

Decision 11-04-018 April 14, 2011

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of American Broadband, Inc. for a Certificate of Public Convenience and Necessity to Provide Resold and Limited Facilities-Based Competitive Local Exchange and Interexchange Telecommunication Services Within California.

Application 10-12-011
(Filed December 16, 2010)

DECISION GRANTING AMERICAN BROADBAND, INC. A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO PROVIDE LIMITED FACILITIES-BASED AND RESOLD COMPETITIVE LOCAL EXCHANGE, AND INTEREXCHANGE SERVICE

1. Summary

American Broadband, Inc., filed an application for a certificate of public convenience and necessity for authority to provide limited facilities-based and resold competitive local exchange and interexchange telephone service in all the service territories of Pacific Bell Telephone Company, d/b/a AT&T California, Verizon California Inc., SureWest Telephone, and Citizens Telecommunications Company of California, Inc., d/b/a Frontier Communications of California, throughout the State of California.

By this decision, we grant American Broadband, Inc. a certificate of public convenience and necessity to provide limited facilities-based and resold competitive local exchange intraLATA and interLATA interexchange telecommunications services, on the terms and conditions set forth in the Ordering Paragraphs.

2. Background

On December 12, 2010, American Broadband, Inc. (ABi or Applicant), filed an application for a certificate of public convenience and necessity (CPCN) to provide limited facilities-based and resold competitive local exchange and interexchange telecommunications services in all the service territories of Pacific Bell Telephone Company d/b/a AT&T California (AT&T), Verizon California Inc. (Verizon), SureWest Telephone (SureWest), Citizens Telecommunications Company of California, Inc., d/b/a Frontier Communications Company of California (Frontier), throughout California.

ABi seeks authority to offer resold competitive local carrier services to business customers throughout the state of California. ABi plans to facilitate the availability of broadband and related services, data private line, data network services, managed virtual private network configurations and backhaul/transport connectivity.¹ ABi intends to provide its services using the facilities and services of other carriers as well as its own equipment installed in or on existing structures.²

Applicant's legal name is American Broadband, Inc. Applicant is a Delaware corporation. Its principal place of business is located at 1321 Connellsville Road, Lemont Furnace, PA 15456.

3. California Environmental Quality Act (CEQA)

CEQA requires the Commission to act as the designated lead agency to assess the potential environmental impact of a project in order that adverse

¹ Application (A.) 10-12-011 at 2-3.

² *Id.* at 3.

effects are avoided, alternatives are investigated, and environmental quality is restored or enhanced to the fullest extent possible. Applicant will provide its service through the use of existing facilities and network elements of other carriers and/or through its own facilities, installed within existing buildings and structures, and has no other plans for constructing other facilities at this time. Since ABi states that it does not intend to construct any facilities,³ it can be seen with certainty that there is no possibility that granting this application will have an adverse impact upon the environment.⁴

4. Financial Qualifications

Pursuant to Rule 4.B of D.95-12-056, an applicant for a CPCN for authority to provide limited facilities-based and resold local exchange and interexchange services 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.

³ A.10-12-011 § 5 at 3.

⁴ It should be noted that the Commission adopted General Order (GO) 170 on December 16, 2010 in Decision (D.) 10-12-056. GO 170 implements the Commission's responsibilities pursuant to CEQA to review possible environmental impacts of construction projects consisting of any new telephone or telegraph line; or the repair, replacement, modification, alteration, or addition to an existing telephone or telegraph line in the State of California. ABi will be subject to the GO 170 when it is implemented by the Commission. Upon implementation, GO 170 will eliminate the Limited Facilities-based authority designation that identifies types of construction activities a carrier may undertake pursuant to their CPCN. However, GO 170 will not require any additional filings to be made by ABi or additional authority to be granted by the Commission for the types of construction activities currently proposed by ABi.

In (confidential) Exhibit E to the application, Applicant has provided its 2009 audited financial statements and bank statement through November 2010. The financial and bank statements demonstrate that ABi has access to well over \$100,000 in cash, which is an amount sufficient to cover start-up expenses and is reasonably liquid and available.

ABi proposes to offer service within the territories of AT&T, Verizon, SureWest and Frontier. In its application, ABi stated that it does not yet have agreements with other carriers to purchase services for resale and anticipates that the requirement for deposits (if any) would be negotiated as part of such agreements. If deposits are required, Applicant does not expect the total amount to exceed \$25,000.00.⁵ Applicant's financial and bank statements demonstrate that it has sufficient funds to cover any deposit requirements. We find that ABi has demonstrated that it has sufficient funds to pay deposits, and thus, fulfills the Commission's deposit requirement.

5. Managerial and 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.⁶ ABi supplied biographical information on its management, in its application, that demonstrated that it has sufficient expertise and training to operate as a telecommunications provider.

⁵ A.10-12-011 at 6-7.

⁶ D.95-12-056 at Appendix C, Rule 4.A.

ABi verified that no one associated with or employed by ABi as an affiliate, officer, director, partner, or owner of more than 10% of ABi was previously associated with a telecommunications carrier that filed for bankruptcy, or was sanctioned by the Federal Communications Commission or any state regulatory agency for failure to comply with any regulatory statute, rule, or order.

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

For the above reasons, we find that ABi is in compliance with these requirements of D.95-12-056.

6. Tariffs

Commission staff reviewed ABi'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, ABi shall 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.⁷ In

⁷ D.95-12-056 at Appendix C, Rule 4.E.

Exhibit D to the application, ABi provided a map of the location of its proposed service territory and is in compliance with this requirement.

8. Expected Customer Base

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

9. Request to File Under Seal

Pursuant to Rule 11.4, ABi has filed a motion for leave to file Exhibit E to the application as confidential material under seal. Applicant represents that the information is sensitive, and disclosure could place it at an unfair business disadvantage. We have granted similar requests in the past, and do so here.

10. Conclusion

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

11. Categorization and Need for Hearings

In Resolution ALJ 176-3260, dated September 2, 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. Comments on Proposed Decision

No protests were filed in this proceeding. Therefore, this is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Pub. Util. Code § 311(g)(2), the otherwise applicable 30-day period for public review and comment is being waived.

13. Assignment of Proceeding

Timothy Alan Simon is the assigned Commissioner and W. Anthony Colbert is the assigned ALJ in this proceeding.

Findings of Fact

1. Notice of the application appeared on the Daily Calendar on December 23, 2010. No protests have been filed. A hearing is not required.
2. ABi seeks authorization to provide limited facilities-based and resold competitive local exchange and interexchange telephone service in all the service territories of AT&T, Verizon, SureWest, and Frontier throughout California.
3. ABi has a minimum of \$100,000 cash or cash equivalent that is reasonably liquid and readily available to meet its start-up expenses.
4. ABi 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.
5. ABi's management possesses sufficient experience, knowledge, and technical expertise to provide local exchange and interexchange services to the public.
6. No one associated with or employed by ABi as an affiliate, officer, director, partner, or owner of more than 10% of ABi was previously associated with a telecommunications carrier that filed for bankruptcy, or was sanctioned by the

Federal Communications Commission or any state regulatory agency for failure to comply with any regulatory statute, rule, or order.

7. No one associated with or employed by it as an affiliate, officer, director, partner, or owner of more than 10% of ABi 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.

8. Except for the deficiencies identified in Attachment A to this decision, ABi's draft tariffs comply with the Commission's requirements.

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

10. ABi provided an estimate of its customer base for the first and fifth year of operation.

11. ABi does not propose to construct any facilities.

12. ABi has filed a motion for leave to file Exhibit E to the application as confidential material under seal.

Conclusions of Law

1. ABi should be granted a CPCN to provide limited facilities-based and resold competitive local exchange and interexchange telephone service in all the service territories of AT&T, Verizon, SureWest, and Frontier throughout California subject to the terms and conditions set forth in the Ordering Paragraphs.

2. ABi has the financial ability to provide the proposed service.

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

4. Applicant should be granted nondominant carrier status, subject to Commission rules and regulations as detailed in D.85-01-008 and modified in D.85-07-081 and D.85-11-044.

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

6. Since ABi does not propose to construct any facilities, it can be seen with certainty that granting it authority to provide local exchange service will not have a significant adverse effect upon the environment.

7. ABi's motion to file material under seal should be granted, material under seal should not be made accessible or disclosed to anyone other than the Commission and its staff, except upon further order or ruling of the Commission, the assigned Commissioner, the assigned Administrative Law Judge (ALJ), or the ALJ then designated as Law and Motion Judge.

O R D E R

IT IS ORDERED that:

1. A certificate of public convenience and necessity is granted to American Broadband, Inc. to provide limited facilities-based and resold local exchange and interexchange telecommunications service in the service territories of Pacific Bell Telephone Company d/b/a AT&T California and Verizon California, Inc., in California, subject to the terms and conditions set forth below.

2. American Broadband, Inc. may not offer competitive local exchange, interexchange services, and switched access service until tariffs are filed with and

authorized by this Commission, in accordance with General Order 96-B and has corrected for deficiencies set forth in Attachment A.

3. The corporate identification number assigned to American Broadband, Inc., U7210C, 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. American Broadband, Inc. is a nondominant carrier, subject to the Commission rules and regulations as detailed in Decision (D.) 85-01-008 and modified in D.85-07-081 and D.85-11-044.

5. American Broadband, 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. This filing does not reopen the proceeding.

6. American Broadband, 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 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 must report user fees even if the amount due is \$0.

7. Prior to initiating service, American Broadband, 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. American Broadband, 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. American Broadband, 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 with the information contained in Attachment D.

10. American Broadband, 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. American Broadband, Inc. must file a tariff within 12 months of the effective date of this order, or its certificate of public convenience and necessity will be cancelled.

12. American Broadband, Inc. must comply with the Consumer Protection Rules contained in General Order 168.

13. 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, American Broadband, Inc. is subject to all applicable Commission rules, decisions, General Orders, and statutes that pertain to California public utilities.

14. American Broadband, Inc.'s request to file materials under seal is granted, materials under seal shall not be made accessible or disclosed to anyone other than the Commission and its staff, except upon further order or ruling of the Commission, the assigned Commissioner, the assigned Administrative Law Judge (ALJ), or the ALJ then designated as Law and Motion Judge.

15. Application 10-12-011 is closed.

This order is effective today.

Dated April 14, 2011, at San Francisco California.

MICHAEL R. PEEVEY

President

TIMOTHY ALAN SIMON

MICHEL PETER FLORIO

CATHERINE J.K. SANDOVAL

MARK FERRON

Commissioners