

Decision 12-03-039 March 22, 2012

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of DigiJack Corporation for a Certificate of Public Convenience and Necessity to Provide Limited Facilities-Based and Resale Competitive Local Exchange Services within the California Service Areas of Pacific Bell Telephone Company dba AT&T California, Verizon California, Inc., Frontier Citizens Telecom of California, and Surewest Telephone Company.

Application 11-09-020
(Filed September 14, 2011)

**DECISION GRANTING A CERTIFICATE OF PUBLIC
CONVENIENCE AND NECESSITY TO DIGIJACK CORPORATION**

1. Summary

DigiJack Corporation is granted a Certificate of Public Convenience and Necessity to provide resold and limited facilities-based competitive local exchange 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), Verizon California Inc. (Verizon), Citizens Telecommunications Company of California, Inc. dba Frontier Communications of California (Frontier), and SureWest Telephone (SureWest).

DigiJack Corporation (Applicant), a California corporation, filed an application for a Certificate of Public Convenience and Necessity (CPCN) to provide resold and limited facilities-based telecommunications services in the service territories of AT&T, Verizon, Frontier, and SureWest. Applicant's principal place of business is located at 510 College Street, Woodland, CA 95695. Applicant's telephone number is (908) 248-2846.

3. California Environmental Quality Act (CEQA)

The 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

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

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 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 in order to provide the proposed service.³ DigiJack has provided financial statements that demonstrate its ability to meet these requirements, with an 18-month certificate of deposit for the required amounts.

5. Technical Qualifications

To be granted a CPCN for authority to provide local exchange 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 Chairman, Chief Executive Officer, and President that demonstrated that it has sufficient expertise and training to operate as a telecommunications provider.

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

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

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

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 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.

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

9. Conclusion

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

10. Categorization and Need for Hearings

In Resolution ALJ 176-3283, 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.

11. Waiver of Comment Period

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Section 311(g)(2) of the Public Utilities Code and Rule 14.6(c)(2), the otherwise applicable 30-day period for public review and comment is waived.

12. 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 5, 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 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 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. The application should be granted to the extent set forth below.

6. 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.

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

8. 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 DigiJack Corporation to operate as a limited facilities-based and resale provider of local exchange services subject to the terms and conditions set forth below.

2. DigiJack Corporation 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.

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. DigiJack Corporation is authorized to file tariff schedules for the provision of competitive local exchange services with the deficiencies noted in Attachment A corrected. DigiJack Corporation may not offer services until tariffs are on file. DigiJack Corporation's initial filing must be made in accordance with General Order 96-B, the Telecommunication's Industry Rules. DigiJack Corporation must comply with its tariffs.

5. The corporate identification number assigned to DigiJack Corporation, U7224C, 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 carriers included in Attachments B, C, and D to this decision, DigiJack Corporation 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. DigiJack Corporation 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. DigiJack Corporation must annually pay the user fee and public purpose surcharges specified in Attachment B.

9. 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.

10. Prior to initiating service, DigiJack Corporation 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.

11. DigiJack Corporation 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.

12. DigiJack Corporation 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 beginning May 2013, using the form contained in Attachment D.

13. DigiJack Corporation must file an annual report with the Director of the Communications Division, in compliance with General Order 104-A, on a calendar-year basis beginning March 2013, with the information contained in Attachment C to this decision.

14. DigiJack Corporation is not authorized to construct facilities other than those to be installed in existing buildings and structures.

15. Application 11-09-020 is closed.

This order is effective today.

Dated March 22, 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

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List of deficiencies in tariff filed by DigiJack Corporation in A.11-09-020, to be corrected in its tariff compliance filing.

1. Sheet 25-T, Rule 3, Application for Service: Please add "Potential customers who are denied service must be given the reason for the denial in writing within 10 days of service denial." See Decision 95-07-054, Appendix B, 3.0, Rule 2.
2. Sheet 26-T, Rule 5, Special Information Required on Forms: Name of carrier shall be identified on each bill. Furthermore, each bill must include a toll-free telephone number for service or billing inquiries, along with an address where the customer may write. If the carrier uses a billing agent, the carrier must include the name of the billing agent it uses. See Decision 95-07-054, Appendix B, 3.0, Rule 3(A).
3. Sheet 29-T, Rule 9.1, Taxes: Please provide language concurring with the Commission's Public Programs all-end-user surcharges and the Reimbursement Fee as filed by Pacific Bell (dba AT&T California) in its joint tariff for surcharges and fees. See Resolution T-16901.
4. Sheet 30-T, Rule 9.3, Payment of Bills: Please add that payments will be credited to customer's account within 24 hours of receipt to avoid incorrectly assessed late payment charges. See Decision 95-07-054, Appendix B, Rule 9.
5. Sheet 33-T, Rule 10.2, Cancellation for Cause by the Company: Please add that service is not initially discontinued on any Saturday, Sunday, legal holiday, or any other day Carrier service representatives are not available to serve customers. See Decision 95-07-054, Appendix B, Rule 10.
6. Sheet 41-T, Rule 21, Blocking Access to 900 and 976 Information Services: Please add that the blocking access to 900 and 976 telephone information services are to be done at the request of a customer. The Carrier shall inform their customers of the availability of this service at the time service is ordered. The blocking service shall be made available free-of-charge to residential

customers. The carrier may impose a charge if customer asks for deactivation of blocking. See Decision 95-07-054, Appendix B, Rule 15.

7. Please include Legal Requirements for Refusal or Discontinuance of Service. See Decision 91188, Appendix B, Case No. 4930.

(END OF ATTACHMENT A)

ATTACHMENT B

REQUIREMENTS APPLICABLE TO COMPETITIVE LOCAL EXCHANGE 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 Deaf and Disabled Telecommunications Program (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 modified by D.95-02-050, to fund the California High Cost

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

Fund-A (Pub. Util. Code § 739.3; D.96-10-066, pp. 3-4, App. B, Rule 1.C; Resolution T-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 24, 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 charges 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. Tariff filings must reflect all fees and surcharges to which Applicant is subject, as reflected in #2 above.
- 5. Applicant must file a service area map as part of its initial tariff.

6. 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.

7. 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.

8. 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.

9. Applicant must keep its books and records in accordance with the Generally Accepted Accounting Principles.

10. 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.

11. 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.

12. 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.

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

14. 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.

15. 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.

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

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

18. 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.

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

20. 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 shall 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 §§ 2107 and 2108 of the Public Utilities Code.

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 shall 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 shall 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 should 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 should 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)