

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Fatbeam, LLC for a Certificate of Public Convenience and Necessity to Provide Full Facilities-Based and Resold Competitive Local Exchange Services throughout the Service Territories of Pacific Bell Telephone Company, Verizon California, Inc., SureWest Telephone, and Citizens Telecommunications Company of California, Inc.; and Full Facilities-Based Interexchange Services on a Statewide Basis.

Application 16-01-009
(Filed January 14, 2016)

DECISION GRANTING FATBEAM, LLC A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO PROVIDE FULL FACILITIES-BASED AND RESOLD COMPETITIVE LOCAL EXCHANGE SERVICES AND FULL FACILITIES-BASED INTEREXCHANGE SERVICES

Summary

Pursuant to Public Utilities Code § 1001, we grant Fatbeam, LLC, a certificate of public convenience and necessity (CPCN) to provide full facilities-based and resold competitive local exchange services and full facilities-based interexchange services in California subject to the terms and conditions set forth in the Ordering Paragraphs.

1. Background

On January 14, 2016, Fatbeam, LLC, (Fatbeam or Applicant), a Washington limited liability corporation qualified to do business in California, filed an application for a certificate of public convenience and necessity (CPCN) to provide full facilities-based and resold competitive local exchange services

throughout the service territories of Pacific Bell Telephone Company, Verizon California Inc.¹, SureWest Telephone, and Citizens Telecommunications Company of California, Inc. and full facilities-based interexchange services on a statewide basis in California.

Fatbeam proposes to provide dark and lit fiber services over fiber optic cabling owned and operated by the Applicant. These services are intended to permit Fatbeam's customers to provide California end-users a range of voice communications, data, video, and other services.

Fatbeam's principal place of business is located at 2065 W. Riverstone Drive, Suite 105, Coeur d'Alene, ID 83814.

2. Jurisdiction

Public Utilities Code Section 216(a) defines the term "Public utility" to include a "telephone corporation," which in turn is defined in Public Utilities Code Section 234(a) as "every corporation or person owning, controlling, operating, or managing any telephone line for compensation within this state."

Fatbeam proposes to provide full facilities-based and resold competitive local exchange services within certain territories of California and full facilities-based interexchange services on a statewide basis in California. In its application, Fatbeam acknowledges it will operate as a telephone corporation and a public utility subject to our jurisdiction. Therefore, we grant the application.

3. California Environmental Quality Act

¹ Effective April 1, 2016 Frontier Communications of California (Frontier) provides service to the territory formerly served by Verizon California, Inc.

California Environmental Quality Act (CEQA)² and Rule 2.4 of the Commission's Rules of Practice and Procedure³ require the Commission examine projects to determine any potential environmental impacts in order that adverse effects are avoided and environmental quality is restored or enhanced to the fullest extent possible under CEQA.

Fatbeam's application states its proposed construction activities will generally include the installation of fiber and related facilities and electronics in public rights-of-way. Where there are no existing available conduits or other suitable facilities in place, Applicant will install its own conduits and other necessary facilities in public rights-of-way, and on existing utility easements or utility poles. These construction activities may, depending on the location and the nature of the facilities, require trenching, microtrenching, or boring. In addition, Applicant may install facilities in these areas, including: small structures, vaults, hand holes, poles, small cabinets, and associated facilities and equipment. This is anticipated to take place in areas generally along public roads and street or existing utility rights-of-way where ground disturbing construction has previously occurred.

Fatbeam contends these activities fall within the following classes of projects, that are exempt from CEQA and therefore neither an Environmental Impact Report nor a Negative Declaration is required.

- Class 3 Exemption: construction and location of limited numbers of new, small facilities or structures; installation of small new equipment and facilities in small structures. This includes water main, sewage,

² Public Resources Code § 21000 *et seq.*

³ Title 20, California Code of Regulations, Division 1, Chapter 1; hereinafter, "Rule" or "Rules."

electrical, gas and other utility extensions of reasonable length to serve such construction. 14 CCR § 15303.

- Class 4 Exemption: minor public or private alterations in the condition of land, water, and/or vegetation which do not involve removal of healthy, mature, scenic trees except for forestry and agricultural purposes. This may include the filling of earth into previously excavated land with material compatible with the natural features of the site and minor trenching and backfilling where the surface is restored.
- Class 32 Exemption: in-fill development: (a) consistent with the applicable general plan designation and all applicable general plan policies and applicable zoning designation and regulations; (b) occurs within city limits on a project site of no more than five acres substantially surrounded by urban uses; (c) site has no value, as habitat for endangered, rare or threatened species; (d) approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality; and, (e) site can be adequately served by all required utilities and public services.

Fatbeam's proposed activities involve construction of small facilities and reasonably short utility extensions (Class 3). At this time, Fatbeam does not know where its California Customers will be located and cannot identify where it will place facilities in order to provide its service. Therefore, the Applicant has not proposed any specific construction as part of its application.

Exemption of the proposed activities is consistent with Commission precedent. Fatbeam's proposed new construction activities are similar to those undertaken by other carriers that we have decided are categorically exempt from CEQA. *See, e.g., D.06-04-063 (ClearLinx Network Corporation); D.06-04-067 (CA-CLEC LLC).*

Fatbeam requests approval 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 tracks the expedited review procedure that we have approved for other carriers. Such a process will expedite CEQA review and is appropriate for the type of construction outlined here, which will likely be categorically exempt. By 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 to explain why further environmental review is required. At the same time, the proposed CEQA review process will enable Fatbeam to undertake construction of its projects in an efficient manner without experiencing delays caused by an unnecessarily protracted CEQA review.

Similar to the procedure approved for other carriers, the following procedure will be used to obtain Commission approval of Fatbeam's claimed CEQA exemptions for proposed construction projects:

- Fatbeam 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;
- 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 Fatbeam’s submission for the proposed project to confirm that the claimed exemption(s) from CEQA are applicable.
- Within 21 days from the date of Fatbeam’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 Supplement and find that:

- Fatbeam’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 Fatbeam'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 Fatbeam 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 approve Fatbeam's proposed process for Commission review of claimed CEQA exemptions for construction projects undertaken pursuant to Fatbeam's full facilities-based authority, based on the specific facts of this case 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 Fatbeam's claimed CEQA exemption(s) and issues a letter of denial to Fatbeam, Fatbeam 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.

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

4. Financial Qualifications

To be granted a CPCN, an applicant for authority to provide limited 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.⁴ 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.⁵ In the application and supplemental filing, Fatbeam provided documentation that \$100,000 would be available to Fatbeam for one year following certification and that Fatbeam does not anticipate any deposits being required by LECs and/or IECs. Since Fatbeam has provided documentation that it possesses a minimum of \$100,000 that is reasonably liquid and available and it does not anticipate additional deposits, it has demonstrated that it has sufficient funds to meet its start-up expenses and has fulfilled this requirement.

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.⁶ Fatbeam supplied biographical information on its management in Exhibit E to its

⁴ The financial requirement for Competitive Local Exchange Carriers (CLEC) is contained in D.95-12-056, Appendix C. The financial requirement for Non-Dominant Interexchange Carriers (NDIEC) is contained in D.91-10-041.

⁵ The requirement for Competitive Local Carrier (CLC) 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 NDIECs, the requirement is found in D.93-05-010.

⁶ D.95-12-056 at Appendix C, Rule 4.A.

application and its supplemental filing that demonstrated that it has sufficient expertise and training to operate as a telecommunications provider.

In its application, Fatbeam verified that no one associated with or employed by Fatbeam as an affiliate, officer, director, partner, or owner of more than ten percent of Fatbeam 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.

For the above reasons, we find that Fatbeam is in compliance with the requirements of D.95-12-056.

6. Tariffs

Fatbeam does not intend to provide services for which the Commission requires the filing of a tariff. Therefore, the requirement for filing a tariff is waived. Fatbeam shall file a tariff, if in the future it determines to provide services requiring a tariff.

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.⁷ In

⁷ D.95-12--056 at Appendix C, Rule 4.E.

its application, Fatbeam provided a map of the location of its proposed service territory, in compliance with this requirement.

8. Rule 3.1(i) Statement (Include for Full Facilities Only)

Rule 3.1(i) sets forth the requirement that a utility filing an application under Pub. Util. Code § 1001, provide a statement regarding General Order (GO) 104-A, Section 2. Fatbeam states that it is not aware of any reportable matters pursuant to General Order 104-A, Section 2. Fatbeam, therefore, has nothing to report under this rule.

Going forward, Fatbeam must file all reports required of a public utility under Commission jurisdiction.

9. Expected Customer Base

Fatbeam has not previously provided services in California and therefore is unable, at this time, to provide its estimated customer base for the first and fifth years of operation.

10. Request for Treatment as a Non-dominant Carrier

Applicant requests treatment as a NDIEC, which would include exemption from the requirements of Pub. Util. Code §§ 816-830 concerning stocks and security and § 851 concerning the encumbrance and transfer of utility property. The Commission detailed its rules regarding exemption of non-dominant carriers in D.85-01-008, and subsequently modified in D.85-07-081 and D.85-11-044. We grant Applicant's request for non-dominant interexchange carrier status, provided that they follow all rules detailed in the above referenced decisions.⁸

⁸ While the Commission has granted exemption from §§ 816 - 830 to others, exemption from §§ 851-854 has not been granted previously and is not granted here.

11. Safety Considerations

With the adoption of the *Safety Policy Statement of the California Public Utilities Commission* on July 10, 2014, the Commission has, among other things, heightened its focus on the potential safety implications of every proceeding. We have considered the potential safety implications here. We feel satisfied that Fatbeam will meet the Commission's minimum safety goals and expectations of CLEC's because: (1) Fatbeam has taken steps to meet the financial requirements as set forth in this decision for a facilities-based CLEC, and (2) Fatbeam is a public utility that is required pursuant to Pub. Util. Code § 451 to "... furnish and maintain such adequate, efficient, just and reasonable service, instrumentalities, equipment, and facilities, including telephone facilities ... as are necessary to promote the safety, health, comfort, and convenience of its patrons, employees, and the public."

12. Conclusion

We conclude that the application conforms to our rules for certification as a competitive local exchange and interexchange carrier. Accordingly, we grant Fatbeam a CPCN to provide full facilities-based and resold local exchange telecommunications service in the service territory of AT&T, Frontier, Citizens, and SureWest and interexchange service in California subject to compliance with the terms and conditions set forth in the Ordering Paragraphs.

The CPCN granted by this decision provides benefits to Fatbeam and corresponding obligations. Fatbeam receives authority to operate in the prescribed service territory, it can request interconnection with other telecommunications carriers in accordance with Section 251 of the Federal Communications Act (47 U.S.C. 251), and it receives access to public rights-of-way in California as set forth in D.98-10-058 subject to the CEQA

requirements set forth in this decision. In return, Fatbeam is obligated to comply with all applicable Public Utilities Codes and Commission Rules, GOs, and decisions applicable to telecommunications carriers providing approved services. The applicable Codes, Rules, etc. include, but are not limited to consumer protection rules, tariffing, and reporting requirements. Moreover, Fatbeam is obligated to pay all Commission prescribed user fees and public purpose program surcharges as set forth in the Appendix B of this decision, to comply with CEQA, and to adhere to Pub. Util. Code Section 451 which states that every public utility "...shall furnish and maintain such adequate, efficient, just, and reasonable service, instrumentalities, equipment, and facilities, including telephone facilities, as defined in Section 54.1 of the Civil Code, as are necessary to promote the safety, health, comfort, and convenience of its patrons, employees, and the public."

13. Request to File Under Seal

Pursuant to Rule 11.4 of the Commission's Rules of Practice and Procedure, Fatbeam has filed a motion for leave to file Exhibit D to the application as confidential materials under seal. Fatbeam represents that the information is sensitive, and disclosure could place Fatbeam at an unfair business disadvantage. We have granted similar requests in the past and do so here.

14. Categorization and Need for Hearings

In Resolution ALJ 176-3371, dated January 28, 2016, 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.

15. Comments on Draft 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), the otherwise applicable 30-day period for public review and comment is waived.

16. Assignment of Proceeding

Carla J. Peterman is the assigned Commissioner and Eric Wildgrube is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. Notice of the application appeared on the Daily Calendar on January 28, 2016. No protests have been filed. A hearing is not required.
2. Fatbeam is a telephone corporation and a public utility as defined in Pub. Util. Code Sections 234(a) and 216(a).
3. The Commission is the Lead Agency for this project under CEQA.
4. Fatbeam's proposed construction activity falls within one or more CEQA categorical exemptions.
5. Fatbeam's authority to provide services will not have a significant adverse effect upon the environment.
6. Fatbeam 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 has filed a performance bond in the amount of \$100,000 for its first year of operation.
7. Fatbeam does not anticipate deposits being required by other telecommunications carriers in order to provide the proposed service but if any

are, Fatbeam has sufficient additional cash or cash equivalent to cover deposits that may be required.

8. Fatbeam's management possesses sufficient experience, knowledge, and technical expertise to provide the proposed services to the public.

9. No one associated with or employed by Fatbeam as an affiliate, officer, director, partner, or owner of more than ten percent of Fatbeam 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 was previously associated with any telecommunication carrier that 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.

10. Fatbeam does not intend to provide services for which the Commission requires the filing of a tariff.

11. Fatbeam provided a map of the location of its proposed service territory.

12. Fatbeam has no information to report under Rule 3.1(i), which requires that a utility filing an application under Pub. Util. Code §1001, provide a statement regarding compliance with GO 104-A, Section 2.

13. Fatbeam is unable to provide an estimate of its customer base for the first and fifth year of operation.

14. Pursuant to Rule 11.4, Fatbeam filed a motion for leave to file confidential materials under seal, Exhibit D to the application.

Conclusions of Law

1. Fatbeam should be granted a CPCN to provide resold and full facilities-based local exchange telecommunications service in the service territories of AT&T, Frontier, Citizens, and SureWest and interexchange service in California, subject to the terms and conditions set forth in the Ordering Paragraphs.

2. Fatbeam should be allowed to use the Energy Division 21-day CEQA exemption process.

3. Fatbeam, once granted a CPCN, should be subject to the applicable Commission rules, decisions, General Orders, and statutes that pertain to California public utilities.

4. Fatbeam's proposed services do not require filing of a tariff.

5. Fatbeam's motion to file under seal its Exhibit D to the application should be granted for three years.

6. Fatbeam should be granted non-dominant carrier status, subject to Commission rules and regulations as detailed in D.85-01-008 and modified in D.85-07-081 and D.85-11-044.

O R D E R

IT IS ORDERED that:

1. A Certificate of Public Convenience and Necessity is granted to Fatbeam, LLC to provide resold and full facilities-based local exchange telecommunications services in the territories of Pacific Bell Telephone Company d/b/a AT&T California, Citizens Telecommunications Company of California, Inc. d/b/a/ Frontier Communications of California, and SureWest Telephone, and interexchange service in California, subject to the terms and conditions set forth below.

2. The corporate identification number assigned to Fatbeam, LLC U-7299-C, must be included in the caption of all original filings with this Commission, and in the titles of other pleadings filed in existing cases.

3. The certificate granted by this order will expire if not exercised within 12 months of the effective date of this order.

4. Fatbeam, LLC must maintain its performance bond of at least \$100,000 during its first year of operations.

5. Following the first year of operations, Fatbeam, LLC must maintain a performance bond of at least \$25,000 in accordance with Decision 13-05-035. The performance bond must be a continuous bond (*i.e.*, there is no termination date on the bond) issued by a corporate surety company authorized to transact surety business in California, and the Commission must be listed as the obligee on the bond. Within five days of acceptance of its certificate of public convenience and necessity authority, Fatbeam, LLC must submit a Tier 1 advice letter to the Director of Communications, containing a copy of the license holder's executed bond, and submit a Tier 1 advice letter annually, but not later than March 31, with a copy of the executed bond.

6. Fatbeam, LLC must not allow its performance bond to lapse during any period of its operation. Pursuant to Decision 13-05-035, the Commission may revoke a Certificate of Public Convenience and Necessity if a carrier is more than 120 days late in providing the Director of the Communications Division a copy of its executed performance bond and the carrier has not been granted an extension of time by the Communications Division.

7. In addition to all the requirements applicable to competitive local exchange carriers and interexchange carriers included in Attachments B, C, and D to this decision, Fatbeam, LLC 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.

8. Fatbeam, LLC 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.

9. Fatbeam, LLC must annually pay the 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.

10. Fatbeam, LLC must annually pay the user fee specified in Attachment B. Fatbeam, LLC must pay a minimum user fee of \$100 or 0.23% of gross intrastate revenue, whichever is greater. Under Public Utilities Code § 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.

11. Prior to initiating service, Fatbeam, LLC 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.

12. Prior to initiating service, Fatbeam, LLC must provide the Commission's Communications Division with the name and address of its designated regulatory/official contact persons(s). This information must be provided electronically, using the "Regulatory/Official Contact Information Update Request" found at <http://www.cpuc.ca.gov/communications/>. This

information must be updated if the name or telephone number changes, or at least annually.

13. Fatbeam, LLC 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.

14. Fatbeam, LLC 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.

15. The staff of the Commission's Energy Division is authorized to review, process, and act upon Fatbeam, LLC's requests for a determination that its full facilities-based construction activities are exempt from the requirements of the California Environmental Quality Act.

16. If Fatbeam, LLC wishes to engage in full facilities-based construction activities and believes that these activities are exempt from California Environmental Quality Act (CEQA), Fatbeam shall first apply to the Commission's Energy Division staff for a determination of exemption from CEQA using the following procedure set forth in Ordering Paragraph 16.

17. Fatbeam, LLC will provide the Commission's Energy Division with:

- a. A detailed description of the proposed project, including:
 - i. Customer(s) to be served;
 - ii. The precise location of the proposed construction project; and
 - iii. Regional and local site maps.
- b. A description of the environmental setting, including at a minimum:
 - i. Cultural, historical, and paleontological resources;

- ii. Biological resources; and
- iii. Current land use and zoning.
- c. A construction workplan, including:
 - i. Commission Preconstruction Survey Checklist – Archaeological Resources;
 - ii. Commission Preconstruction Survey Checklist – Biological Resources;
 - iii. A detailed schedule of construction activities, including site restoration activities;
 - iv. A description of construction/installation techniques;
 - v. A list of other agencies contacted with respect to siting, land use planning, and environmental resource issues, including contact information; and
 - vi. A list of permits required for the proposed project.
- d. A statement of the California Environmental Quality Act exemption(s) claimed to apply to the proposed project; and
- e. Documentation supporting the finding of exemption from California Environmental Quality Act.
- f. The Energy Division will then review the submittal and notify Fatbeam, LLC of either its approval or its denial of Fatbeam, LLC's claim for exemption from California Environmental Quality Act review within 21 days from the time that Fatbeam, LLC's submittal is complete.
- g. If the Energy Division approves Fatbeam, LLC's claimed California Environmental Quality Act exemption(s), the staff will prepare a Notice to Proceed and file a Notice of Exemption with the State Clearinghouse, Office of Planning and Research.
- h. If the Energy Division disapproves Fatbeam, LLC's claimed California Environmental Quality Act (CEQA) exemptions, the staff will issue to UTILITY a letter which states the specific reasons that the claimed CEQA exemptions do not apply to the proposed project.

- i. If the Energy Division disapproves Fatbeam, LLC's claimed California Environmental Quality Act (CEQA) exemption(s), Fatbeam shall 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 full facilities-based construction activities.

18. Fatbeam, LLC's motion to file under seal its Exhibit D is granted for a period of three years after the date of this order. During this three-year period, this information shall not be publicly disclosed except on further Commission order or Administrative Law Judge ruling. If Fatbeam, LLC believes that it is necessary for this information to remain under seal for longer than three years, Fatbeam, LLC may file a new motion showing good cause for extending this order by no later than 30 days before the expiration of this order.

19. Application 16-01-009 is closed.

This order is effective today.

Dated _____, 2016, at San Francisco, California.

ATTACHMENT A

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(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,⁹ a written acceptance of the certificate granted in this proceeding within 30 days of the effective date of this order.

2. The certificate granted and the authority to render service under the rates, charges and rules authorized will expire if not exercised within 12 months of the date of this order.

3. 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 Universal Lifeline Telephone Service Trust Administrative Committee Fund (Pub. Util. Code § 879);
- b. The California Relay Service and Communications Devices Fund (Pub. Util. Code § 2881; D.98-12-073);
- c. The California High Cost Fund-A (Pub. Util. Code § 739.3; D.96-10-066, at 3-4, App. B, Rule 1.C);
- d. The California High Cost Fund-B (D.96-10-066, at 191, App. B, Rule 6.F.; D.07-12-054);
- e. The California Advanced Services Fund (D.07-12-054);
- f. The California Teleconnect Fund (D.96-10-066, at 88, App. B, Rule 8.G).

⁹ Written acceptance filed in this docket does not reopen the proceeding.

- g. The User Fee provided in Pub. Util. Code §§ 431-435. The minimum annual User Fee is \$100, as set forth in D.13-05-035.

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 bills until further revised. Current and historical surcharge rates can be found at <http://www.cpuc.ca.gov/General.aspx?id=1124>.

- Carriers must report and remit CPUC telephone program surcharges online using the CPUC Telecommunications and User Fees Filing System (TUFFS). Information and instructions for online reporting and payment of surcharges are available at <http://www.cpuc.ca.gov/General.aspx?id=1010>. To request a user ID and password for TUFFS online filing and for questions, please e-mail Telco_surcharges@cpuc.ca.gov.
- Carriers must file and pay the PUC User Fee (see above item 2g) upon receiving the User Fee statement sent by the Commission. User Fees cannot be reported or paid online. Instructions for reporting filing are available at <http://www.cpuc.ca.gov/General.aspx?id=1009>. Please call (415) 703-2470 for questions regarding User Fee reporting and payment.

4. Applicant is a competitive local exchange carrier (CLC). 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).

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

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

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

8. Applicant must obtain a performance bond of at least \$25,000 in accordance with Decision 13-05-035. The performance bond must be a continuous bond (i.e., there is no termination date on the bond) issued by a corporate surety company authorized to transact surety business in California, and the Commission must be listed as the obligee on the bond. Within five days of acceptance of its certificate of public convenience and necessity authority, Applicant must submit a Tier-1 advice letter to the Director of Communications, containing a copy of the license holder's executed bond, and submit a Tier-1 advice letter annually, but not later than March 31, with a copy of the executed bond.

9. Applicant must not allow its performance bond to lapse during any period of its operation. Pursuant to Decision 13-05-035, the Commission may revoke a certificate of public convenience and necessity if a carrier is more than 120 days late in providing the Director of the Communications Division a copy of its executed performance bond and the carrier has not been granted an extension of time by the Communications Division.

10. 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. In addition, Applicant must provide the Commission's Communications Division with the name and address of its designated regulatory/official contact persons(s). This information must be provided electronically, using the "Regulatory/Official Contact Information Update Request" found at

<http://www.cpuc.ca.gov/communications>. This information must be updated if the name or telephone number changes, or at least annually.

11. 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.

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

13. 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.

14. 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.

15. 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.

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

17. 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.

18. 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.

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

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

21. 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.

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

23. 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 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.

12. Cash Flow statement as of December 31st of the calendar year for which information is submitted, for California operations only.

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 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)