

Decision 11-06-031 June 23, 2011

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of Plumas
Sierra Telecommunications for a Certificate
of Public Convenience and Necessity to
Provide Full Facilities Based Competitive
Local Exchange Access and Interexchange
Services within California.

Application 11-02-014
(Filed February 18, 2011)

**DECISION GRANTING PLUMAS SIERRA TELECOMMUNICATIONS
A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY IN
ORDER TO PROVIDE FULL FACILITIES-BASED COMPETITIVE LOCAL
EXCHANGE ACCESS AND INTEREXCHANGE SERVICE WITHIN
CALIFORNIA AND ADOPTING A FINAL MITIGATED NEGATIVE
DECLARATION PURSUANT TO CEQA**

1. Summary

Plumas Sierra Telecommunications filed an application for a certificate of public convenience and necessity for authority to provide full facilities-based competitive local exchange, access, and interexchange services in the service territories of Pacific Bell Telephone Company d/b/a AT&T California and Citizens Telecommunications Company of California, Inc., d/b/a Frontier Communications Company of California Inc., specifically, within the counties of Plumas, Sierra, and Lassen. Plumas seeks to provide interexchange service throughout the state of California.

By this decision, we grant Plumas Sierra Telecommunications a certificate of public convenience and necessity to provide full facilities-based competitive

local exchange, access, and interexchange services, on the terms and conditions set forth in the Ordering Paragraphs.

2. Background

On February 18, 2011, Plumas Sierra Telecommunications (Plumas) filed an Application seeking authority to provide competitive local exchange, access, and interexchange services within the counties of Plumas, Sierra, and Lassen. Plumas was awarded a Broadband Technologies Opportunity Program (BTOP) Grant from the National Telecommunications and Information Administration (NTIA) to provide broadband data services under the American Recovery and Reinvestment Act. Plumas will build a fiber optic open access network that will traverse through parts of Plumas, Sierra and Lassen Counties; Plumas will not initially offer any local exchange voice or any voice services, except as authorized by D.95-07-054. All services will be provided over facilities owned by Plumas' parent company, Plumas Sierra Rural Electric Cooperative (PSREC), unbundled loops of the local incumbent telecommunications providers, and interexchange facilities owned by other certified carriers. Plumas will lease unbundled network elements and local loops from Pacific Bell dba AT&T California (AT&T) and Frontier Communications (Frontier) within the local service areas where PSREC does not have such facilities.

Plumas states that it filed this application mainly for the purpose of becoming a Competitive Local Carrier (CLC) so that it may negotiate with AT&T and Frontier under Section 251(c) of the 1996 Telecom Act for collocation and unbundled network elements needed for its data network.

3. California Environmental Quality Act (CEQA)

Pursuant to CEQA and Rule 2.4 of the Commission's Rules of Practice and Procedure, the Commission examines projects to determine any potential environmental impacts in order that adverse effects are avoided and environmental quality is restored or enhanced to the fullest extent possible under CEQA.

In this proceeding, the Commission is the lead agency under CEQA with respect to the environmental review of the Plumas-Sierra Broadband Project (Project), and preparation of the Final Mitigated Negative Declaration (MND). The Commission, as the lead agency, must adopt the Final MND before the Project may be approved. Adoption consists of two steps. First, the Commission must conclude that the Final MND has been completed in compliance with CEQA; and second, the Commission must have reviewed and considered the Final MND prior to approving the Project. Additionally, the Commission must find that the Final MND reflects its independent judgment (Pub. Res. Code Section 21082.1(c)(3)).

The purpose of the MND is to identify potentially significant environmental effects associated with the Project, and propose mitigation measures that would minimize the environmental consequences. During the course of the CEQA review an opportunity was provided for public involvement, as required by CEQA. On May 30, 2011, the Draft MND was published for public review and comment. The public review and comment period for the Draft MND ended on June 18, 2011. Comments on the Draft MND are addressed in the Final MND which was released on June 20, 2011.

The Final MND includes the Draft MND, along with the comments received on the Draft MND, individual responses to the comments, and revisions

as necessary in response to those comments and other information received. The MND utilizes an interdisciplinary approach that ensures the integrated use of the natural and social sciences and the consideration of qualitative as well as quantitative factors. It is organized and written so that it is meaningful and useful to decision-makers and the public. Therefore, the Final MND is competent, comprehensive, and in compliance with CEQA.

The Final MND identifies environmental effects of the Project that may be mitigated to less than significant levels or avoided. The adoption and implementation of these mitigation measures was assumed in the determination of environmental impact levels in the Final MND. With these mitigation measures, the Final MND concludes that all potential environmental effects can be mitigated to less than significant levels. The mitigation measures identified in the Final MND are reasonable and feasible. Therefore, we will adopt them and make implementation of them a condition of our approval of the Project.

The Final MND includes a Mitigation Monitoring, Compliance and Reporting Program (MMCRP). The purpose of the MMCRP is to ensure that the mitigation measures in the Final MND are implemented. We have reviewed the MMCRP and find that it conforms to the recommendations in the Final MND for measures required to mitigate or avoid environmental effects of the Project. Therefore, we will adopt the MMCRP.

As discussed above, we have reviewed the Final MND as part of our consideration of whether to approve the Project. Based on that review, we find that the Final MND represents our independent judgment regarding the environmental impact of the Project. For the above reasons, we adopt the Final MND for the Project pursuant to and in compliance with CEQA. The executive summary of the Final MND is included herein as Attachment A.

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 Section 6 of, and Exhibit 5 to the application, Plumas provided a copy of audited financial statements for the most recent year ending December 31, 2009. The audit is the consolidated audit of Plumas Sierra Rural Electric Cooperative and all Subsidiaries, one of which is Plumas Sierra Telecommunications. In addition, Plumas submits its most recent bank statement, showing that cash on hand is in excess of the \$100,000 requirement for a full facilities-based Applicant. Plumas states that the financial statements and the bank statement demonstrate that it possesses a minimum of \$100,000 of unencumbered cash, reasonably liquid and readily available, to meet the expenses of the operation.

Appendix E, Section 4, of D.96-02-072 provides a list of the financial instruments that may satisfy the applicable unencumbered case requirement. That list does not include bank statements. However, the audited financial statements provided by Plumas do show that Plumas Sierra Telecommunications did have the minimum required amount of cash on hand. Since Plumas has provided documentation through a consolidated financial statement that it and its parent possess more than a minimum of \$100,000 that is reasonably liquid and available, it has demonstrated that it has sufficient funds to meet its start-up expenses and has fulfilled this requirement. Plumas has also demonstrated that

it has sufficient funds to pay future deposits that may be required by other telecommunications carriers in order to provide service in California.

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. Plumas 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.

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

Plumas also verified that no one associated with or employed by it as an affiliate, officer, director, partner, or owner of more than 10% of Plumas 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 Plumas is in compliance with these requirements of D.95-12-056.

6. Tariffs

Plumas states that its initial services will be broadband services, which will be offered at competitive prices that will be published and made available on Plumas' website. Because it is only initially offering broadband data services that are not subject to tariff, Plumas seeks an exemption, pursuant to D.07- 09-018, from the Commission requirement to submit a proposed local exchange tariff. We agree that, because its initial services will be competitively priced broadband services, Plumas need not submit a proposed local exchange tariff.

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. In Exhibit 6, Plumas provided a map of the location of its proposed service territory, in compliance with this requirement.

8. Expected Customer Base

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

9. General Order 104-A Statement

Rule 3.1(i) sets forth the requirement that a utility filing an application under Pub. Util. Code § 1001, provide a statement regarding General Order (GO) 104-A. Plumas states that it is a wholly owned subsidiary of Plumas Sierra Rural Electric Cooperative. As a wholly owned subsidiary, Plumas is not Publicly Held, has no stock and is considered as a non profit corporation. Plumas does not have common or capital stock issued or outstanding. Therefore, no annual report is available to submit with this application we waive this requirement

since it does not fit Applicant. On a going forward basis, though, Plumas must file all reports required of a public utility under Commission jurisdiction.

10. Conclusion

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

11. Categorization and Need for Hearings

In Resolution ALJ 176-3270, dated March 10, 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.

12. Waiver of Comment Period

No protests were filed in this proceeding. Therefore, 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) of the Commission's Rules of Practice and Procedure, the otherwise applicable 30-day period for public review and comment is being waived.

13. Assignment of Proceeding

Catherine J.K. Sandoval is the assigned Commissioner and Stephen C. Roscow is the assigned ALJ in this proceeding.

Findings of Fact

1. Notice of the application appeared on the Daily Calendar on February 23, 2011. No protests have been filed. A hearing is not required.
2. Plumas seeks authority to provide full facilities-based competitive local exchange, access, and interexchange services in the service territories of AT&T and Frontier, specifically, within the counties of Plumas, Sierra, and Lassen and interexchange service throughout the state of California.
3. Plumas has a minimum of \$100,000 of cash or cash equivalent that is reasonably liquid and readily available to meet its start-up expenses.
4. Plumas 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. Plumas'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 Plumas as an affiliate, officer, director, partner, or owner of more than 10% of Plumas 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 Plumas as an affiliate, officer, director, partner, or owner of more than 10% of Plumas 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. Because its initial services will be competitively priced broadband services, Plumas need not submit a proposed local exchange tariff.

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

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

11. The Commission is the lead agency under CEQA with respect to the environmental review of the Plumas Sierra Broadband Project and preparation of the Draft and Final Mitigated Negative Declaration.

12. A Draft and Final Mitigated Negative Declaration was prepared by the Commission staff pursuant to the CEQA Guidelines.

13. A Draft Mitigated Negative Declaration was published for public comment between May 3, 2011, and June 3, 2011.

14. All comments received have been responded to in the Final Mitigated Negative Declaration, a summary of which is attached in Attachment A.

15. With the implementation of the mitigation measures identified in the Final Mitigated Negative Declaration, all environmental impacts are reduced to less-than-significant.

16. We conclude that the Final MND is competent, comprehensive, and has been completed in compliance with CEQA and the Public Resources Code.

17. We have reviewed and considered the Final MND prior to approving the Project.

18. We find that the Final MND reflects our independent judgment.

Conclusions of Law

1. Plumas Sierra Telecommunications should be granted a CPCN to provide full facilities-based competitive local exchange access and interexchange service in the service territories of Pacific Bell Telephone Company d/b/a AT&T California and Citizens Telecommunications Company of California, Inc., d/b/a Frontier Communications Company of California Inc., and interexchange service in the state of California, subject to the terms and conditions set forth in the Ordering Paragraphs.

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

3. Plumas Sierra Telecommunications will be subject to any rules, regulations, or policies resulting from R.06-10-006.

4. The Final Mitigated Negative Declaration should be adopted by the Commission as adequate for our decision-making purposes pursuant to CEQA.

5. The mitigation measures identified in the Final Mitigated Negative Declaration and the Mitigation Monitoring Compliance and Reporting Program should be adopted by the Commission and made conditions of project approval.

O R D E R

IT IS ORDERED that:

1. A certificate of public convenience and necessity is granted to Plumas Sierra Telecommunications to provide full facilities-based competitive local exchange access and interexchange service in the service territories of Pacific Bell Telephone Company d/b/a AT&T California and Citizens Telecommunications Company of California, Inc., d/b/a Frontier Communications Company of

California Inc., and interexchange service in the state of California, subject to the terms and conditions set forth below.

2. The Final Mitigated Negative Declaration, a summary of which is attached in Attachment A, is hereby adopted pursuant to California Environmental Quality Act Guidelines and the Public Resources Code and must be used by Responsible Agencies when issuing discretionary approvals.

3. The mitigation measures developed in the Final Mitigated Negative Declaration to avoid or lessen impacts to the environment and specified in the Mitigation Monitoring Compliance and Reporting Program are adopted and imposed as conditions of project approval.

4. The Commission's Executive Director shall supervise and oversee the Plumas Sierra Broadband Project insofar as it relates to monitoring and enforcement of the mitigation measures described in the Final Mitigated Negative Declaration.

5. The Executive Director may delegate such supervision and oversight duties to the Commission staff or outside staff.

6. Plumas Sierra Telecommunications must be subject to any rules, regulations, or policies resulting from R.06-10-006.

7. The corporate identification number assigned to Plumas Sierra Telecommunications, U7218C, must be included in the caption of all original filings with this Commission, and in the titles of other pleadings filed in existing cases.

8. 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, Plumas Sierra Telecommunications 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.

9. Plumas Sierra Telecommunications 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.

10. Plumas Sierra Telecommunications 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.

11. Prior to initiating service, Plumas Sierra Telecommunications 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.

12. Plumas Sierra Telecommunications 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.

13. Plumas Sierra Telecommunications 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.

14. Plumas Sierra Telecommunications must file an annual report with the General Order 104-A, on a calendar-year basis with the information contained in Attachment C to this decision.

15. Application 11-02-014 is closed.

This order is effective today.

Dated June 23, 2011, at San Francisco, California.

MICHAEL R. PEEVEY

President

TIMOTHY ALAN SIMON

MICHEL PETER FLORIO

CATHERINE J.K. SANDOVAL

MARK J. FERRON

Commissioners