

Decision 12-04-029 April 19, 2012

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Application of Digital Transportation Corporation for a Certificate of Public Convenience and Necessity to Provide Full Facilities-Based and Resold Competitive Local Exchange Services in the Service Territories of Pacific Bell Telephone Company, Verizon California Inc., Surewest Telephone, and Citizens Telecommunications, Inc., and Interexchange Services Statewide.

Application 11-11-005  
(Filed November 4, 2011)

**DECISION GRANTING DIGITAL TRANSPORTATION CORPORATION A  
CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY IN ORDER TO  
PROVIDE FULL FACILITIES-BASED AND RESOLD LOCAL EXCHANGE AND  
INTEREXCHANGE TELECOMMUNICATION SERVICES**

**1. Summary**

Digital Transportation, Inc. is granted a certificate of public convenience and necessity pursuant to Pub. Util. Code § 1001 to provide full facilities-based and resold competitive local exchange and interexchange services, subject to the terms and conditions set forth below. The application is unopposed. This proceeding is closed.

**2. Background**

In prior decisions, we authorized the provision of competitive interexchange services by carriers meeting specified criteria. In addition, we authorized the provision of competitive local exchange service, by carriers meeting specified criteria, within the service territories of Pacific Bell Telephone

Company (Pacific), Verizon California Inc. (Verizon), SureWest Telephone (SureWest),<sup>1</sup> and Citizens Telecommunications Company of California, Inc., dba Frontier Communications of California (CTC).

Digital Transportation Corporation (Digital or Applicant) is a California corporation with its principal place of business located at 1720 Q Street, Sacramento, California 95811, with telephone number (916) 538-1720.

### **3. Financial Qualifications**

To be granted a certificate of public convenience and necessity (CPCN), an applicant for authority to provide full-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.<sup>2</sup> 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.<sup>3</sup> In Exhibit D to the application, Digital has provided documentation that it possesses more than the required 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 it has fulfilled this requirement.

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<sup>1</sup> SureWest was formerly known as Roseville Telephone Company.

<sup>2</sup> The financial requirement for Competitive Local Carriers (CLCs) is contained in Decision (D.) 95-12-056, Appendix C.

<sup>3</sup> The requirement for CLC 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. Technical Qualifications**

Applicants for Non-Dominant Interexchange Carrier and CLC authority are required to make a reasonable showing of technical expertise in telecommunications or a related business. Digital submitted biographical information on its officers in its application and in its February 7, 2012 Response to Administrative Law Judge Inquiry. The information provided demonstrates that it possesses sufficient experience and knowledge to operate as a telecommunications provider.

Digital represents that no one associated with or employed by Digital as an affiliate, officer, director, partner, or owner of more than 10% of Digital was previously associated with any telecommunication 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.

#### **5. Tariffs**

Digital asserts that it does not currently intend to provide any services for which a tariff is required. Instead, Digital will offer all services on a detariffed basis. In accordance with D.07-09-018, Digital will make its rates, terms, and conditions for detariffed services available to the public on its website and provide a toll-free number for consumers to call to obtain a copy of rates, terms, and conditions.

#### **6. California Environmental Quality Act (CEQA)**

The CEQA requires that the Commission act as the designated lead agency for this project 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.

In its application, Digital asserts that it intends to install its facilities, such as fiber optic cable and related equipment, primarily in existing conduits and other existing buildings and infrastructure. Digital further asserts that it may, however, need to undertake outside plant construction activities in order to serve some customer locations if, for example, there are no existing conduits or there is inadequate space in the existing conduits. Such activities may include trenching for the installation of underground conduit and the installation of new utility poles, equipment shelters, or other above-ground support structures. Digital asserts that it expects that such construction ordinarily would be very small in scale, consisting of construction of short conduit extensions or stubs and installations of a limited number of poles or other above-ground facilities. Further, such construction generally would occur in existing roadways or other previously-developed and disturbed rights-of-way. Digital asserts that specific projects are unknown at this time.

These activities may fall within the classes of projects that are exempt from CEQA and for which neither an Environmental Impact Report nor a Negative Declaration is required.

Digital requests leave to utilize a procedure for expedited review of its projects once it is aware of a specific site(s) in which it plans construction. The proposed procedure generally tracks the expedited review process that we have approved for other carriers.<sup>4</sup> Such a process will expedite CEQA review and is appropriate for any type of construction that is categorically exempt. By

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<sup>4</sup> See D.10-12-004 (Mobilitie, LLC); D.08-12-027 (ATC Outdoor DAS); D.10-04-038 (SnowCrest Telephone, Inc.); D.10-01-014 (Pacific Lightwave); D.09-11-021 (Freedom Telecommunications, Inc.); D.09-07-043 (PublicWireless, Inc.).

establishing this expedited review process, we are able to review the information on a specific project to confirm that it is categorically exempt from CEQA or explain why further environmental review is required. At the same time, the proposed CEQA review process will enable Digital to undertake construction of its projects in a timely manner.

Similar to the procedure approved for other carriers,<sup>5</sup> the following procedure will be used to obtain Commission approval of Digital's claimed CEQA exemptions for proposed construction projects:

- Digital will provide the Commission's Energy Division with:
  - A detailed description of the proposed project, including:
    - Customer(s) to be served;
    - The precise location of the proposed construction project; and
    - Regional and local site maps.
  - A description of the environmental setting, to include at a minimum:
    - Cultural, historical, and paleontological resources;
    - Biological resources; and
    - Current land use and zoning.
  - A construction workplan, to include:
    - Commission Preconstruction Survey Checklist – Archaeological Resources;

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<sup>5</sup> See e.g., D.06-04-030 (NewPath Networks, LLC); D.06-04-063 (ClearLinx Network Corporation); D.06-06-047 (Sunesys, Inc.); D.08-12-027 (ATC Outdoor DAS, LLC); D.07-04-045 (NextG Networks of California, Inc.); D.07-08-026 (Broadband Associates International); and D.07-11-028 (Trillion Partners, Inc.).

- Commission Preconstruction Survey Checklist – Biological Resources;
- A detailed schedule of construction activities, including site restoration activities;
- A description of construction/installation techniques;
- A list of other agencies contacted with respect to siting, land use planning, and environmental resource issues, including contact information; and
- A list of permits required for the proposed project.
- A statement of the CEQA exemption(s) applicable to the proposed project; and
- Documentation and factual evidence sufficient to support a finding that the claimed exemption(s) is (are) applicable.
- The Energy Division will review Digital's submission for the proposed project to confirm that the claimed exemption(s) from CEQA are applicable.
- Within 21 days from the date of Digital's submittal, the Energy Division will issue either:
  - A Notice to Proceed (NTP) and file a Notice of Exemption with the State Clearinghouse, Office of Planning and Research, or
  - A letter of denial stating the specific reasons why the claimed exemption(s) are not applicable to the proposed project.

We have reviewed the application and find that:

- Digital's proposed facilities-based project activities are very limited;
- These activities would in almost all circumstances be very likely to qualify for an exemption from CEQA; and
- The proposed process for reviewing the applicability of CEQA exemptions to Digital's facilities-based projects is

not only adequate for the Commission's purposes as CEQA Lead Agency, but is also in the public interest because it enables Digital to respond in a timely manner to requests for service without the delay or burden of a full CEQA review when such review is unnecessary.

We therefore authorize Digital to follow the process described in the order herein, for Commission review of claimed CEQA exemptions for construction projects undertaken pursuant to Digital's full facilities-based authority with the following modifications related to the Commission's Energy Division review and approval or disapproval of the proposed exemptions.

- If the Energy Division disapproves Digital's claimed CEQA exemption(s), and issues a letter of denial to Digital, Digital must either re-design the specific project and facilities and then reapply for a finding of exemption from CEQA, or file a formal application with the Commission seeking the requisite approval and full CEQA review, before commencing any construction activities.

Digital shall not perform any full facilities-based construction activities without first obtaining an NTP from the Energy Division or authorization by the Commission after the requisite environmental review.

We have previously determined in Rulemaking 95-04-043/ Investigation 95-04-044 that the public convenience and necessity require that competition be allowed in the provision of competitive local exchange service. Granting this application will benefit the public interest by expanding the availability of technologically advanced telecommunications services within the state.

## **7. Conclusion**

We conclude that the application conforms to our rules for authority to provide full facilities based and resold competitive local exchange and

interexchange telecommunications services. Accordingly, we shall approve the application subject to the terms and conditions set forth herein.

### **8. Categorization and Need for Hearings**

In Resolution ALJ 176-3284, dated November 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.

### **9. Comments on Proposed 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 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 waived.

### **10. Assignment of Proceeding**

Catherine J.K. Sandoval is the assigned Commissioner and Richard W. Clark is the assigned Administrative Law Judge in this proceeding.

### **Findings of Fact**

1. Notice of the application appeared on the Daily Calendar on November 9, 2011.
2. No protests have been filed.
3. A hearing is not required.
4. In prior decisions, the Commission authorized competition in providing interexchange services for carriers meeting specific criteria.



5. In prior decisions, the Commission authorized competition, by carriers meeting specified criteria, in providing local exchange telecommunications services within the service territories of Pacific, Verizon, SureWest and CTC.

6. Digital has a minimum of \$100,000 of cash or cash equivalent that is reasonably liquid and readily available to meet its start-up expenses and any deposits that may be required by other telecommunications carriers in order to provide the proposed service.

7. Digital possesses sufficient experience and knowledge to provide telecommunications services.

8. Digital does not intend to provide services for which a tariff is required. Digital will comply with D.07-09-018 in making its rates, terms and conditions for detariffed services available to the public.

9. Digital will be constructing facilities, which may be exempt from CEQA.

### **Conclusions of Law**

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

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

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

4. Any facilities Digital will be constructing should be subject to CEQA review as set forth in this order.

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

6. Digital, 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. Digital is exempt from the filing of tariffs, but shall comply with D.07-09-018 in making its rates, terms and conditions for detariffed services available to the public.

8. Because of the public interest in competitive local exchange and interexchange 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 Digital Transportation Corporation to operate as a full facilities-based and resale provider of competitive local exchange services, and interexchange services, subject to the terms and conditions set forth below.

2. Digital Transportation Corporation is authorized to provide local exchange service in the service territories of Pacific Bell Telephone Company, Verizon California Inc., SureWest Telephone, and Citizens Telecommunications Company of California, Inc., dba Frontier Communications of California.

3. Digital Transportation Corporation is exempt from the filing of tariffs, but shall comply with Decision 07-09-018 in making its rates, terms and conditions for detariffed services available to the public.

4. 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.

5. The corporate identification number assigned to Digital Transportation Corporation, U7229C, shall be included in the caption of all original filings with this Commission, and in the titles of other pleadings filed in existing cases.

6. Digital Transportation Corporation shall comply with all applicable rules adopted in the Local Exchange Competition proceeding (Rulemaking 95-04-043/

Investigation 95-04-044), the Commission's rules and regulations for non-dominant interexchange carriers set forth in Decision (D.) 93-05-010, D.90-08-032, as well as all other applicable Commission rules, decisions, General Orders, and statutes that pertain to California public utilities, subject to the exemptions granted in this decision.

7. Digital Transportation Corporation shall comply with the requirements applicable to competitive local exchange carriers and non-dominant interexchange carriers included in Attachment B to this decision.

8. Applicant is authorized to construct equipment to be installed in existing buildings or structures. For all other future construction projects Applicant shall use the modified California Environmental Quality Act review process set forth in the body of this decision.

9. Application 11-11-005 is closed.

This order is effective today.

Dated April 19, 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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**(END OF ATACHMENT A)**

## **ATTACHMENT B**

### **REQUIREMENTS APPLICABLE TO COMPETITIVE LOCAL EXCHANGE CARRIERS AND INTEREXCHANGE CARRIERS**

1. Digital Transportation Corporation (Digital) shall file, in this docket, a written acceptance of the certificate granted in this proceeding within 30 days of the effective date of this order.

2. Digital is subject to the following fees and surcharges that must be regularly remitted. Per the instructions in Appendix 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 either 0.180% of gross intrastate revenue (Resolution M-4819, dated June 7, 2007, effective July 1, 2007);
- d. The current 0.00% 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-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, Digital should 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. Digital 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. Digital 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 Digital is subject, as reflected in 2 above.

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

7. Prior to initiating service, Digital 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 shall be updated if the name or telephone number changes, or at least annually.

8. Digital 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. Digital 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, and again within five days after intraLATA service begins.<sup>1</sup>

10. Digital shall keep its books and records in accordance with the Generally Accepted Accounting Principles.

11. In the event Digital'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.

12. Digital 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.

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<sup>1</sup> 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.

13. Digital 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. Digital shall ensure that its employees comply with the provisions of Public Utilities (Pub. Util.) Code § 2889.5 regarding solicitation of customers.

15. Within 60 days of the effective date of this order, Digital 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 Digital 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 Digital's CPCN unless it has received written permission from the Communications Division to file or remit late.

17. Digital is exempt from Commission Rules of Practice and Procedure 3.1(b).

18. Digital is exempt from Pub. Util. Code §§ 816-830.

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

21. Digital shall send a copy of this decision to concerned local permitting agencies not 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**

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 May 1st of the year following the calendar year for which the annual report is submitted.

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)**