

Decision 12-02-033 February 16, 2012

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Liberty Bell Telecom, L.L.C. dba DISH Network Phone & Internet for a Certification of Public Convenience and Necessity to Provide Local Exchange and Interexchange Telecommunications Services within the State of California.

Application 11-10-006
(Filed October 7, 2011)

**DECISION GRANTING A CERTIFICATE OF PUBLIC CONVENIENCE AND
NECESSITY TO LIBERTY-BELL TELECOM, LLC
dba DISH NETWORK PHONE & INTERNET**

1. Summary

Liberty-Bell Telecom, LLC dba DISH Network Phone & Internet is granted a certificate of public convenience and necessity to provide resold and limited facilities-based competitive local exchange 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 territories of Pacific Bell Telephone Company dba AT&T California (AT&T),

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.

Verizon California Inc. (Verizon), Citizens Telecommunications Company of California, Inc. dba Frontier Communications of California (Frontier), and SureWest Telephone (SureWest).

Liberty-Bell Telecom, LLC dba DISH Network Phone & Internet (Liberty-Bell or Applicant), a Colorado corporation, filed an application for a CPCN to provide resold and limited facilities-based interexchange telecommunications services statewide, and competitive local exchange services in the service territories of AT&T, Verizon, Frontier, and SureWest's service territories. Applicant's principal place of business is located at 2460 West 26th Avenue, Suite #380-C, Denver, CO 80211. Applicant's telephone number is (303) 831-1977.

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 other types of facilities.

4. Financial Qualifications

To be granted a CPCN, an applicant for authority to provide limited facilities-based and resold local exchange services must demonstrate that it has a minimum of \$100,000 in 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 in order to provide the proposed service.³

Liberty-Bell has submitted bank statements covering a period of six months both for itself and its parent company, demonstrating that it has met these requirements.

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.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 Liberty-Bell as an affiliate, officer, director, partner, or owner of more than 10% of Liberty-Bell 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

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 set forth in D.95-12-056, Appendix C.

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

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.

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 has complied with this requirement.

8. Expected Customer Base

Applicant is required to provide its estimated customer base for the first and fifth years of operation in its application. 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.

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

10. Request to File Under Seal

Applicant requests that the financial information filed with the application, as well as supplemental information submitted in response to a November 18, 2011 request from the ALJ for additional information, be filed under seal. The financial information consists of financial statements. Applicant represents that the information is proprietary and sensitive. We have granted such requests in the past, and it is reasonable to do so here. In keeping with our standard practice, the financial information shall be kept confidential for two years after the date of this decision.

11. Waiver of Comments

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.

12. Categorization and Need for Hearings

In Resolution ALJ 176-3283, dated October 20, 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.

13. Assignment of Proceeding

Catherine J.K. Sandoval is the assigned Commissioner and Julie A. Fitch is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. Notice of the application appeared on the Daily Calendar on October 13, 2011. A hearing is not required.
2. 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.
3. Applicant has a minimum \$100,000 of cash or cash equivalent that is reasonably liquid and readily available to meet its start-up expenses.
4. 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.
5. Applicant possesses sufficient experience, knowledge, and technical expertise to provide telecommunications services.
6. 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.
7. Applicant will not be constructing facilities except within existing buildings or structures.

Conclusions of Law

1. Applicant has the financial ability to provide the proposed service.
2. Applicant's request to file its financial information under seal should be granted for a period of two years from the date of this decision, consistent with our standard practice.
3. Applicant has sufficient technical expertise to operate as a telecommunications carrier.

4. Public convenience and necessity require that Applicant's resold competitive local exchange and interexchange services be subject to the terms and conditions set forth herein.

5. 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.

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 Liberty-Bell Telecom, LLC dba DISH Network Phone & Internet to operate as a limited facilities-based and resale provider of local exchange and interexchange services subject to the terms and conditions set forth below.

2. Liberty-Bell Telecom, LLC dba DISH Network Phone & Internet is authorized to provide local exchange service in the service territories of Pacific Bell Telephone Company dba AT&T California, Verizon California Inc., SureWest Telephone, and Citizens Telecommunications Company of California,

Inc., dba Frontier Communications of California, and interexchange services statewide.

3. 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.

4. Liberty-Bell Telecom, LLC dba DISH Network Phone & Internet is authorized to file tariff schedules for the provision of competitive local exchange services with the deficiencies noted in Attachment A corrected. Liberty-Bell Telecom, LLC dba DISH Network Phone & Internet may not offer services until tariffs are on file. Liberty-Bell Telecom, LLC dba DISH Network Phone & Internet's initial filing must be made in accordance with General Order 96-B, the Telecommunication's Industry Rules. Liberty-Bell Telecom, LLC dba DISH Network Phone & Internet must comply with its tariffs.

5. The corporate identification number assigned to Liberty-Bell Telecom, LLC dba DISH Network Phone & Internet, U7223C, must be included in the caption of all original filings with this Commission, and in the titles of other pleadings filed in existing cases.

6. In addition to all the requirements applicable to competitive local exchange and interexchange carriers included in Attachments B, C, and D to this decision, Liberty-Bell Telecom, LLC dba DISH Network Phone & Internet 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. Liberty-Bell Telecom, LLC dba DISH Network Phone & Internet 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.

8. Liberty-Bell Telecom, LLC dba DISH Network Phone & Internet 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, Liberty-Bell Telecom, LLC dba DISH Network Phone & Internet 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. Liberty-Bell Telecom, LLC dba DISH Network Phone & Internet 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. Liberty-Bell Telecom, LLC dba DISH Network Phone & Internet 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. Liberty-Bell Telecom, LLC dba DISH Network Phone & Internet 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. Liberty-Bell Telecom, LLC dba DISH Network Phone & Internet is not authorized to construct facilities other than those to be installed in existing buildings and structures.

14. Liberty-Bell Telecom, LLC (Liberty-Bell) dba DISH Network Phone & Internet's financial statements shall be filed under seal and shall remain under seal for a period of two years after the date of this order. If Liberty-Bell believes that it is necessary for this information to remain under seal for longer than two years, Liberty-Bell shall file a new motion at least 30 days before the expiration of this limited protective order.

15. Application 11-10-006 is closed.

This order is effective today.

Dated February 16, 2012, at San Francisco, California.

MICHAEL R. PEEVEY

President

TIMOTHY ALAN SIMON

MICHEL PETER FLORIO

CATHERINE J.K. SANDOVAL

MARK J. FERRON

Commissioners

Attachment A

Page 1

List of deficiencies in draft tariff submitted by Liberty-Bell Telecom, LLC dba DISH Network Phone & Internet, in A.11-10-006, to be corrected in its initial tariff compliance filing.

1. Initiation of Service –

- a. DISH Network Phone & Internet (DISH) must include a Lifeline (ULTS) tariff / offering (service is to residential subscribers as described in its application;
- b. DISH must inform potential customers “*in writing*” within 10 days of service denial;
- c. If initiation of service is based on an oral agreement, DISH must provide a confirmation letter within 10 days of initiating the service order. The letter must be in a language other than English if the sale was in another language.

Please correct Original sheets no. 13-14, *Service initiation*, pursuant to D.95-07-054, Appendix B, Rule 2.

2. Deposits - Conflicting information found in sheet no. 52, section 2.5.5 – Deposits, which states “Company does not require deposits.” This conflicts with sheet no. 47, section 2.5.1 (B)(6a); sheet no. 44, section 2.5.1(A)(3c), which implies there is a deposit requirement; sheet 95, section 4.13 which states... “You may still establish local telephone service by paying a deposit;” and also conflicts with D.95-07-054, Appendix B, Rule 4. In addition, there must be a rule for deposit refunds.
3. Change of Service Provider – In sheet no. 73, section 2.19(A), there is an incorrect citation to Commission Code and a typo in the word “mist.” Commission Code Section 2998.5 is not the correct citation for solicitation of customer authorization for service termination and transfer. The correct citation should be PU Code section 2889.5. (D.95-07-054, Appendix B, Rule 11). This section of the proposed tariff uses the term “Commission Code” whereas another section, 2.18, uses the term “PU Code.” Please be consistent and use “PU Code.”

4. Privacy – In sheet no. 70, Section 2.18, first paragraph, there is an incorrect citation to PU Code section 2881. Please correct. The correct citation should be PU Code section 2891. (D.95-07-054, Appendix B, Rule 14).
5. Lifeline (ULTS) Offering for residential service – Please include a Lifeline offering / tariff as described in item # 1 above and pursuant to D.95-07-054, Appendix B, Rule 2.
6. Blocking Access to 900/976 – Please correct typo in sheet no. 73, Section 2.20, first paragraph, first sentence, “.....Company shall block that Customer’s address.....The correct word should be “access,” not address.
7. Tariff Accessibility – Please state either a California address (but not the Commission’s) where the tariff is available for public inspection or copying or provide an Internet URL where the tariffs are posted. (G.O. 96B, 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,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 0.180% of gross intrastate revenue (Resolution M-4819), dated June 7, 2007, effective July 1, 2007;
- d. The current 0.000% 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-17299, dated November 19, 2010, effective December 1, 2010);
- e. The current 0.300% surcharge applicable to all intrastate services except for those excluded by D.94-09-065, as modified by D.95-02-050, to fund the California High Cost Fund-B (D.96-10-066, p. 191, App. B, Rule 6.F.; D.07-12-054, Resolution T-17311, dated March 24, 2011, effective May 1, 2011.);
 - f. The current 0.14% 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-17343, dated September 22, 2011, effective November 1, 2011; 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 Company (dba AT&T California) and apply the current surcharge and fee amounts in that joint tariff on end-user charges until further revised.

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

5. Tariff filings shall reflect all fees and surcharges to which Applicant is subject, as reflected in #2 above.

6. Applicant shall file a service area map as part of its initial tariff.

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

8. Applicant shall notify the Director of the Communications Division in writing of the date that local exchange service is first rendered to the public, no later than five days after service first begins.

9. Applicant shall notify the Director of the Communications Division in writing of the date interLATA service is first rendered to the public within five days after service begins.⁷

10. Applicant shall 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 shall either produce such records at the Commission's offices or reimburse the Commission for the reasonable costs incurred in having Commission staff travel to its office.

⁷ California is divided into ten Local Access and Transport Areas (LATAs), each containing numerous local telephone exchanges. InterLATA describes services, revenues and functions relating to telecommunications originating within one LATA and terminating in another LATA. IntraLATA describes services, revenues and functions relating to telecommunications originating within a single LATA.

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

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

14. Applicant shall 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 shall 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, the Communications Division shall prepare for Commission consideration a resolution that revokes Applicant's CPCN unless it has received written permission from the Communications Division to file or remit late.

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 shall immediately notify the Communications Division's Bankruptcy Coordinator.

21. Applicant shall 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.

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

(END OF ATTACHMENT C)

ATTACHMENT D
CALENDAR YEAR AFFILIATE TRANSACTION REPORT

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)