

Decision 10-11-023 November 19, 2010

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

Application of Appia Communications, Inc. for a Certificate of Public Convenience and Necessity for Authority to Provide Limited Facilities-Based and Resold Local Exchange Services in the service areas of AT&T, Verizon, SureWest, and Citizens and Limited Facilities-Based and Resold interexchange telecommunications services statewide.

Application 10-08-004  
(Filed August 4, 2010)

**DECISION GRANTING APPIA COMMUNICATIONS, INC.  
A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY  
IN ORDER TO PROVIDE RESOLD AND LIMITED FACILITIES-BASED LOCAL  
EXCHANGE AND INTEREXCHANGE SERVICE**

**1. Summary**

Appia Communications, Inc. filed an application for a certificate of public convenience and necessity for authority to provide resold and limited facilities-based local exchange telecommunications services in the service territories of Pacific Bell Telephone d/b/a AT&T California, Verizon California Inc., Citizens Telecommunications Company of California, Inc, and SureWest Communications, and provide non-dominant interexchange service in California. Appia Communications, Inc. also requested that it be authorized to provide the requested services on a detariffed basis.

By this decision, we grant Appia Communications, Inc. a certificate of public convenience and necessity to provide resold and limited facilities-based

local exchange and non-dominant interexchange telecommunications services on a detariffed basis, on the terms and conditions set forth in the Ordering Paragraphs. This proceeding is closed.

## **2. Background**

On August 4, 2010, Appia Communications, Inc. (Appia), (a Michigan corporation authorized to operate in California as a foreign corporation), filed an application for a certificate of public convenience and necessity (CPCN) to provide resold and limited facilities-based telecommunications services on a detariffed basis in the service territories of Pacific Bell Telephone d/b/a AT&T California (AT&T), Verizon California Inc. (Verizon), Citizens Telecommunications Company of California, Inc (Citizens), and SureWest Communications (SureWest), and provide non-dominant interexchange service on a detariffed basis in California.

Notice of Application (A.) 10-08-004 appeared on the Commission's Daily Calendar on August 10, 2010.

On August 30, 2010, the assigned Administrative Law Judge (ALJ) issued *Administrative Law Judge Ruling Requiring Applicant to File a Response to Information Request Within 10 Days* (Ruling), to which Appia filed a response on September 10, 2010. On August 4 and September 10, Appia filed motions for leave to file selected portions of its application and response to the Ruling as confidential materials under seal. On September 17, 2010, Appia filed a motion to accept a late-filed response to the Ruling, which the assigned ALJ granted. Appia's principal place of business is located at 1030 Hastings Street, Suite 100, Traverse City, Michigan 49686. Appia proposes to provide local exchange and interexchange service such as business lines, Direct Inward Dialing, Digital

Signal 1, and other similar services. Appia proposes to provide these services primarily to small and mid-size businesses operating in California.

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

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

### **4. Financial Qualifications**

Pursuant to Rule 4.B of D.95-12-056, an applicant for a CPCN for authority to provide facilities-based local exchange service must demonstrate that it has \$100,000 cash or cash equivalent to meet the firm's start-up expenses. Applicant must also demonstrate that it has sufficient additional resources to cover all deposits required by other telecommunications carriers in order to provide service in California.

In Exhibit B to the application and in Attachment 1 to its response to the Ruling, Appia provided financial statements and bank statements, showing that it has \$100,000 to meet start-up expenses. Appia stated that, given its established relationships with several service providers, it does not anticipate being required to provide deposits. Nonetheless, Appia has demonstrated that it has sufficient funds available in case deposits are required by service providers, in addition to funds needed to meet start-up expenses.

## **5. Technical Qualifications**

To be granted a CPCN for authority to provide local exchange and interexchange service, an applicant must make a reasonable showing of managerial and technical expertise in telecommunications or a related business.<sup>1</sup> Appia supplied biographical information on its management, in Exhibit D to its application, that demonstrated that it has sufficient expertise and training to operate as a telecommunications provider.

Appia also verified that no one associated with or employed by Appia as an affiliate, officer, director, partner, or owner of more than 10% of Appia was previously associated with a telecommunications carrier that filed for bankruptcy, was sanctioned by the Federal Communications Commission or any state regulatory agency for failure to comply with any regulatory statute, rule, or order, or has been found either civilly or criminally liable by a court of appropriate jurisdiction for a violation of § 17000, et seq. of the California Business and Professions Code, or for any actions which involved misrepresentations to consumers, nor is currently under investigation for similar violations. We therefore find that Appia is in compliance with the managerial and technical requirements of Decision (D.) 95-12-056.

## **6. Detariffed Rates**

Appia intends to provide services to business customers on a detariffed basis. Appia must comply with all GO 96-B – Telecommunications Industry Rules (Telecommunications Rules)<sup>2</sup> in regards to the provision of detariffed

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<sup>1</sup> D.95-12-056 at Appendix C, Rule 4.A.

<sup>2</sup> Authorized in D.07-09-019.

services, including but not limited to: 1) the posting of all detariffed rates, terms, and conditions of service on an internet site pursuant to Rule 5.2 of the Telecommunications Rules; and 2) the notification customers for any service not provided under tariff, of higher rates or charges, more restrictive terms or conditions, withdrawal of service, or transfer of ownership or customer base, pursuant to Rule 5.3 of the Telecommunications Rules.

## **7. Map of Service Territory**

To be granted a CPCN for authority to provide local exchange service, an applicant must provide a map of the service territories it proposes to serve.<sup>3</sup> Appia provided a map of the location of its proposed service territory, in compliance with this requirement.

## **8. Expected Customer Base**

Appia provided its estimated customer base for the first and fifth years of operation in Section 15 of its application. Therefore, Appia has complied with this requirement.

## **9. Request for Treatment as Non-Dominant Carrier**

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

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<sup>3</sup> D. 95-12-056 at Appendix C, Rule 4.E.

## **10. Conclusion**

We conclude that the application conforms to our rules for certification as a competitive local exchange carrier. Accordingly, we grant Appia a CPCN to provide resold and limited facilities-based local exchange telecommunications service in the service territory of AT&T, Verizon, Citizens, and SureWest, and non-dominant interexchange service in California, all on a detariffed basis, subject to compliance with the terms and conditions set forth in the Ordering Paragraphs.

## **11. Request to File Under Seal**

Pursuant to Rule 11.4 of the Commission's Rules of Practice and Procedure, Appia filed motions for leave to file Exhibit B to the application and Attachment 1 to its response to the Ruling, as confidential materials under seal. Exhibit B includes financial statements and a bank statement, and Attachment 1 includes a bank statement. Appia represents that this information is confidential. We have granted similar requests in the past and do so here.

## **12. Categorization and Need for Hearings**

In Resolution ALJ 176-3259, dated August 12, 2010, the Commission preliminarily categorized this application as ratesetting, and preliminarily determined that hearings were not necessary. No protests have been received. There is no apparent reason why the application should not be granted. Given these developments, a public hearing is not necessary, and it is not necessary to disturb the preliminary determinations.

## **13. Waiver of Comment Period**

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Section 311(g)(2) of the Public Utilities Code

and Rule 14.6(c)(2), the otherwise applicable 30-day period for public review and comment is waived.

#### **14. Assignment of Proceeding**

Timothy Alan Simon is the assigned Commissioner and Seaneen M. Wilson is the assigned ALJ in this proceeding.

#### **Findings of Fact**

1. Notice of the application appeared on the Daily Calendar on August 10, 2010. No protests have been filed. A hearing is not required.
2. Appia has a minimum of \$100,000 of cash or cash equivalent that is reasonably liquid and readily available to meet its start-up expenses.
3. Appia has sufficient additional cash or cash equivalent to cover deposits that may be required by other telecommunications carriers in order to provide the proposed service.
4. Appia's management possesses sufficient experience, knowledge, and technical expertise to provide local and interexchange services to the public.
5. No one associated with or employed by Appia as an affiliate, officer, director, partner, or owner of more than 10% of Appia was previously associated with a telecommunications carrier that filed for bankruptcy, was sanctioned by the Federal Communications Commission or any state regulatory agency for failure to comply with any regulatory statute, rule, or order, was previously associated with any telecommunication carrier that has been found either civilly or criminally liable by a court of appropriate jurisdiction for a violation of § 17000, et seq. of the California Business and Professions Code, or for any actions which involved misrepresentations to consumers, nor is currently under investigation for similar violations.

6. Appia intends to provide services on a detariffed basis to the extent permitted by the Telecommunications Rules authorized in D.07-09-019.
7. Appia provided a map of the location of its proposed service territory.
8. Appia provided an estimate of its customer base for the first and fifth years of operation.
9. On September 17, 2010, Appia filed a motion to accept a late-filed response to the Ruling, which the assigned ALJ granted.
10. Pursuant to Rule 11.4, Appia filed motions for leave to file confidential materials under seal, including Exhibit B to the application and Attachment 1 to its response to the Ruling.

### **Conclusions of Law**

1. Appia should be granted a CPCN to provide resold and limited facilities-based local exchange telecommunications service in the service territories of AT&T, Verizon, Citizens, and SureWest, and non-dominant interexchange service in California, all on a detariffed basis, subject to the terms and conditions set forth in the Ordering Paragraphs.
2. Appia, once granted a CPCN, should be subject to the applicable Commission rules, decisions, General Orders, and statutes that pertain to California public utilities.
3. We should confirm the assigned ALJ's ruling, granting Appia's September 17, 2010 motion to accept a late-filed response to the Ruling
4. Appia's motions to file under seal its Exhibit B to the application and Attachment 1 to its response to the Ruling, should be granted for two years.



**O R D E R**

**IT IS ORDERED** that:

1. A certificate of public convenience and necessity is granted to Appia Communications, Inc. to provide resold and limited facilities-based local exchange telecommunications services on a detariffed basis in the territories of Pacific Bell Telephone d/b/a AT&T California, Verizon California Inc., Citizens Telecommunications Company of California, Inc, and SureWest Communications, and provide non-dominant interexchange service in California on a detariffed basis, subject to the terms and conditions set forth below.
2. The corporate identification number assigned to Appia Communications, Inc., U7206C, must be included in the caption of all original filings with this Commission, and in the titles of other pleadings filed in existing cases.
3. In addition to all the requirements applicable to competitive local exchange carriers and interexchange carriers included in Attachments A, B, and C to this decision, Appia Communications, Inc. is subject to the Consumer Protection Rules contained in GO 168, and all applicable Commission rules, decisions, General Orders, and statutes that pertain to California public utilities.
4. Appia Communications, Inc. must file, in this docket, a written acceptance of the certificate granted in this proceeding within 30 days of the effective date of this order.
5. Appia Communications, Inc. must annually pay the user fee and public purpose surcharges specified in Attachment A. Per the instructions in Exhibit E to Decision 00-10-028, the Combined California Public Utilities Commission Telephone Surcharge Transmittal Form must be submitted even if the amount due is \$0. Under Public Utilities Code Section 405, carriers that are in default of

reporting and submitting user fees for a period of 30 days or more will be subject to penalties including suspension or revocation of their authority to operate in California. Therefore, carriers should report user fees even if the amount due is \$0.

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

7. Appia Communications, Inc. must notify the Director of the Communications Division in writing of the date that local exchange service is first rendered to the public, no later than five days after service first begins.

8. Appia Communications, Inc. must file an affiliate transaction report with the Director of the Communications Division, in compliance with Decision 93-02-019, on a calendar-year basis using the form contained in Attachment C.

9. Appia Communications, Inc. must file an annual report with the Director of the Communications Division, in compliance with GO 104-A, on a calendar-year basis with the information contained in Attachment B to this decision.

10. We confirm the assigned Administrative Law Judge's ruling, granting Appia's September 17, 2010 motion to accept a late-filed response to the Ruling

11. Appia Communications, Inc.'s motions to file under seal its Exhibit B to the application and Attachment 1 to its response to *Administrative Law Judge Ruling Requiring Applicant to File a Response to Information Request Within 10 Days* is granted. The information will remain under seal for a period of two years after

the date of this order. During this two-year period, this information will remain under seal and may not be viewed by any person other than the assigned Commissioner, the assigned Administrative Law Judge, the Assistant Chief Administrative Law Judge, or the Chief Administrative Law Judge, except as agreed to in writing by Appia Communications, Inc. or as ordered by a court of competent jurisdiction. If Appia Communications, Inc. believes that it is necessary for this information to remain under seal for longer than two years, Appia Communications, Inc. may file a new motion at least 30 days before the expiration of this limited protective order.

12. Application 10-08-004 is closed.

This order is effective today.

Dated November 19, 2010, at San Francisco, California.

MICHAEL R. PEEVEY

President

DIAN M. GRUENEICH

JOHN A. BOHN

TIMOTHY ALAN SIMON

NANCY E. RYAN

Commissioners

## **ATTACHMENT A**

### **REQUIREMENTS APPLICABLE TO COMPETITIVE LOCAL EXCHANGE CARRIERS AND INTEREXCHANGE CARRIERS**

1. Applicant shall file, in this docket, a written acceptance of the certificate granted in this proceeding within 30 days of the effective date of this order.
2. Applicant is subject to the following fees and surcharges that must be regularly remitted. Per the instructions in Appendix E to Decision (D.) 00-10-028, the Combined California PUC Telephone Surcharge Transmittal Form must be submitted even if the amount due is \$0.
  - a. The current 1.15% surcharge applicable to all intrastate services except for those excluded by D.94-09-065, as modified by D.95-02-050, to fund the Universal Lifeline Telephone Service Trust Administrative Committee Fund (Pub. Util. Code § 879; Resolution T-17071, dated March 1, 2007, effective April 1, 2007);
  - b. The current 0.20% surcharge applicable to all intrastate services except for those excluded by D.94-09-065, as modified by D.95-02-050, to fund the California Relay Service and Communications Devices Fund (Pub. Util. Code § 2881; D.98-12-073 and Resolution T-17127, dated December 20, 2007, effective January 1, 2008);
  - c. The user fee provided in Pub. Util. Code §§ 431-435, which is 0.18% of gross intrastate revenue (Resolution M-4819), dated June 7, 2007, effective July 1, 2007;
  - d. The current 0.11% surcharge applicable to all intrastate services except for those excluded by D.94-09-065, as modified by D.95-02-050, to fund the California High Cost Fund-A (Pub. Util. Code § 739.3; D.96-10-066, pp. 3-4, App. B, Rule 1.C; Resolution T-17259, dated April 8, 2010 effective May 1, 2010);
  - e. The current 0.45% surcharge applicable to all intrastate services except for those excluded by D.94-09-065, as

modified by D.95-02-050, to fund the California High Cost Fund-B (D.96-10-066, p. 191, App. B, Rule 6.F.; D.07-12-054); Resolution T-17215, dated October 15, 2009 effective December 1, 2009;

- f. The current 0.00% surcharge applicable to all intrastate services except for those excluded by D.94-09-065, as modified by D.95-02-050, to fund the California Advanced Services Fund (D.07-12-054); and
- g. The current 0.079% surcharge applicable to all intrastate services except for those excluded by D.94-09-065, as modified by D.95-02-050, to fund the California Teleconnect Fund (D.96-10-066, p. 88, App. B, Rule 8.G, Resolution T-17142, dated April 24, 2008, effective June 1, 2008).

Note: These fees change periodically. In compliance with Resolution T-16901, December 2, 2004, Applicant should check the joint tariff for surcharges and fees filed by Pacific Bell Telephone Company (d/b/a AT&T California) and apply the current surcharge and fee amounts in that joint tariff on end-user charges until further revised.

- 3. Applicant is a competitive local exchange carrier (CLEC). Applicant is detariffed.
- 4. Applicant is a nondominant interexchange carrier (NDIEC). Applicant is detariffed.
- 5. Prior to initiating service, Applicant shall provide the Commission's Consumer Affairs Branch with the name and address of its designated contact person(s) for purposes of resolving consumer complaints. This information shall be updated if the name or telephone number changes, or at least annually.
- 6. Applicant shall notify the Director of the Communications Division in writing of the date that local exchange service is first rendered to the public, no later than five days after service first begins.

7. Applicant shall notify the Director of the Communications Division in writing of the date interLATA service is first rendered to the public within five days after service begins, and again within five days after intraLATA service begins.<sup>1</sup>

8. Applicant shall keep its books and records in accordance with the Generally Accepted Accounting Principles.

9. In the event Applicant's books and records are required for inspection by the Commission or its staff, it shall either produce such records at the Commission's offices or reimburse the Commission for the reasonable costs incurred in having Commission staff travel to its office.

10. Applicant shall file an annual report with the Director of the Communications Division, in compliance with GO 104-A, on a calendar-year basis with the information contained in Attachment C to this decision.

11. Applicant shall file an affiliate transaction report with the Director of the Communications Division, in compliance with D.93-02-019, on a calendar-year basis using the form contained in Attachment C.

12. Applicant shall ensure that its employees comply with the provisions of Public Utilities (Pub. Util.) Code § 2889.5 regarding solicitation of customers.

13. Within 60 days of the effective date of this order, Applicant shall comply with Pub. Util. Code § 708, Employee Identification Cards, and notify the Director of the Communications Division in writing of its compliance.

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<sup>1</sup> California is divided into ten Local Access and Transport Areas (LATAs), each containing numerous local telephone exchanges. InterLATA describes services, revenues and functions relating to telecommunications originating within one LATA and terminating in another LATA. IntraLATA describes services, revenues and functions relating to telecommunications originating within a single LATA.

14. If Applicant is 90 days or more late in filing an annual report, or in remitting the surcharges and fee listed in 2 above, the Communications Division shall prepare for Commission consideration a resolution that revokes Applicant's certificate of public convenience and necessity unless it has received written permission from the Communications Division to file or remit late.

15. Applicant is exempt from Commission's Rules of Practice and Procedure 3.1(b).

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

17. Applicant is exempt from the requirements of Pub. Util. Code § 851 for the transfer or encumbrance of property whenever such transfer or encumbrance serves to secure debt.

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

19. Applicant shall send a copy of this decision to concerned local permitting agencies not later than 30 days from the date of this order.

**(END OF ATTACHMENT A)**

**ATTACHMENT B  
ANNUAL REPORT**

An original and a machine readable, copy using Microsoft Word or compatible format shall be filed with the California Public Utilities Commission, State Office Building, 505 Van Ness Avenue, Room 3107, San Francisco, CA 94102-3298, no later than March 31st of the year following the calendar-year for which the annual report is submitted.

Failure to file this information on time may result in a penalty as provided for in §§ 2107 and 2108 of the Public Utilities Code.

Required information:

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

If incorporated, specify:

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



11. Income statement for California operations for the calendar-year for which information is submitted.

For answers to any questions concerning this report, call (415) 703-2883.

**(END OF ATTACHMENT B)**

**ATTACHMENT C**  
**CALENDAR YEAR AFFILIATE TRANSACTION REPORT**

1. Each utility shall list and provide the following information for each affiliated entity and regulated subsidiary that the utility had during the period covered by the annual Affiliate Transaction report.

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

2. The utility shall prepare and submit a corporate organization chart showing any and all corporate relationships between the utility and its affiliated entities and regulated subsidiaries in #1 above. The chart should have the controlling corporation (if any) at the top of the chart; the utility and any subsidiaries and/or affiliates of the controlling corporation in the middle levels of the chart and all secondary subsidiaries and affiliates (*e.g.*, a subsidiary that in turn is owned by another subsidiary and/or affiliate) in the lower levels. Any regulated subsidiary should be clearly noted.

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

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

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

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

**(END OF ATTACHMENT C)**