

Decision 08-05-007 May 15, 2008

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of Channel Islands Telephone Company, for a Certificate of Public Convenience and Necessity to Construct Telecommunications Facilities and to provide local Exchange and Interexchange Service to and within certain previously unserved Channel Islands.

Application 07-08-014
(Filed August 9, 2007)

**DECISION GRANTING LIMITED FACILITIES-BASED CERTIFICATE
OF PUBLIC CONVENIENCE AND NECESSITY**

1. Summary

Channel Islands Telephone Company (Applicant) seeks a certificate of public convenience and necessity (CPCN) under Pub. Util. Code § 1001 for authority to provide facilities-based local exchange and interexchange telecommunications services and to construct facilities necessary to provide these services. By this decision, we grant Applicant the authority to provide limited facilities-based local exchange and interexchange services, subject to the terms and conditions set forth below.

Applicant's application for authority to provide full facilities-based services and to construct facilities is denied at this time, because of the need for environmental review under the California Environmental Quality Act (CEQA). Applicant may reapply for full facilities-based authority and authorization to construct after undergoing any required CEQA review or obtaining a staff determination that the project falls under categorical or statutory exemptions to

CEQA, pursuant to the expedited process described in Decision (D.) 06-04-030 (*Newpath*).

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), and Citizens Telecommunications Company of California, Inc. dba Frontier Communications of California (CTC).¹

Applicant, a California corporation, seeks authority to provide facilities-based local exchange and interexchange services to and within five of the Channel Islands, specifically San Miguel, Santa Rosa, Santa Barbara, Anacapa, and Santa Cruz Islands, which do not currently have phone service. Applicant's principal place of business is located at 3802 Rosecrans Street, San Diego, CA 92110.

According to the application, the largest of the Channel Islands, Santa Catalina Island is served by Pacific, and two of the remaining islands, San Nicolas and San Clemente Islands, are controlled by the United States Navy. Four of the five remaining Channel Islands, including San Miguel, Santa Rosa, Santa Barbara, and Anacapa Islands, along with a portion of Santa Cruz Island, comprise the Channel Islands National Park. The remaining portion of Santa Cruz Island is owned by the Nature Conservancy.

¹ SureWest was formerly known as Roseville Telephone Company.

Applicant states that San Miguel, Santa Rosa, Santa Barbara, Anacapa, and Santa Cruz Islands are not served by any local exchange or interexchange carrier. Although some analog cellular telephone service is available on these islands, this service is being discontinued. As a result, these five islands will soon have no public telephone service to serve National Park Service employees, ranch employees, and research personnel who live on the islands or the 30,000 individuals who visit the national park each year.

Applicant has applied for a Rural Telecommunications Infrastructure Grant from the Commission in order to obtain funding for the construction of its telecommunications facilities and for any necessary environmental (CEQA) review. However, Applicant cannot qualify for a Rural Telecommunications Infrastructure Grant until it holds a CPCN in this state, and Applicant cannot obtain a full facilities-based CPCN without undergoing CEQA review for its proposed facilities or obtaining a staff determination that the project is exempt from CEQA pursuant to the expedited process described in D.06-04-030. Although Applicant claims that the facilities proposed to be constructed are exempt from CEQA, the construction of facilities in this environmentally-sensitive setting may require CEQA review. Applicant has, to date, neither completed CEQA review of its proposed project nor obtained a staff determination that the project is exempt from CEQA.

However, the issuance of a limited facilities-based CPCN to Applicant would enable Applicant to commence its operations as a telecommunications provider in this state. Although a limited facilities-based CPCN would not authorize Applicant to engage in construction, except for very minor activities such as the placement of switches in or on existing structures, Applicant may

later reapply for a full facilities-based CPCN and authorization to construct facilities, after undergoing any required CEQA review.

3. Financial Qualifications

To be granted a CPCN, an applicant for authority to provide limited facilities-based local exchange and/or interexchange services must demonstrate that it has a minimum of \$100,000 of 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 (LECs) and/or interexchange carriers (IECs) in order to provide the proposed service.³ Applicant provided documentation that demonstrates that it has sufficient cash to satisfy the financial requirements.

4. Technical Qualifications

Applicants for local exchange and interexchange authority are required to make a reasonable showing of technical expertise in telecommunications or a related business. Applicant submitted biographical information on its officers that demonstrates that it possesses sufficient experience and knowledge to operate as a telecommunications provider.

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

² The financial requirement for LECs is contained in D.95-12-056, Appendix C. The financial requirement for IECs is contained in D.91-10-041.

³ The requirement for LEC applicants to demonstrate that they have additional financial resources to meet any deposits required by underlying LECs and/or IECs is set forth in D.95-12-056, Appendix C. For IECs, the requirement is found in D.93-05-010.

filed for bankruptcy, or was sanctioned by the Federal Communications Commission (FCC) or any state regulatory agency for failure to comply with any regulatory statute, rule, or order.

5. Tariffs

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

6. CEQA

CEQA requires the Commission 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. Pursuant to the limited facilities-based authority granted in this decision, Applicant will not be constructing any facilities. Therefore, it can be seen with certainty that there is no possibility that granting this application will have an adverse effect upon the environment. Applicant must file for additional full facilities-based authority, and submit to any required CEQA review, before it can construct facilities.

7. Ratemaking Considerations

Applicant has asked to be treated as a small LEC for ratemaking purposes and proposes to initially establish rates and charges for its services that mirror the standard rates and/or charges of Pacific for the same services. Once Applicant has completed construction of its facilities and has a minimum of one calendar-year operating experience to enable it to prepare valid intrastate test-year results, projections, and costs studies, Applicant would file a general rate

case (GRC) with the Commission. Applicant shall not change its tariffed rates and charges until authorized by a Commission decision following the GRC.

We note that under these circumstances, Applicant will not be eligible for funding from California High Cost Fund-A until after the Commission has acted on a GRC filed by Applicant in compliance with D.91-09-042 and in accordance with the implementing guidelines established in the Appendix of the same Decision.

8. Motion to File Confidential Information Under Seal

Applicant has filed a motion to file the confidential financial information submitted as Exhibit G to the application under seal. We have granted these motions in similar cases, and we do so here.

9. Conclusion

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

10. Categorization and Need for Hearings

In Resolution ALJ 176-3197, dated August 23, 2007, the Commission preliminarily categorized this application as Ratesetting, and preliminarily determined that hearings were not necessary. No protests have been received. There is no apparent reason why the application should not be granted. Given these developments, a public hearing is not necessary, and it is not necessary to disturb the preliminary determinations.

11. Comments on Proposed Decision

Pub. Util. Code § 311(g)(1) provides that this decision must be served on all parties and subject to at least 30 days review and comment prior to a vote of the Commission. Section 311(g)(2) provides that this 30-day comment period

may be waived or reduced upon the stipulation of all parties to the proceeding. All parties in this proceeding have stipulated to waive the 30-day waiting period required by § 311(g)(1) and the opportunity to file comments on the proposed decision. Therefore, the public review and comment period is waived.

12. Assignment of Proceeding

Michael R. Peevey is the assigned Commissioner and Myra J. Prestidge is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. Notice of the application appeared in the Daily Calendar on August 17, 2007.
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 specified 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. Applicant has a minimum of \$100,000 of cash or cash value equivalent that is reasonably liquid and readily available to meet its start-up expenses.
7. Applicant has sufficient additional cash or cash equivalent to cover any deposits that may be required by other telecommunications carriers in order to provide the proposed service.
8. Applicant's management possesses sufficient experience and knowledge to provide telecommunications services.

9. As part of its application, Applicant submitted a draft of its initial tariff. Except for the deficiencies noted in Attachment A to this decision, Applicant's draft tariffs comply with the Commission's requirements.

10. Applicant will not be constructing facilities, pursuant to this limited facilities-based CPCN.

11. If Applicant later wishes to construct facilities as described in the application, Applicant must reapply for full facilities-based authority and undergo any required CEQA review.

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 and interexchange services be subject to the terms and conditions set forth herein.
4. Since Applicant will not be constructing any facilities pursuant to this limited facilities-based CPCN, 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 public utilities.
7. Applicant should correct the deficiencies noted in its draft tariffs as indicated in Attachment A to this decision.
8. Since Applicant has asked to be treated as a small LEC for ratemaking purposes, Applicant will not be eligible for funding from California High Cost

Fund-A until after it has filed a GRC and the Commission has issued a decision on a GRC, filed by Applicant in accordance with D.91-09-042 and the implementing guidelines set forth in the Appendix of that decision.

9. Applicant's motion to file the confidential financial documents submitted as Exhibit G to the application under seal should be granted.

10. 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 (CPCN) is granted to Channel Islands Telephone Company (Applicant) to operate as a limited facilities-based provider of competitive local exchange services and interexchange services subject to the terms and conditions set forth below.

2. Applicant is authorized to provide local exchange service and interexchange service in the service territories of Pacific Bell Telephone Company, Verizon California Inc., SureWest Telephone, and Citizens Telecommunications Company of California Inc., and specifically on the San Miguel, Santa Rosa, Santa Barbara, Anacapa, and Santa Cruz Islands.

3. Applicant is authorized to file tariff schedules for the provision of competitive local exchange services with the deficiencies noted in Attachment A corrected. Applicant may not offer services until tariffs are on file. Applicant's initial filing shall be made in accordance with General Order (GO) 96-B. Applicant shall comply with its tariffs.

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 Applicant, U-7068, 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. Applicant 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 interexchange carriers set forth in Decision (D.) 93-05-010 and D.90-08-032, as well as other applicable Commission's rules, decisions, GOs, and statutes that pertain to California public utilities, subject to the exemptions granted in this decision.

7. Applicant shall comply with the requirements applicable to competitive local exchange carriers included in Attachment A to this decision.

8. Applicant is not authorized to construct facilities, except for the installation of switches in and on existing buildings or structures, until Applicant undergoes any required environmental review and applies for and obtains full facilities-based authority.

9. Applicant is not eligible for funding from California High Cost Fund-A until it has filed a general rate case (GRC) with the Commission in accordance with D.91-09-042 and the implementing guidelines set forth in the Appendix of that decision and the Commission has issued a decision on the GRC.

10. Applicant's motion, dated September 12, 2007, to file the documents submitted as Exhibit G to the application under seal is granted.

11. The confidential documents of Applicant, which have been filed under seal as an attachment to the motion for leave to file confidential materials under seal dated September 12, 2007, shall remain under seal for a period of two years from the date of this decision, and during that period, the information shall not be accessible or disclosed to anyone other than Commission staff except on the further order or ruling of the Commission, the assigned Commissioner, the Chief Administrative Law Judge (ALJ), the assigned ALJ, or the ALJ then designated as Law and Motion Judge. If Applicant believes that further protection of this information is needed after two years, Applicant may file a motion stating the justification for further withholding the information from public inspection, or for such other relief as the Commission Rules may then provide. This motion must be filed no later than 30 days before the expiration of this protective order.

12. Application 07-08-014 is closed.

This order is effective today.

Dated May 15, 2008, at San Francisco, California.

MICHAEL R. PEEVEY

President

DIAN M. GRUENEICH

JOHN A. BOHN

RACHELLE B. CHONG

TIMOTHY ALAN SIMON

Commissioners

ATTACHMENT A

List of deficiencies in tariff filed by Channel Islands Telephone Company in Application 07-08-014 to be corrected in its tariff compliance filing: None.

(END OF ATTACHMENT A)

ATTACHMENT B

REQUIREMENTS APPLICABLE TO COMPETITIVE LOCAL EXCHANGE CARRIERS

1. Applicant 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. Applicant is subject to the following fee and surcharges that must be regularly remitted per the instructions in Appendix E to D.00-10-028. The Combined California PUC Telephone Surcharge Transmittal Form must be submitted even if the amount due is zero.

3. Revenues collected for the California Advanced Services Fund (CASF) at the surcharge rate of 0.25% shall be held by the carrier in a memorandum account tracking system and the account will accrue monthly interest on the accumulated balance at the short-term commercial paper rate. Carriers shall continue to hold custody of all the collected CASF surcharge revenues and accumulated interest until the Commission provides further direction on the disposition of these revenues.

- a. The current 1.15% 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 0.20% 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 0.18% of gross intrastate revenue (Resolution M-4819), dated June 7, 2007, effective July 1, 2007;
- d. The current 0.13% 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-17128, dated December 20, 2007, effective January 1, 2008);
- e. The current 0.25% 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);
- f. The current 0.25% 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 Advances Services Fund (D.07-12-054); and
- g. The current 0.13% 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-16888, dated December 1, 2005, effective January 1, 2006).

Note: These fees change periodically. In compliance with Resolution T-16901, December 2, 2004, you should check the joint tariff for surcharges and fees filed by Pacific Bell (dba SBC California) and apply the current surcharge and fee amounts in that joint tariff on end-user bills until further revised.

- 4. Applicant is a competitive local exchange carrier (CLC). The effectiveness of its future tariffs is subject to the requirements of General Order (GO) 96-B and the Telecommunications Industry Rules (D.07-09-019).
- 5. Applicant is a non-dominant interexchange carrier (NDIEC). The effectiveness of its future NDIEC tariffs is subject to the requirements of GO 96-B and the Telecommunications Industry Rules (D.07-09-019).

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

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

8. 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 shall be updated if the name or telephone number changes, or at least annually.

9. 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.

10. 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, and again within five days after intraLATA service begins.¹

11. Applicant shall keep its books and records in accordance with the Generally Accepted Accounting Principles.

12. 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.

¹ 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. 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.

14. 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.

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

16. 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.

17. 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.

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

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

20. 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.

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

22. 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 copy and a machine readable copy using Microsoft Word or compatible format shall be filed with the California Public Utilities Commission, 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 Sections 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 Sections 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)