

Decision 10-11-013 November 19, 2010

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of Wholesale Carrier Services, Inc. for a Certificate of Public Convenience and Necessity to Provide Resold and Limited Facilities-Based Local Exchange Telecommunications Services Within California.

Application 10-06-012
(Filed June 22, 2010)

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

1. Summary

Wholesale Carrier Services, 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.

By this decision, we grant Wholesale Carrier Services, Inc. a certificate of public convenience and necessity to provide resold and limited facilities-based local exchange telecommunications services on the terms and conditions set forth in the Ordering Paragraphs. This proceeding is closed.

2. Background

On June 22, 2010, Wholesale Carrier Services, Inc. (Wholesale), (a Florida 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 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). On June 22, 2010, Wholesale also filed a motion for leave to file under seal its Exhibit 6 to the application. Notice of Application 10-06-012 appeared on the Commission's Daily Calendar on June 24, 2010.

On July 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 Wholesale filed a response on August 18, 2010.¹ Wholesale's principal place of business is located at 5471 North University Drive, Coral Springs, Florida 33067. Wholesale proposes to provide local exchange services utilizing unbundled network elements purchased from incumbent Local Exchange Carriers. All services provided by Wholesale will be routed solely over facilities owned by other certified carriers.

3. California Environmental Quality Act (CEQA)

The CEQA requires that 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

¹ Wholesale requested and received authority from the assigned ALJ for an extension of time to respond to the Ruling.

restored or enhanced to the fullest extent possible. Since Wholesale 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, Wholesale must file for additional authority, and submit to any necessary CEQA review.

4. Financial Qualifications

Pursuant to Rule 4.B of Decision (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 6 to the application, Wholesale provided a bank statement showing that \$100,000 plus an amount equal to any deposits required by AT&T, Verizon, Citizens, and SureWest would be available to Wholesale. Wholesale has therefore demonstrated that it has sufficient funds to meet its start-up expenses and any deposits required by service providers, and has fulfilled this requirement.

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.²

² D.95-12-056 at Appendix C, Rule 4.A.

Wholesale supplied biographical information on its management in Exhibit 3 to its application that demonstrated that it has sufficient expertise and training to operate as a telecommunications provider.

Wholesale also verified that, except as discussed below, no one associated with or employed by Wholesale as an affiliate, officer, director, partner, or owner of more than 10% of Wholesale 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.

During our review, we discovered two possible state tax liens against Wholesale, one in California and one in Pennsylvania. Wholesale provided a Certificate of Revivor from the California Franchise Tax Board (FTB) stating that Wholesale is in good standing with the FTB. Wholesale also stated that the California State Board of Equalization found no amount due from it, and that the FTB and the California Secretary of State found no lien against it. Wholesale also provided documentation that it has now filed the tax return in question in Pennsylvania, and does not owe any taxes for that return. These explanations resolve our concerns regarding these state tax liens.

Since Wholesale has resolved the issues in question, we find that Wholesale is in compliance with the managerial and technical requirements of D.95-12-056.

6. Tariffs

Commission's staff reviewed Wholesale's draft tariffs for compliance with Commission rules and regulations. The deficiencies are noted in Attachment A to this decision. In its compliance tariff filing, Wholesale must correct these deficiencies as a condition of our approval of its application.

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.³ In Exhibit 5 to the application, Wholesale provided a map of the location of its proposed service territory, in compliance with this requirement.

8. Expected Customer Base

Wholesale provided its estimated customer base for the first and fifth years of operation in Section 13 of its application. Therefore, Wholesale has complied with this requirement.

9. Conclusion

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

³ D.95-12-056 at Appendix C, Rule 4.E.

10. Request to File Under Seal

Pursuant to Rule 11.4 of the Commission's Rules of Practice and Procedure, Wholesale has filed a motion for leave to file Exhibit 6 to the application as confidential materials under seal. Exhibit 6 includes financial statements of Wholesale as well as a bank statement. Wholesale represents that disclosure of this information could place it at a competitive disadvantage. We have granted similar requests in the past and do so here.

11. Categorization and Need for Hearings

In Resolution ALJ 176-3257, dated July 8, 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.

12. 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.

13. 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 June 24, 2010. No protests have been filed. A hearing is not required.

2. Wholesale 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. Wholesale 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. Wholesale's management possesses sufficient experience, knowledge, and technical expertise to provide local exchange services to the public.

5. No one associated with or employed by Wholesale as an affiliate, officer, director, partner, or owner of more than 10% of Wholesale 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 telecommunications 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. Except for the deficiencies identified in Attachment A to this decision, Wholesale's draft tariffs comply with the Commission's requirements.

7. Wholesale provided a map of the location of its proposed service territory.

8. Wholesale provided an estimate of its customer base for the first and fifth years of operation.

9. Pursuant to Rule 11.4, Wholesale filed a motion for leave to file confidential materials under seal, including Exhibit 6 to the application.

Conclusions of Law

1. Wholesale 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, subject to the terms and conditions set forth in the Ordering Paragraphs.

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

3. Wholesale's initial tariff filing should correct the tariff deficiencies shown in Attachment A to this decision.

4. Wholesale's motion to file under seal its Exhibit 6 to the application, 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 Wholesale Carrier Services, Inc. to provide resold and limited facilities-based local exchange telecommunications services 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, subject to the terms and conditions set forth below.

2. Wholesale Carrier Services, Inc. may not offer competitive local exchange services until tariffs are filed with and authorized by this Commission, in accordance with General Order 96-B and as corrected for deficiencies set forth in Exhibit A.

3. The corporate identification number assigned to Wholesale Carrier Services, Inc., U6644C, must be included in the caption of all original filings with this Commission, and in the titles of other pleadings filed in existing cases.

4. In addition to all the requirements applicable to competitive local exchange carriers and interexchange carriers included in Attachments B, C, and D to this decision, Wholesale Carrier Services, Inc. is subject to the Consumer Protection Rules contained in General Order 168, and all applicable Commission rules, decisions, General Orders, and statutes that pertain to California public utilities.

5. Wholesale Carrier Services, Inc. must file, in this docket, a written acceptance of the certificate granted in this proceeding within 30 days of the effective date of this order.

6. Wholesale Carrier Services, Inc. must annually pay the user fee and public purpose surcharges specified in Attachment B. 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 § 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.

7. Prior to initiating service, Wholesale Carrier Services, 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.

8. Wholesale Carrier Services, 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.

9. Wholesale Carrier Services, 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 D.

10. Wholesale Carrier Services, Inc. must file an annual report with the Director of the Communications Division, in compliance with General Order 104-A, on a calendar-year basis with the information contained in Attachment C to this decision.

11. Wholesale Carrier Services, Inc. must file a tariff within 12 months of the effective date of this order, or its certificate will be cancelled.

12. Wholesale Carrier Services, Inc. motion to file under seal its Exhibit 6 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 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 Wholesale Carrier Services, Inc. or as ordered by a court of competent jurisdiction. If Wholesale Carrier Services, Inc. believes that it is necessary for this information to remain under seal for longer than two years, Wholesale Carrier Services, Inc. may file a new motion at least 30 days before the expiration of this limited protective order.

13. Application 10-06-012 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

List of deficiencies in draft tariff submitted by Wholesale Carrier Services, Inc., in Application 10-06-012 to be corrected in its initial tariff compliance filing.

1. Schedule 1-T, Sheet 36 - Update the California Lifeline Telephone Service offer provided by your utility, consistent with the requirements found at:

<http://www.cpuc.ca.gov/PUC/Telco/Public+Programs/ults.htm>

2. Schedule 2-T, Sheet 27 – State company’s California business address at which tariff is available for public inspection, or provide a web URL where tariffs are available on-line (GO96B Section 8.1.3).

(END OF ATTACHMENT A)

ATTACHMENT B

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

1. Applicant must file, in this docket with reference to this decision number,⁴ 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 Exhibit E to Decision (D.) 00-10-028, the Combined California Public Utilities Commission 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

⁴ Written acceptance filed in this docket does not reopen the proceeding.

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 (effective December 1, 2009) 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); Resolution T-17248, dated December 17, 2009, effective January 1, 2010; 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 29, 2008, effective June 1, 2008).

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

3. Applicant is a competitive local exchange carrier. The effectiveness of its future tariffs is subject to the requirements of General Order 96-B and the Telecommunications Industry Rules (D.07-09-019).

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

5. Tariff filings must reflect all fees and surcharges to which Applicant is subject, as reflected in #2 above.
6. Applicant must file a service area map as part of its initial tariff.
7. Prior to initiating service, Applicant must provide the Commission's Consumer Affairs Branch with the name and address of its designated contact person(s) for purposes of resolving consumer complaints. This information must be updated if the name or telephone number changes, or at least annually.
8. Applicant 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.
9. Applicant must notify the Director of the Communications Division in writing of the date local service is first rendered to the public within five days after service begins.
10. Applicant must keep its books and records in accordance with the Generally Accepted Accounting Principles.
11. In the event Applicant's books and records are required for inspection by the Commission or its staff, it must either produce such records at the Commission's offices or reimburse the Commission for the reasonable costs incurred in having Commission staff travel to its office.
12. Applicant 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 C to this decision.
13. Applicant must 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 D.

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

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

16. If Applicant is 90 days or more late in filing an annual report, or in remitting the surcharges and fee listed in #2 above, and has not received written permission from the Communications Division to file or remit late, the Communications Division must prepare for Commission consideration a resolution that revokes Applicant's Certificate of Public Convenience and Necessity.

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

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

19. 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.

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

21. Applicant must send a copy of this decision to concerned local permitting agencies no later than 30 days from the date of this order.

(END OF ATTACHMENT B)

ATTACHMENT C

ANNUAL REPORT

An original and a machine readable, copy using Microsoft Word or compatible format must be 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 Pub. Util. Code §§ 2107 and 2108.

Required information:

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

If incorporated, specify:

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

12. Cash Flow statement as of December 31st of the calendar year for which information is submitted, for California operations only.

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

(END OF ATTACHMENT C)

ATTACHMENT D

CALENDAR YEAR AFFILIATE TRANSACTION REPORT

An original and a machine readable, copy using Microsoft Word and Excel, or compatible format must be 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.

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

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

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

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

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

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

6. Utilities that do not have affiliated entities must 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 D)