



FILED

10-31-11
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**AFFIDAVIT OF GARY RAY
IN SUPPORT OF MOTION TO EXPEDITE
PETITION FOR MODIFICATION**

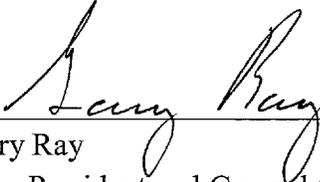
I Gary Ray, declare as follows:

1. My name is Gary Ray, and I am the Vice President and General Counsel for 360networks (USA), Inc. ("360"). My business address is 370 Interlocken Blvd., Suite 600, Broomfield, Colorado 80021.
2. Concurrent with this Motion, 360 is filing a petition to modify D.06-09-006, the order granting 360 a certificate of public convenience and necessity ("CPCN") to provide local exchange service in California.
3. At the time that 360 filed its CPCN application, it did not have a need to engage in ground disturbing activities, and therefore requested limited facilities-based authority to provide local exchange service in California.
4. Since receiving its CPCN, 360 has provided service to customers solely through facilities or services purchased from other carriers, or by placing fiber in existing conduits that are located both underground and inside existing buildings and infrastructure. All of these activities fall within 360's limited facilities-based authority.
5. 360's business plan has changed and it now seeks full facilities-based authority so that it may perform additional construction activities. In addition, 360 is requesting application of the expedited 21-day CEQA review process developed by the Energy Division staff.
6. Specifically, 360 has received a request to install a short fiber link from a customer's location to an incumbent carrier's central office and to an educational institution.
7. The customers have an immediate requirement for the capacity into the Chico market to support their market expansion and enhance the competitive broadband offerings for small and medium businesses within the Chico market which currently lacks competition. The educational customers require the broadband service to address diversity concerns between the Chico market and the core educational state network.
8. If 360 is unable to quickly modify its CPCN for full facilities-based authority and access to the expedited CEQA review process, it will be unable to meet the customer's need, and the customer will likely give this business to a competitor. Therefore, 360 will be severely disadvantaged in the marketplace by the Commission's disparate policies regarding CEQA review for telecommunications carriers.

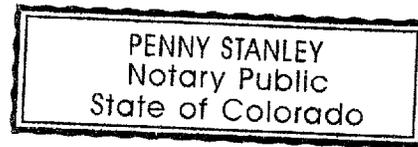
9. Some incumbent local exchange carriers (“ILECs”) are not required to seek CEQA review from the Commission for construction projects while other carriers have prior approval to engage in ground disturbing construction pursuant to a blanket mitigated negative declaration (“MND”). More recently, in an effort to minimize this disparate treatment, the Energy Division staff developed an expedited 21-day CEQA review process for projects that are exempt from CEQA.

I declare under penalty of perjury that the foregoing is true and correct true to the best of my belief and knowledge.

Date: October 28, 2011



Gary Ray
Vice President and General Counsel



[insert notary stamp]

Sworn to and subscribed before me this 28th day of October, 2011 by
Gary Ray

Penny Stanley
Penny Stanley
Notary Public