the Communications Division before license holder is deemed delinquent. A registration license holder should be required to provide an explanation in its request for additional time that demonstrates good cause for the additional time needed to comply with the requirement to submit to the Commission a copy of the executed bond.

26. The Communications Division should prepare for Commission consideration a resolution revoking the registration license of any registration license holder that is more than 120 days late in providing the Director of the Communications Division a copy of its executed performance bond and that has not been granted an extension of time by the Communications Division.

27. Registration license applicants should be required to provide additional information, and undergo expanded fiscal and civil responsibility checks.

28. Registration license applicants should be required to disclose other types of monetary forfeitures to resolve any action by any regulatory body, agency, or attorney general, or court, in addition to information concerning settlement agreements entered into or voluntary payments made by an applicant or its principals.

29. The Application Form should be revised as follows:

Question No. 7 (Question No. 8 on the revised Application Form):

“Neither applicant, any of its affiliates, officers, directors, partners, agents, or owners (directly or indirectly) of more than 10% of applicant, or anyone acting in a management capacity for applicant: (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 (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 sections 17000 *et seq.*, 17200 *et seq.*, or 17500 *et seq.* of the California Business & Professions Code, or of any other statute, regulation, or decisional law relating to fraud, dishonesty, failure to disclose, or misrepresentations to consumers or others; (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.

If your answer to this question is anything other than an unqualified 'True,' please attach documentation and describe any such bankruptcies, findings, judgments, convictions, referrals, denials, suspensions, revocations, limitations, settlements, voluntary payments or any other type of monetary forfeitures."

Question No. 8 (Question No. 9 on the revised Application Form):

"To the best of applicant's knowledge, neither applicant, any affiliate, officer, director, partner, nor owner of more than 10% of applicant, 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.

If your answer to this question is anything other than an unqualified 'True, please attach documentation and describe

all such investigations, whether pending, settled voluntarily or resolved in another manner.”

30. Requiring resumes from officers and directors of registration applicants will provide important information about an applicant’s principals but should not discourage potential officers and directors from serving, and should not discourage registrants from seeking to offer services in California.

31. Applicants for registration licenses should be required to state when the applicant expects to begin providing service in California.

32. Applicants seeking to transfer registration licenses should be required to verify compliance with Commission reporting, fee, and surcharge transmittal requirements.

33. It is reasonable to increase the application fee for new and transferred registration licenses to \$250 until we have more experience with the revised rules adopted in this Decision. Increasing the application fee to \$250 for new and transferred registration licenses will not be a substantial burden on registration applicants and will help offset the costs of processing registration license applications.

34. It is reasonable to establish a minimum annual user fee of \$100 for registration license holders to help fund Commission regulatory activities.

35. R.09-07-009 should be closed.

36. This order should be effective immediately.

O R D E R

IT IS ORDERED that:

1. The simplified registration process set forth in Decision 97-06-107 is revised as specified in the Ordering Paragraphs below.
2. The authorization granted through the simplified registration process pursuant to § 1013 is renamed a “registration license.”
3. Registrants that are granted a new or transferred registration license must provide the Director of the Communications Division a written acceptance of the registration license before exercising the authority granted by that license.
4. Registration license holders must obtain a performance bond equal to or greater than 10 percent of intrastate revenues reported on the Commission’s User Fee Statement during the preceding calendar year or \$25,000, whichever is greater. 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 90 days after the effective date of this Decision, all registration license holders must submit an Information-Only advice letter to the Director of the Communications Division containing a copy of the registration license holder’s executed performance bond.
5. New registration license applicants applying for the first time which have not previously reported revenues or submitted surcharges to the Commission must obtain a performance bond in the amount of \$25,000 for the first year. In the affidavit included in its application, the registration applicant must attest to the amount of the bond that will be obtained and that the required performance bond will be executed within five business days after the effective date of the issuance of a registration license. 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.

6. Each registration license holder must submit an Information-Only advice letter to the Director of the Communications Division containing a copy of the registration license holder's executed performance bond at least annually not later than March 31. Within five business days after the effective date of the issuance of a registration license, a new registration holder must submit an Information-Only advice letter to the Director of the Communications Division a copy of the registration license holder's executed bond.

7. A registration license holder must not allow its performance bond to lapse during any period of its operation. During all periods of operation a registration license holder must continue to possess the requisite legal, technical, and financial qualifications.

8. The Communications Division is authorized grant to requests for additional time for registration license holders to submit a copy of the executed bond if the license holder makes a written request to the Communications Division before license holder is deemed delinquent. A registration license holder must provide an explanation in its request for additional time that demonstrates good cause for the additional time needed to comply with the requirement to submit to the Commission a copy of the executed bond.

9. The Communications Division must prepare for Commission consideration a resolution revoking the registration license of any registration license holder that is more than 120 days late in providing the Director of the Communications Division a copy of its executed performance bond and that has not been granted an extension of time by the Communications Division.

10. Applicants for registration licenses must submit, as part of the application, resumes, listing all employment, from officers and directors of registration applicants.

11. Applicants for registration licenses must state when the applicant expects to begin providing service in California.

12. The revised Application Form and instructions in Attachment B to this Decision are adopted.

13. Applicants seeking to transfer registration licenses must verify compliance with all Commission reporting, fee, and surcharge transmittals.

14. The application fee for new and transferred registration licenses is set at \$250.

15. A minimum annual user fee for registration license holders is established and set at \$100. Registration license holders must pay an annual user fee based on the Commission-established rate in effect at the time (currently 0.18% of gross intrastate revenue) or \$100, whichever is greater.

16. Rulemaking 09-07-009 is closed.

This order is effective today.

Dated September 2, 2010, at San Francisco, California.

MICHAEL R. PEEVEY
President
DIAN M. GRUENEICH
JOHN A. BOHN
TIMOTHY ALAN SIMON
NANCY E. RYAN
Commissioners

ATTACHMENT A
Current Application for Registration License

Form of Application for Registration

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF
CALIFORNIA

1 Application of

--

A.

for Registration as an Interexchange Carrier
Telephone Corporation Pursuant to the
Provisions of Public Utilities Code Section 1013.

(Insert the full legal name of applicant in blank above;
see instruction 1; attach fictitious names, if any)

Street address:

Telephone: ()

Fax Nr.: ()

E-Mail:

2 Applicant is: (Check only one; see instruction 2.)	A corporation (attach good standing certificate)	<input type="checkbox"/>
	A limited partnership (attach good standing certificate)	<input type="checkbox"/>
	A limited partnership (attach good standing certificate)	<input type="checkbox"/>
	A limited liability company (attach good standing certificate)	<input type="checkbox"/>
	A general partnership	<input type="checkbox"/>
	A sole proprietor	<input type="checkbox"/>
	A trust	<input type="checkbox"/>
	Other (describe)	<input type="checkbox"/>
<i>Attach name, street address, and telephone number of applicant's registered agent for service of process Attach list of the names, titles, and street addresses of all officers and directors, general partners, trustees, members, or other persons authorized to conduct the business of applicant at a similar level Attach list of all affiliated entities (see instruction 2)</i>		

3 Legal domicile of applicant is:	California	<input type="checkbox"/>
	Other (identify):	<input type="checkbox"/>
(Check only one; see instruction 3.)		

4 Applicant will operate as:	Switchless reseller	<input type="checkbox"/>
	Facilities-based carrier	<input type="checkbox"/>
(Check only one; see instruction 4.)		

5 Applicant will provide service:	Statewide <input type="checkbox"/> In specific portions only (attach description and map) <input type="checkbox"/>
(Check only one; see instruction 5.)	
6 Applicant will provide: voice and data telecommuni - cations only	True <input type="checkbox"/> Not true <input type="checkbox"/>
(Check only one; see instruction 6.)	
7 No affiliate, officer, director, general partner, or	True <input type="checkbox"/> Not true <input type="checkbox"/>
person owning more than 10% of applicant, or anyone acting in such a capacity whether or not formally appointed, held one of these positions with an IEC that filed for bankruptcy or has been found either criminally or civilly liable by a court of appropriate jurisdiction for a violation of • 17000 et seq. of the California Business and Professions Code or for any actions which involved misrepresentations to consumers, and to the best of applicant's knowledge, is not currently under investigation for similar violations. (Check only one; see instruction 2.)	
8 To the best of applicant's knowledge, neither	True <input type="checkbox"/> Not true <input type="checkbox"/>
applicant, any affiliate, officer, director, partner, nor owner of more than 10% of applicant, or any person acting in such capacity whether or not formally appointed, has been sanctioned by the Federal Communications Commission or any state regulatory agency for failure to comply with any regulatory statute, rule or order.	
9 Applicant has a minimum of	True (attach documentation) <input type="checkbox"/> Not true <input type="checkbox"/>
(a) \$25,000 in the case of a switchless reseller OR (b) \$100,000 in the case of a facilities based applicant, in each case reasonably liquid and available to meet the firm's first-year expenses, including deposits required by local exchange carriers or interexchange carriers or (c) has profitable interstate operations to generate the required cash flow. (Check only one; see instruction 7.)	
10 Applicant has the required	True <input type="checkbox"/> Not true <input type="checkbox"/>
expertise to operate as an interexchange carrier of the type indicated in the application.	
11 Applicant is eligible for an	True <input type="checkbox"/> Not true <input type="checkbox"/>
exemption from tariffing requirements as set out in Commission Decision 98-08-031 and seeks such an exemption. (Check only one; see instruction 8.)	

I hereby declare under penalty of perjury under the laws of the State of California that the forgoing information, and all attachments, are true, correct, and complete to the best of my knowledge and belief after due inquiry, and that I am authorized to make this application on behalf of the applicant named above.

Signed:

Name
Title
Dated

Street
Address

Telephone
Fax

Principal Place of Business (if different from address on page 1).

Street Address
City
State
Zip
Phone No.

(End of Attachment A)

ATTACHMENT B

Redlined Application for Registration License showing revisions (new or revised text is shown in underline and deleted text is shown in strikethrough font)

~~Form of~~ Application for Registration License

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF
CALIFORNIA

1 Application of

--

A.

for Registration as an Interexchange Carrier
Telephone Corporation Pursuant to the
Provisions of Public Utilities Code Section 1013.

(Insert the full legal name of applicant in blank above;
see instruction 1; ~~attach fictitious names, if any~~)
Street address:

Telephone: () Fax No.: ()
E-Mail:

1.A. List all fictitious business names under which
applicant has done business in the last five years:

--

2 Applicant is: (Check only one; see instruction 2.)	A corporation (attach good standing certificate) <input type="checkbox"/> A limited partnership (attach good standing certificate) <input type="checkbox"/> A limited partnership (attach good standing certificate) <input type="checkbox"/> A limited liability company (attach good standing certificate) <input type="checkbox"/> A general partnership <input type="checkbox"/> A sole proprietor <input type="checkbox"/> A trust <input type="checkbox"/> Other (describe) <input type="checkbox"/>
	<p><i>Attach name, street address, and telephone number of applicant's registered agent for service of process.</i></p> <p><i>Attach list of the names, titles, and street addresses of all officers and directors, general partners, trustees, members, or other persons authorized to conduct the business of applicant at a similar level.</i></p> <p><u>Attach resumes listing all employment for each officer and director.</u></p> <p><i>Attach list of all affiliated entities (see instruction 2)</i></p>
3 Legal domicile of applicant is: (Check only one; see instruction 3.)	California <input type="checkbox"/> Other (identify): <input type="checkbox"/>
4 Applicant will operate as: (Check only one; see instruction 4.)	Switchless reseller <input type="checkbox"/> Facilities-based carrier <input type="checkbox"/>
5 Applicant will provide service: (Check only one; see instruction 5.)	Statewide <input type="checkbox"/> In specific portions only (attach description and map) <input type="checkbox"/>
6 Applicant expects to begin offering service in California on:	<div style="border-bottom: 1px solid black; width: 100%;"></div> <div style="text-align: right;">(date)</div>
7 Applicant will provide: voice and data telecommunications only (Check only one; see instruction 6.)	True <input type="checkbox"/> Not true <input type="checkbox"/>

8 Neither applicant, any of its affiliates, officers, directors,	True <input type="checkbox"/> Not true <input type="checkbox"/>
<p>partners, agents, or owners (directly or indirectly) of more than 10% of applicant, or anyone acting in a management capacity for applicant: (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 (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 sections 17000 et seq., 17200 et seq., or 17500 et seq. of the California Business & Professions Code, or of any other statute, regulation, or decisional law relating to fraud, dishonesty, failure to disclose, or misrepresentations to consumers or others; (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. (Check only one; see instruction 2.)</p> <p>If your answer to this question is anything other than an unqualified 'True', please attach documentation and describe any such bankruptcies, findings, judgments, convictions, referrals, denials, suspensions, revocations, limitations, settlements, voluntary payments or any other type of monetary forfeitures.</p>	
9 To the best of applicant's knowledge,	True <input type="checkbox"/> Not true <input type="checkbox"/>
<p>neither applicant, any affiliate, officer, director, partner, nor owner of more than 10% of applicant, or any person acting in such capacity whether or not formally appointed, <u>is being or has been sanctioned investigated</u> by the Federal Communications Commission or any law enforcement or regulatory agency for failure to comply with any law, rule or order. (Check only one; see instruction 2.)</p> <p>If your answer to this question is anything other than an unqualified 'True,' please attach documentation and describe all such investigations, whether pending, settled voluntarily or resolved in another manner.</p>	
10 Applicant will obtain a continuous bond, issued	True (attach documentation) <input type="checkbox"/> Not true <input type="checkbox"/>
<p>by a corporate surety company authorized to transact surety business in California, in the amount of \$25,000 that will be in effect during all periods of operation, and lists the California Public Utilities Commission as the obligee. Applicant will submit an Information-Only advice letter to the Director of the Communications Division containing a copy of the Applicant's executed bond within five business days after the effective date of the issuance of a registration license. (Check only one; see instruction 8.)</p>	

11 Applicant has a minimum of (a) \$25,000 in	True (attach documentation) <input type="checkbox"/> Not true <input type="checkbox"/>
the case of a switchless reseller OR (b) \$100,000 in the case of a facilities based applicant, in each case reasonably liquid and available to meet the firm's first-year expenses, including deposits required by local exchange carriers or interexchange carriers or (c) has profitable interstate operations to generate the required cash flow. (Check only one; see instruction 9.)	
12 Applicant has the required expertise to	True <input type="checkbox"/> Not true <input type="checkbox"/>
operate as an interexchange carrier of the type indicated in the application.	
13 Applicant is eligible for an exemption from	True <input type="checkbox"/> Not true <input type="checkbox"/>
tariffing requirements as set out in Commission Decision 98-08-031 and seeks such an exemption. (Check only one; see instruction 8.)	

I hereby declare under penalty of perjury under the laws of the State of California that the forgoing information, and all attachments, are true, correct, and complete to the best of my knowledge and belief after due inquiry, and that I am authorized to make this application on behalf of the applicant named above.

Signed:

Name _____
 Title _____
 Dated _____

**Street
 Address**

**Telephone
 Fax
 E-mail**

Principal Place of Business (if different from address on page 1).

**Street Address
 City
 State
 Zip
 Phone No.**

Instructions:

1. Enter the legal name of applicant exactly as it appears on its articles or certificate of corporation or similar charter document.
2. Good standing certificates are available from the office of the Secretary of State of the State of California and should be dated of a date not more than 60 days prior to the date of filing the application. An original certificate must be attached to the manually signed copy of the application. An affiliated entity is any entity under common control with applicant. Common control exists if the same individuals or entities have the direct or indirect power to determine the action of applicant and such entity through the right to vote shares, by contract or agreement, or otherwise. Note whether any such entity is a reporting company for purposes of the Securities Exchange Act of 1934, as amended. Attach current resumes, listing all employment, for all officers and directors of applicant.
3. For individuals, domicile is the place of legal residence; for entities, it is the state of incorporation or organization.
4. A switchless reseller only uses the switch of another carrier; a facilities based carrier uses its own switch as well as the facilities of another carrier. Only facilities which meet the requirements for exemption from the California Environmental Quality Act (CEQA) pursuant to Commission Rule of Practice and Procedure ~~47.1(h)(1)(A)(1-)~~ 2.4 may be included in a CPCN registration. All other facilities will require a formal application.
5. If service is to be provided to less than the entire State of California, specify the exact area for which authority is requested.
6. Enter the date that applicant expects to begin offering service in California.
7. Applicants which will provide services other than ordinary voice and data communications may not use the registration system.
8. All registrants are required to obtain a performance bond, pursuant to Public Utilities Code § 1013(f). Applicant must provide the Executive Director a copy of its executed bond within five business days after the effective date of the issuance of a registration license.
9. Attach audited balance sheet for the most recent fiscal year and an unaudited balance sheet as of the most recent fiscal quarter, a bank statement as of the month prior to the date of filing the application, or a third-party undertaking to provide the required amounts on behalf of applicant. If the balance sheet shows current liabilities in excess of current assets or negative equity, explain how applicant will be able to maintain sufficient liquidity for its first year of operations.
10. All NDIECs exempt from tariffing requirement must comply with the Consumer Protection Rules adopted in Decision 98-08-031.
11. Material changes in the entries for this application , such as discontinuing operation or bankruptcy, or change of name (DBA), change of address, telephone, fax number or E-mail address should be reported by a simple letter (for non-tariffed carriers) and by advice letter (quadruplicate) for tariffed carriers, referencing your CPCN number.

(End of Attachment B)

ATTACHMENT C

Revised Application for Registration License

Application for Registration License BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

1 Application of

--

A.

for Registration as an Interexchange Carrier
Telephone Corporation Pursuant to the
Provisions of Public Utilities Code Section 1013.

(Insert the full legal name of applicant in blank above;
see instruction 1)

Street address:

Telephone: () Fax No.: ()

E-Mail:

1.A. List all fictitious business names under which
applicant has done business in the last five years:

--

2 Applicant is: (Check only one; see instruction 2.)	A corporation (attach good standing certificate) <input type="checkbox"/> A limited partnership (attach good standing certificate) <input type="checkbox"/> A limited partnership (attach good standing certificate) <input type="checkbox"/> A limited liability company (attach good standing certificate) <input type="checkbox"/> A general partnership <input type="checkbox"/> A sole proprietor <input type="checkbox"/> A trust <input type="checkbox"/> Other (describe) <input type="checkbox"/>
	<p><i>Attach name, street address, and telephone number of applicant's registered agent for service of process.</i></p> <p><i>Attach list of the names, titles, and street addresses of all officers and directors, general partners, trustees, members, or other persons authorized to conduct the business of applicant at a similar level.</i></p> <p><i>Attach resumes listing all employment for each officer and director.</i></p> <p><i>Attach list of all affiliated entities (see instruction 2)</i></p>
3 Legal domicile of applicant is: (Check only one; see instruction 3.)	California <input type="checkbox"/> Other (identify): <input type="checkbox"/>
4 Applicant will operate as: (Check only one; see instruction 4.)	Switchless reseller <input type="checkbox"/> Facilities-based carrier <input type="checkbox"/>
5 Applicant will provide service: (Check only one; see instruction 5.)	Statewide <input type="checkbox"/> In specific portions only (attach description and map) <input type="checkbox"/>
6 Applicant <u>expects to</u> begin offering service in California on:	<div style="border-bottom: 1px solid black; width: 100%;"></div> <div style="text-align: right;">(date)</div>
7 Applicant will provide: voice and data telecommunications only (Check only one; see instruction 6.)	True <input type="checkbox"/> Not true <input type="checkbox"/>

8 Neither applicant, any of its affiliates, officers, directors,	True <input type="checkbox"/> Not true <input type="checkbox"/>
<p>partners, agents, or owners (directly or indirectly) of more than 10% of applicant, or anyone acting in a management capacity for applicant: (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 (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 sections 17000 et seq., 17200 et seq., or 17500 et seq. of the California Business & Professions Code, or of any other statute, regulation, or decisional law relating to fraud, dishonesty, failure to disclose, or misrepresentations to consumers or others; (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. (Check only one; see instruction 2.)</p> <p>If your answer to this question is anything other than an unqualified 'True', please attach documentation and describe any such bankruptcies, findings, judgments, convictions, referrals, denials, suspensions, revocations, limitations, settlements, voluntary payments or any other type of monetary forfeitures.</p>	
9 To the best of applicant's knowledge,	True <input type="checkbox"/> Not true <input type="checkbox"/>
<p>neither applicant, any affiliate, officer, director, partner, nor owner of more than 10% of applicant, 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. (Check only one; see instruction 2.)</p> <p>If your answer to this question is anything other than an unqualified 'True,' please attach documentation and describe all such investigations, whether pending, settled voluntarily or resolved in another manner.</p>	
10 Applicant will obtain a continuous bond, issued	True (attach documentation) <input type="checkbox"/> Not true <input type="checkbox"/>
<p>by a corporate surety company authorized to transact surety business in California, in the amount of \$25,000 that will be in effect during all periods of operation, and lists the California Public Utilities Commission as the obligee. Applicant will submit an Information-Only advice letter to the Director of the Communications Division containing a copy of the Applicant's executed bond within five business days after the effective date of the issuance of a registration license. (Check only one; see instruction 8.)</p>	

11 Applicant has a minimum of (a) \$25,000 in	True (attach documentation) <input type="checkbox"/> Not true <input type="checkbox"/>
the case of a switchless reseller OR (b) \$100,000 in the case of a facilities based applicant, in each case reasonably liquid and available to meet the firm's first-year expenses, including deposits required by local exchange carriers or interexchange carriers or (c) has profitable interstate operations to generate the required cash flow. (Check only one; see instruction 9.)	
12 Applicant has the required expertise to	True <input type="checkbox"/> Not true <input type="checkbox"/>
operate as an interexchange carrier of the type indicated in the application.	
13 Applicant is eligible for an exemption from	True <input type="checkbox"/> Not true <input type="checkbox"/>
tariffing requirements as set out in Commission Decision 98-08-031 and seeks such an exemption. (Check only one; see instruction 8.)	

I hereby declare under penalty of perjury under the laws of the State of California that the forgoing information, and all attachments, are true, correct, and complete to the best of my knowledge and belief after due inquiry, and that I am authorized to make this application on behalf of the applicant named above.

Signed:

Name
Title
Dated

Street
Address

Telephone
Fax
E-mail

Principal Place of Business (if different from address on page 1).

Street Address
City
State
Zip
Phone No.

Instructions:

1. Enter the legal name of applicant exactly as it appears on its articles or certificate of corporation or similar charter document.
2. Good standing certificates are available from the office of the Secretary of State of the State of California and should be dated of a date not more than 60 days prior to the date of filing the application. An original certificate must be attached to the manually signed copy of the application. An affiliated entity is any entity under common control with applicant. Common control exists if the same individuals or entities have the direct or indirect power to determine the action of applicant and such entity through the right to vote shares, by contract or agreement, or otherwise. Note whether any such entity is a reporting company for purposes of the Securities Exchange Act of 1934, as amended. Attach current resumes, listing all employment, for all officers and directors of applicant.
3. For individuals, domicile is the place of legal residence; for entities, it is the state of incorporation or organization.
4. A switchless reseller only uses the switch of another carrier; a facilities based carrier uses its own switch as well as the facilities of another carrier. Only facilities which meet the requirements for exemption from the California Environmental Quality Act (CEQA) pursuant to Commission Rule of Practice and Procedure 2.4 may be included in a CPCN registration. All other facilities will require a formal application.
5. If service is to be provided to less than the entire State of California, specify the exact area for which authority is requested.
6. Enter the date that applicant expects to begin offering service in California.
7. Applicants which will provide services other than ordinary voice and data communications may not use the registration system.
8. All registrants are required to obtain a performance bond, pursuant to Public Utilities Code § 1013(f). Applicant must provide the Executive Director a copy of its executed bond within five business days after the effective date of the issuance of a registration license.
9. Attach audited balance sheet for the most recent fiscal year and an unaudited balance sheet as of the most recent fiscal quarter, a bank statement as of the month prior to the date of filing the application, or a third-party undertaking to provide the required amounts on behalf of applicant. If the balance sheet shows current liabilities in excess of current assets or negative equity, explain how applicant will be able to maintain sufficient liquidity for its first year of operations.
10. All NDIECs exempt from tariffing requirement must comply with the Consumer Protection Rules adopted in Decision 98-08-031.
11. Material changes in the entries for this application , such as discontinuing operation or bankruptcy, or change of name (DBA), change of address, telephone, fax number or E-mail address should be reported by a simple letter (for non-tariffed carriers) and by advice letter (quadruplicate) for tariffed carriers, referencing your CPCN number.

(End of Attachment C)