

Decision 11-05-009 May 5, 2011

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of VoxBeam Telecommunications, Inc. for a Certificate of Public Convenience and Necessity to provide Limited Facilities-Based and Resold Competitive Local Exchange, Access, and Interexchange Telecommunications Services Within California.

Application 11-01-024
(Filed January 24, 2011)

**DECISION GRANTING A CERTIFICATE OF PUBLIC CONVENIENCE
AND NECESSITY TO VOXBEAM TELECOMMUNICATIONS, INC.**

1. Summary

VoxBeam Telecommunications, Inc. is granted a certificate of public convenience and necessity to provide limited facilities-based and resold competitive local exchange, access, and interexchange telecommunications services in California subject to the terms and conditions set forth below. This application is unopposed. This proceeding is closed.

2. Background

In prior decisions, we have authorized the provision of competitive local exchange service,¹ by carriers meeting specified criteria, within the service

¹ A competitive local exchange carrier (CLEC) is a common carrier that is issued a certificate of public convenience and necessity (CPCN) to provide local exchange telecommunications service for a geographic area specified by such carrier.

territories of Pacific Bell Telephone Company dba AT&T California (AT&T), Verizon California Inc. (Verizon), Citizens Telecommunications Company of California, Inc. dba Frontier Communications of California (Frontier), and SureWest Telephone (SureWest).

On January 24, 2011, VoxBeam Telecommunications, Inc. (Applicant), a Florida corporation authorized to operate in California, filed an application for a CPCN to provide limited facilities-based and resold competitive local exchange and access telecommunications services to business customers in the service territories of AT&T, Verizon, SureWest, and Frontier as well as non-dominant interexchange services throughout the State of California. Applicant's principal place of business is located at 7450 Dr. Phillips Blvd, Suite 203, Orlando, Florida 32819. Applicant's telephone number is (407) 965-1077.

3. California Environmental Quality Act (CEQA)

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. 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. Therefore, it can be seen with certainty that there is no possibility that granting this application will have an adverse impact upon the environment. Applicant must file for additional authority and submit to any necessary CEQA review, before it can construct facilities.

4. Financial Qualifications

To be granted a CPCN, an applicant for authority to provide limited facilities-based and resold local exchange and interexchange services must demonstrate that it has a minimum of \$100,000 cash or cash equivalent to meet the firm's start-up expenses.² An applicant must also demonstrate that it has sufficient additional resources to cover all deposits required by local exchange carriers and/or interexchange carriers (IECs) in order to provide the proposed service.³

Applicant provided audited financial statements as of November 30, 2010 and a balance sheet as of October 21, 2010 from its parent company, Localphone, LTD. Furthermore, Applicant provided an Irrevocable Statement of Financial Responsibility for Mr. Paul Cusack, Chief Executive Officer of VoxBeam Telecommunications, Inc., guaranteeing availability of a minimum of \$100,000, which is irrevocable for 12 months from the date the authority is granted. In response to the Administrative Law Judge Request for Additional Information, dated March 14, 2011, Applicant also provided a brokerage statement for Mr. Cusack showing unencumbered funds in excess of \$100,000 plus additional resources in excess of \$25,000 to meet any deposits required by an underlying local exchange carrier. Applicant has demonstrated that it has sufficient funds to meet the financial requirements contained in D.95-12-056.

² The financial requirement for CLECs is contained in Decision (D.) 95-12-056, Appendix C.

³ The requirement for CLEC applicants to demonstrate that they have additional financial resources to meet any deposits required by underlying local exchange carriers and/or IECs is also set forth in D.95-12-056, Appendix C.

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.⁴ Applicant supplied biographical information on its management that demonstrated that it has sufficient expertise and training to operate as a telecommunications provider.

Applicant represents that no one associated with or employed by VoxBeam Telecommunications, Inc. as an affiliate, officer, director, partner, or owner of more than 10% of VoxBeam Telecommunications, Inc. 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.

6. Tariffs

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

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

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.⁵ Applicant complied with this requirement.

8. Expected Customer Base

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

9. Conclusion

We conclude that the application conforms to our rules for certification as a competitive local exchange and interexchange carrier. Accordingly, we approve the application subject to the terms and conditions set forth herein.

10. Categorization and Need for Hearings

In Resolution ALJ 176-3269, dated February 24, 2011, 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.

11. Comments on Draft Decision

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

⁵ D. 95-12-056 at Appendix C, Rule 4.E.

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

12. Assignment of Proceeding

Timothy Alan Simon is the assigned Commissioner and Melissa Kristine Semcer is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. Notice of the application appeared on the Daily Calendar on January 24, 2011. No protests have been filed. A hearing is not required.
2. VoxBeam Telecommunications, Inc. seeks authorization to provide limited facilities-based and resold competitive local exchange and access telecommunications services to business customers in the service territories of AT&T, Verizon, SureWest and Frontier as well as non-dominant interexchange services throughout the State of California.
3. In prior decisions, the Commission authorized competition by carriers meeting specified criteria in providing local exchange telecommunications services within the service territories of AT&T, Verizon, SureWest and Frontier.
4. Applicant has a minimum \$100,000 of cash or cash equivalent that is reasonably liquid and readily available to meet its start-up expenses.
5. Applicant 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.
6. No one associated with or employed by VoxBeam Telecommunications, Inc. as an affiliate, officer, director, partner, or owner of more than 10% of VoxBeam Telecommunications, Inc. 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.

7. No one associated with or employed by VoxBeam Telecommunications, Inc. 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. Applicant possesses sufficient experience, knowledge, and technical expertise to provide telecommunications services.

9. Applicant submitted a draft of its initial tariff that contained the deficiencies listed in Attachment A to this decision. Except for these deficiencies, Applicant's draft tariffs comply with the Commission's requirements.

10. Applicant has filed a map of the service territories of AT&T, Verizon, SureWest, and Frontier as the location of its proposed service territory.

11. Applicant has provided an estimate of its customer base for the first and fifth years of operation.

12. Applicant will not be constructing facilities except within existing buildings or structures. Granting this application will have no adverse impact on the environment.

Conclusions of Law

1. Applicant has the financial ability to provide the proposed service.

2. Applicant has sufficient technical expertise to operate as a telecommunications carrier.

3. Public convenience and necessity require that Applicant's limited facilities-based and resold competitive local exchange, access and interexchange services be subject to the terms and conditions set forth herein.

4. Since Applicant will not be constructing any facilities, except within existing buildings or structures, it can be seen with certainty that there will be no significant effect on the environment.

5. Applicant should be granted non-dominant carrier status, subject to the Commission rules and regulations detailed in D.85-01-008 and modified in D.85-07-081 and D.85-11-044.

6. The application should be granted to the extent set forth below.

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

8. The initial tariff filing of Applicant should correct the deficiencies noted in its draft tariffs as indicated in Attachment A to this decision.

9. Because of the public interest in competitive local exchange services, the following order should be effective immediately.

O R D E R

IT IS ORDERED that:

1. A certificate of public convenience and necessity is granted to VoxBeam Telecommunications, Inc. to operate as a limited facilities-based and resold provider of local exchange, access and interexchange telecommunications services subject to the terms and conditions set forth below.

2. The certificate granted, and the authority to render service under the rates, charges, and rules authorized, will expire if not exercised within 12 months after the effective date of this order.

3. VoxBeam Telecommunications, Inc. is authorized to file tariff schedules for the provision of competitive local exchange services with the deficiencies noted

in Attachment A corrected. VoxBeam Telecommunications, Inc. may not offer services until tariffs are on file. VoxBeam Telecommunications, Inc.'s initial filing must be made in accordance with General Order 96-B, the Telecommunications Industry Rules. VoxBeam Telecommunications, Inc. must comply with its tariffs.

4. The corporate identification number assigned to VoxBeam Telecommunications, Inc., U-7213-C must be included in the caption of all original filings with this Commission, and in the titles of other pleadings filed in existing cases.

5. VoxBeam Telecommunications 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.

6. 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, VoxBeam Telecommunications, 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.

7. VoxBeam Telecommunications, 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.

8. VoxBeam Telecommunications, 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 should report user fees even if the amount due is \$0.

9. Prior to initiating service, VoxBeam Telecommunications, Inc. must provide the Commission's Consumer Affairs Branch with the name(s) and address(es) 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.

10. VoxBeam Telecommunications, 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.

11. VoxBeam Telecommunications, 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.

12. VoxBeam Telecommunications, 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.

13. VoxBeam Telecommunications, Inc. must file an annual performance bond as specified by D.10-09-017.

14. VoxBeam Telecommunications, Inc. is not authorized to construct facilities other than those to be installed in existing buildings and structures.

15. This proceeding is closed.

This order is effective today.

Dated May 5, 2011, at San Francisco, California.

MICHAEL R. PEEVEY

President

TIMOTHY ALAN SIMON

MICHEL PETER FLORIO

CATHERINE J.K. SANDOVAL

MARK FERRON

Commissioners

ATTACHMENT A

List of deficiencies in draft tariff submitted by VoxBeam Telecommunications, Inc., in A.11-01-024 to be corrected in its initial tariff compliance filing.

1. Tariff Sheet Format: CPUC assigned utility ID number (#U7213C) must be included on each sheet in the upper left header along with Company name and address. (General Order 96B, Section 8.4.1).
2. Your tariff must state that fees and surcharges are in compliance with Resolution T-16901 and concur with the tariff provision for fees and surcharges in AT&T California tariffs.
3. State California utility address at which the tariff is available for inspection (GO96B, Section 8.1.3) or provide Internet URL where tariffs are posted.
4. Revise Universal Lifeline Telephone Service income eligibility provisions consistent with requirements at <http://www.cpuc.ca.gov/PUC/Telco/Public+Programs/ults.htm>

(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,⁶ 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 PUC Telephone Surcharge Transmittal Form must be submitted even if the amount due is \$0.

- a. The current 1.150% 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 0.200% 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 either 0.180% of gross intrastate revenue (Resolution M-4819), dated June 7, 2007, effective July 1, 2007 or \$100, whichever is greater (per D.10-09-017);
- d. The current 0.00% surcharge applicable to all intrastate services except for those excluded by D.94-09-065, as

⁶ Written acceptance filed in this docket does not reopen the proceeding.

- 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-17128, dated December 20, 2007, effective January 1, 2008); Resolution T-17299, dated November 19, 2010, effective December 1, 2010;
- e. The current 0.300% 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 0.000% 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 (NDIEC). The effectiveness of its future NDIEC tariffs is subject to the requirement of General Order 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 CPCN.

17. Applicant is exempt from Rule 3.1(b) of the Commission 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)