

Decision 18-07-016 July 12, 2018

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of OpenFiber for a certificate of public convenience and necessity to provide: (i) full facilities-based and resold competitive local exchange service throughout the service territories of AT&T California, Consolidated Communications, and Frontier Communications of California; and (ii) full facilities-based and resold nondominant interexchange services on a statewide basis.

Application 17-11-011

DECISION GRANTING OPENFIBER INC. A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY IN ORDER TO PROVIDE FULL FACILITIES-BASED AND RESOLD COMPETITIVE LOCAL EXCHANGE SERVICES AND FULL FACILITIES-BASED AND RESOLD NONDOMINANT INTEREXCHANGE SERVICES

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**DECISION GRANTING OPENFIBER INC. A CERTIFICATE OF PUBLIC
CONVENIENCE AND NECESSITY IN ORDER TO PROVIDE FULL
FACILITIES-BASED AND RESOLD COMPETITIVE LOCAL
EXCHANGE SERVICES AND FULL FACILITIES-BASED AND
RESOLD NONDOMINANT INTEREXCHANGE SERVICES**

Summary

Pursuant to Public Utilities Code Section 1001, we grant OpenFiber Inc. a certificate of public convenience and necessity to provide: 1) full facilities-based and resold competitive local exchange telecommunications services in the territories of AT&T California (AT&T), Consolidated Communications, and Frontier Communications of California; and 2) full facilities-based and resold nondominant interexchange services to customers throughout the State of California, subject to the terms and conditions set forth in the Ordering Paragraphs.

This proceeding is closed.

1. Background

On November 17, 2017, OpenFiber, Inc. (OpenFiber or Applicant), a Delaware corporation authorized to do business in California, filed an application requesting a Certificate of Public Convenience and Necessity (CPCN) to provide: (i) full facilities-based and resold competitive local exchange services within the territories of Pacific Bell Telephone Company d/b/a AT&T California (AT&T), SureWest Telephone d/b/a Consolidated Communications (Consolidated), and Citizens Telecommunications Company of California d/b/a Frontier Communications of California (Frontiers); and (ii) full facilities-based and resold non-dominant interexchange services throughout California. OpenFiber's principal place of business is located at 2010 El Camino Real, #624, Santa Clara, CA 95050.

A prehearing conference (PHC) took place on February 28, 2018 to discuss the scope of issues, the schedule and other relevant procedural matters. Only the Applicant appeared at the PHC. At the PHC, Administrative Law Judge (ALJ) Lau directed the Applicant to file supplemental information. OpenFiber filed the supplemental information (Response)¹ on April 5, 2018.

A status conference took place on May 1, 2018. During the status conference, ALJ Lau received personal information from OpenFiber's executive officers to conduct background searches on the officers.

On May 14, 2018, assigned Commissioner Martha Guzman Aceves issued a Scoping Memo, defining the scope of issues and determining the schedule.

2. Jurisdiction

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

OpenFiber proposes to provide competitive local exchange services and nondominant interexchange services in California. Therefore, OpenFiber is a telephone corporation and a public utility subject to our jurisdiction.

3. California Environmental Quality Act (CEQA)

Pursuant to CEQA and Rule 2.4² of the Commission's Rules of Practice and Procedure (Rules), the Commission examines projects to determine any potential environmental impacts in order that adverse effects are avoided and

¹ OpenFiber Response to the Administrative Law Judge's Inquiry.

² Unless otherwise noted, items labeled "Rule" are from the Commission's Rules of Practice and Procedure.

environmental quality is restored or enhanced to the fullest extent possible under CEQA.

To provide service, OpenFiber will, in most cases, install aerial fiber and related equipment in or on existing poles, towers, buildings, fiber, conduits, ducts, rights-of-way, trenches and other facilities and structures of other entities. OpenFiber asserts that these activities are consistent with those that the Commission found are permitted within a “limited” facilities-based authority, and do not require additional CEQA review by the Commission. Consistent with previously approved Commission decisions,³ we confirm that these activities, specifically installing telecommunication facilities in existing conduits or structures, will not result in material adverse effects on the environment and are thus exempt from CEQA review. In other words, they are permitted within a “limited” facilities-based authority.

In some cases, however, OpenFiber will engage in minor ground-disturbing construction activities. OpenFiber seeks full facilities-based authority for these activities. In the Proponent’s Environmental Assessment, OpenFiber states that these construction activities include: (1) new pole installations, (2) small-scale trenching and underground conduit installation, and (3) micro-trenching and installation of laterals. OpenFiber expects that these activities will be relatively minor in scope and will take place primarily in existing rights-of-way and utility easements in developed areas. OpenFiber asserts that these construction activities fall within the following classes of

³ Decision (D.) 99-10-025; D.08-04-018.

projects that are exempt from CEQA and for which neither an Environmental Impact Report nor a Negative Declaration is required.

- Class 1 Exemption: operation, repair, maintenance, leasing or minor alteration of existing public or private structures and facilities, with negligible or no expansion of an existing use. This includes existing facilities used to provide public utility services. 14 CCR § 15301.
- Class 3 Exemption: construction including water main, sewage, electrical, gas and *other utility extensions of reasonable length* to serve such construction. This includes the construction of limited numbers of new small facilities or utility extensions. 14 CCR § 15303.
- Class 4 Exemption: minor public or private alterations in the condition of land, water, and/or vegetation which do not involve the removal of healthy, mature, scenic trees except for forestry and agricultural purposes. Among other things, this includes *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.* 14 CCR § 304.
- Class 32 (“in fill”) Exemption: applies where: i) the projects are consistent with the applicable general plan designation and applicable general plan policies and applicable zoning designation and regulation; ii) proposed development occurs within city limits on a project site of no more than five acres substantially surrounded by urban uses; iii) the project site has no value as habitat for endangered, rare or threatened species; iv) approval of the project would not result in significant effects relating to traffic, noise, air quality, or water quality; and v) the site can be adequately served by all required utilities and public services. 14 CCR § 15332.

Based on OpenFiber’s descriptions of the proposed construction, it is possible that OpenFiber’s proposed projects may fall within one or more of the categorical exemptions under CEQA. OpenFiber’s proposed construction activities involve: 1) minor alteration of existing structures and facilities

(Class 1); 2) construction of reasonably short utility extensions and installation of a limited number of poles (Class 3); 3) ground disturbing activity limited to minor trenching and backfilling (Class 4); and will occur in heavily developed urban and suburban areas which meet the criteria for urban in-fill (Class 32). Exemption of these activities is consistent with Commission precedent.⁴

In addition to the full facilities-based construction authority, OpenFiber requests that the Commission grant it an expedited review process to obtain approval of CEQA exemptions for its construction projects. Because construction is contingent upon specific customer requests, OpenFiber does not currently know the specific areas where it will undertake construction. OpenFiber requests that, after it knows the specific sites for construction, it may use the expedited review process for project approvals.

We approve OpenFiber's request for an expedited review process. The expedited review procedure described below is appropriate for the type of construction projects proposed by OpenFiber. 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. Also, the expedited review procedure will enable OpenFiber to undertake construction projects in an efficient manner, without having to experience delays caused by an unnecessarily protracted CEQA review.

⁴ D.16-08-011; D.15-02-012; D.10-12-004.

Like the procedure previously approved for similarly situated carriers,⁵ OpenFiber shall use the following procedure to obtain Commission approval of CEQA exemptions for each construction project:

- OpenFiber 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

⁵ D.16-08-011; D.15-02-012; D.10-12-004.

- 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 Commission's Energy Division will review OpenFiber's submission for the proposed project to confirm that the claimed exemption(s) from CEQA are applicable.
- Within 21 days from the date of OpenFiber'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.

If the Energy Division disapproves OpenFiber's claimed CEQA exemption(s) and issues a letter of denial to OpenFiber, OpenFiber 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.

OpenFiber 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 95-04-043/Investigation 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

Pursuant to Rule 4.B of D.95-12-056, an applicant for a CPCN for authority to provide 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.⁶ 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.⁷

OpenFiber provides a receipt for a certificate of deposit of \$100,000 in Confidential Exhibit D. In its application, OpenFiber states that it does not owe and does not anticipate owing deposits to local exchange or interexchange carriers. During the PHC, ALJ Lau asked the Applicant whether it has contacted the carriers it plans to interconnect with about deposit requirements. In OpenFiber's Response, OpenFiber explains that it did not contact the carriers because it had prior knowledge that no deposits are required for the services it plans to provide based on the experience of PAXIO, Inc. PAXIO, Inc., has the same management and ownership as OpenFiber and has provided the same services that OpenFiber plans to provide.

⁶ 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.

⁷ The requirement for Competitive Local Carrier 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.

Thus, we determine that OpenFiber has demonstrated that it has sufficient funds to meet its start-up expenses and has fulfilled the Financial Qualifications requirement. OpenFiber's financial documentation will be subject to verification and review by the Commission for one year to ensure that such funds are available.

5. Technical Qualifications

To be granted a CPCN for authority to provide competitive local exchange and interexchange service, an applicant must make a reasonable showing of managerial and technical expertise in telecommunications or a related business.⁸ In Exhibit E of the application, OpenFiber provides a description of each executive officer's experience in the telecommunications industry. Based on the experience of its executive officers, OpenFiber has demonstrated it has the sufficient expertise and training to operate as a telecommunications provider.

OpenFiber provides, in its Response, a sworn affidavit that, aside from Clark, neither OpenFiber nor any of its affiliates, officers, directors, partners, agents, or owners (directly or indirectly) of more than 10% of OpenFiber, or anyone acting in a management capacity: (a) held one of these positions with a company that filed for bankruptcy; (b) been personally found liable, or held one of these positions with a company that has been found liable, for fraud, dishonesty, failure to disclose, or misrepresentations to consumers or others; (c) been convicted of a felony; (d) been the subject of a criminal referral by judge or public agency; (e) had a telecommunications license or operating authority denied, suspended, revoked, or limited in any jurisdiction; (f) personally entered

⁸ D.95-12-056 at Appendix C, Rule 4.A.

into a settlement, or held one of these positions with a company that has entered into settlement of criminal or civil claims involving violations of §§ 17000, et seq., §§ 17200, et seq., or §§ 17500, et seq., of the California Business & Professions Code, or of any other statute, regulation, or decisional law relating to fraud, dishonesty, failure to disclose, or misrepresentations to consumers or others; or (g) been found to have violated any statute, law, or rule pertaining to public utilities or other regulated industries; (h) entered into any settlement agreements or made any voluntary payments or agreed to any other type of monetary forfeitures in resolution of any action by any regulatory body, agency, or attorney general; or (i) is being, or has been investigated by the Federal Communications Commission or any law enforcement or regulatory agency for failure to comply with any law, rule or order.⁹

Clark, CEO of OpenFiber, was previously an officer and owner of Symbio Internet Services, Inc., which filed for Chapter 7 bankruptcy in 1999. Mr. Clark (Clark) is also the current CEO of PAXIO, Inc., which had its CPCN operating authority briefly revoked by the Commission in April 2012 for the default of the Commission surcharge and User Fee reporting and payment requirements and the performance bond filing requirement. The Commission reinstated PAXIO, Inc.'s CPCN in June 2012. Since then, PAXIO, Inc. has been operating in good standing with the Commission.

Given Philip Clark's extensive experience in the internet fiber industry, we find that Clark, despite the two previous experiences described above, is a competent manager who will be capable of leading OpenFiber to operate as a

⁹ These certifications are required by D.13-05-035, Ordering Paragraph 14.

telecommunications carrier. Even though Clark was an officer and owner of a company that filed for bankruptcy, the bankruptcy was filed almost twenty years ago. Since 2003, Clark has been able to successfully manage another internet fiber company, PAXIO, Inc., which provides services similar to OpenFiber. PAXIO, Inc.'s CPCN was revoked briefly in 2012 but has been reinstated and in good standing for the past five years. Thus, Clark has demonstrated that he is capable of successfully operating an internet fiber company that offers similar services.

Based on the extensive experience of OpenFiber's executive officers in the internet fiber industry, we find that OpenFiber's executive management team has the sufficient expertise, knowledge and technical expertise to provide telecommunication services to the public. OpenFiber meets the Technical and Managerial Competence requirement set in D.13-05-035.

6. Tariffs

OpenFiber has requested detariffed status to the extent permitted under Industry Rule 5 of General Order (GO) 96-B. OpenFiber will not offer service to residential customers or offer basic local exchange service and will only offer wholesale services and services to business customers. Consistent with D.07-09-018, OpenFiber is exempted from the requirement to file tariffs provided that it complies with the consumer protection rules identified in D.98-08-031.

7. Map of Service Territory

To be granted a CPCN for authority to provide competitive local exchange service, an applicant must provide a map of the service territories it proposes to

serve.¹⁰ In its application, OpenFiber provided maps depicting the service territories of the LECs where it plans to provide service. OpenFiber will submit maps for new construction activities to the Commission's Energy Division when it applies for approval to construct through the expedited review process. Thus, we determined that OpenFiber is in compliance with this requirement.

8. Rule 3.1(i) Statement

Rule 3.1(i) sets forth the requirement that a utility filing an application under Pub. Util. Code § 1001, provide a statement regarding GO 104-A, Section 2. In its Application, OpenFiber states that it is not a publicly traded company and has no proxy statements, 10-Ks, or annual reports to provide pursuant to GO 104-A, Section 2. OpenFiber, therefore, has nothing to report under this rule.

On a going forward basis, though, OpenFiber must file all reports required of a public utility under Commission jurisdiction.

9. Expected Customer Base

OpenFiber provided its estimated customer base for the first and fifth years of operation in Confidential Exhibit E of its application. Therefore, OpenFiber has complied with this requirement.

10. Request for Treatment as a Non-dominant Carrier

Applicant requests treatment as a non-dominant interexchange carrier (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

¹⁰ Rule 3.1 (c).

regarding exemption of non-dominant carriers in D.85-01-008, and subsequently modified them in D.85-07-081 and D.85-11-044.

OpenFiber requests to offer services only to business customers. Thus, we grant OpenFiber's request for non-dominant interexchange carrier status, which exempts it from Pub. Util. Code §§ 816-830 concerning stocks and security, provided that it follows all rules detailed in the above referenced decisions.

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. The Commission is satisfied that OpenFiber will meet the Commission's minimum safety goals and expectations of CLECs because: (1) OpenFiber has taken steps to meet the financial requirements as set forth in this decision for a facilities-based CLEC, and (2) OpenFiber 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 OpenFiber a CPCN to provide (1) full facilities-based and resold competitive local exchange telecommunications service in the service territory of AT&T, Consolidated, and Frontier and (2) full facilities-based and resold 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 OpenFiber and corresponding obligations. OpenFiber receives authority to operate in the prescribed service territory, and this authority enables OpenFiber, pursuant to section 251 of the 1934 Communications Act, as amended by the 1996 Telecommunications Act (47 U.S.C. 251), to interconnect with telecommunications carriers.¹¹ This authority also enables OpenFiber to obtain 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, OpenFiber is obligated to comply with all Public Utilities Code provisions, Commission rules, General Orders, and decisions applicable to telephone corporations providing approved services. The applicable statutes, rules, General Orders, and decisions include, but are not limited to consumer protection rules, tariffing, and reporting requirements. Moreover, OpenFiber is obligated to pay all Commission prescribed user fees and public purpose program surcharges as set forth in Appendix B of this decision, to comply with CEQA, and to adhere to Pub. Util. Code § 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 § 54.1 of the Civil Code, as are necessary to promote the safety, health, comfort, and convenience of its patrons, employees, and the public.”

¹¹ The California Public Utilities Code uses the term “telephone corporation.” Its counterpart in federal law is a “telecommunications carrier.”

13. Request to File Under Seal

Pursuant to Rule 11.4 of the Commission's Rules of Practice and Procedure, OpenFiber has filed motions for leave to file Exhibits D (Financial Statement) and E (Estimated Number of Customers) to the application as confidential materials under seal. OpenFiber explains that Exhibit D (Financial Statement) contains sensitive financial information relating to its bank account and cash deposits and transactions. It also asserts that Exhibit E (Estimated Number of Customers) contains highly sensitive commercial information that, if disclosed, would place OpenFiber at a significant, unfair business disadvantage in the competitive telecommunications marketplace. OpenFiber argues that its estimated numbers of customers could provide competitors with information about OpenFiber's business plans that are confidential and proprietary. We have granted similar requests in the past and do so here. Exhibits D and E are thus labeled as Confidential Exhibits D and E.

14. Waiver of Comment Period

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

15. Categorization and Need for Hearings

In Resolution ALJ 176-3409, dated November 30, 2017, 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.

16. Assignment of Proceeding

Martha Guzman Aceves is the assigned Commissioner and Elaine Lau is the assigned ALJ in this proceeding.

Findings of Fact

1. Notice of the application appeared on the Daily Calendar on November 20, 2017. No protests have been filed. A hearing is not required.
2. OpenFiber is a telephone corporation and a public utility as defined in Pub. Util. Code § 234(a) and § 216(a).
3. OpenFiber's proposed construction activities appear to fall within one or more CEQA categorical exemptions.
4. OpenFiber has a minimum of \$100,000 of cash or cash equivalent that is reasonably liquid and readily available to meet its start-up expenses.
5. OpenFiber claims that, based on previous experience of its management, it does not anticipate that the carriers it plans to interconnect with will require any deposits.
6. OpenFiber has demonstrated that it has sufficient funds to meet its start-up expenses and has fulfilled the Financial Qualifications requirement.
7. Other than Clark, no one associated with or employed by OpenFiber as an affiliate, officer, director, partner, agent, or owner of more than 10 percent of

OpenFiber: (a) held one of these positions with a company that filed for bankruptcy; (b) been personally found liable, or held one of these positions with a company that has been found liable, for fraud, dishonesty, failure to disclose, or misrepresentations to consumers or others; (c) been convicted of a felony; (d) been the subject of a criminal referral by judge or public agency; (e) had a telecommunications license or operating authority denied, suspended, revoked, or limited in any jurisdiction; (f) personally entered into a settlement, or held one of these positions with a company that has entered into settlement of criminal or civil claims involving violations of §§ 17000, et seq., §§ 17200, et seq., or §§ 17500, et seq., of the California Business & Professions Code, or of any other statute, regulation, or decisional law relating to fraud, dishonesty, failure to disclose, or misrepresentations to consumers or others; or (g) been found to have violated any statute, law, or rule pertaining to public utilities or other regulated industries; (h) entered into any settlement agreements or made any voluntary payments or agreed to any other type of monetary forfeitures in resolution of any action by any regulatory body, agency, or attorney general; or (i) is being, or has been investigated by the Federal Communications Commission or any law enforcement or regulatory agency for failure to comply with any law, rule or order.

8. Clark, CEO of OpenFiber, was previously an officer and owner of a Symbio Internet Service, Inc., which filed for bankruptcy in 1999, and is also currently the CEO of PAXIO, Inc., which had its CPCN briefly revoked by the Commission in 2012.

9. Despite being an officer of a company that filed for bankruptcy and of a company with a CPCN briefly revoked by the Commission, we find that Clark is a competent manager based on his extensive experience in successfully operating

PAXIO, Inc., an internet fiber company that offers similar services and has a CPCN in good standing since 2003.

10. Based on the extensive knowledge of its executive management team, we find that OpenFiber's management possesses sufficient experience, knowledge, and technical expertise to provide telecommunication services to the public.

11. OpenFiber requested and is eligible for exemption from tariffing requirements and must observe the consumer protection rules adopted in D.98-08-031.

12. OpenFiber provided maps depicting the service territories of the LECs where it plans to provide service, and will submit maps for new construction activities when it applies for approval to construct through the expedited review process.

13. OpenFiber is not a publicly traded company and, thus, 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.

14. OpenFiber provided an estimate of its customer base for the first and fifth year of operation in Confidential Exhibit E.

15. Pursuant to Rule 11.4, OpenFiber filed motions for leave to file confidential materials under seal, including its financial statement in Exhibit D and estimated number of customers in Exhibit E.

Conclusions of Law

1. OpenFiber should be granted a CPCN to provide (1) full facilities-based and resold competitive local exchange telecommunications service in the service territories of AT&T, Frontier, and Consolidated and (2) full facilities-based and

resold interexchange services throughout California, subject to the terms and conditions set forth in the Ordering Paragraphs.

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

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

4. OpenFiber should be granted an exemption from the requirement to file tariffs.

5. OpenFiber's motion to file under seal its Exhibit D (Financial Statement) and E (Estimated Number of Customers) of the application, should be granted for three years.

6. OpenFiber should be granted status as a non-dominant interexchange carrier, 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 OpenFiber to provide full facilities-based and resold competitive local exchange telecommunication services in the territories of AT&T California, Frontier Communications of California, and Consolidated Communications, as well as full facilities-based and resold interexchange telecommunication services in California, subject to the terms and conditions set forth below.

2. The corporate identification number assigned to OpenFiber, U-7345-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. OpenFiber must file, in this docket, a written acceptance of the certificate granted in this proceeding within 30 days of the effective date of this decision. Written acceptance filed in this docket does not reopen the proceeding.

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

5. OpenFiber must notify the Director of the Communications Division of the date that local exchange service is first rendered to the public, no later than five days after service first begins, by e-mail to cdcompliance@cpuc.ca.gov.

6. OpenFiber 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, OpenFiber must submit a Tier-1 advice letter to the Communications Division, 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.

7. OpenFiber 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 Communications Division a copy of its executed

performance bond and the carrier has not been granted an extension of time by the Communications Division.

8. 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, OpenFiber 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.

9. OpenFiber must pay the public purpose surcharges specified in Attachment B, and the Combined California Public Utilities Commission Telephone Surcharge Transmittal Form must be submitted even if the amount due is \$0.

10. OpenFiber must pay an annual minimum user fee of \$100 or 0.33 percent of gross intrastate revenue, whichever is greater. Under Pub. Util. 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, OpenFiber must provide the Commission's Consumer Affairs Branch with the name(s), address(es), and telephone number(s) of its designated contact person(s) for purposes of resolving consumer complaints. This information must be updated if the name(s), address(es), or telephone number(s) change, or at least annually.

12. Prior to initiating service, OpenFiber must provide the Commission's Communications Division with the name(s), address(es), and telephone number(s) of its designated regulatory/official contact person(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. OpenFiber must submit an affiliate transaction report to the Director of the Communications Division, by email to cdcompliance@cpuc.ca.gov, in compliance with Decision 93-02-019, on a calendar year basis using the form contained in Attachment D.

14. OpenFiber must submit an annual report to the Director of the Communications Division, by email to cdcompliance@cpuc.ca.gov, in compliance with General Order 104-A, on a calendar-year basis with the information contained in Attachment C to this decision.

15. OpenFiber must submit an application for expanded authority to operate without NDIEC status prior to construction of full facilities.

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

17. If OpenFiber wishes to engage in full facilities-based construction activities and believes that these activities are categorically exempt from California Environmental Quality Act, OpenFiber shall first apply to the Commission's Energy Division staff for a determination of exemption from California Environmental Quality Act by providing 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.

18. The Energy Division will then review the submittal and notify OpenFiber of either its approval or its denial of OpenFiber's claim for exemption from California Environmental Quality Act review within 21 days from the time that OpenFiber's submittal is complete.

19. If the Energy Division approves OpenFiber's claimed California Environmental Quality Act exemption(s), the staff shall prepare a Notice to Proceed and file a Notice of Exemption with the State Clearinghouse, Office of Planning and Research. If the Energy Division disapproves OpenFiber's claimed California Environmental Quality Act exemptions, the staff shall issue to

OpenFiber a letter which states the specific reasons that the claimed California Environmental Quality Act exemptions do not apply to the proposed project.

20. If the Energy Division disapproves OpenFiber's claimed California Environmental Quality Act exemption(s), OpenFiber shall either re-design the specific project and facilities and then reapply for a finding of exemption from California Environmental Quality Act, or file a formal application with the Commission seeking the requisite approval and full review, before commencing any full facilities-based construction activities.

21. OpenFiber's motion to file under seal its Exhibit D (Financial Statement) and E (Estimated Number of Customers) is granted for a period of three years after the date of this decision. During this three year period, this information shall not be publicly disclosed except on further Commission order or Administrative Law Judge ruling. If OpenFiber believes that it is necessary for this information to remain under seal for longer than three years, OpenFiber may file a new motion showing good cause for extending this order by no later than 30 days before the expiration of this order.

22. Application 17-11-011 is closed.

This decision is effective today.

Dated July 12, 2018, at San Francisco, California.

MICHAEL PICKER

President

CARLA J. PETERMAN

LIANE M. RANDOLPH

MARTHA GUZMAN ACEVES

CLIFFORD RECHTSCHAFFEN

Commissioners

ATTACHMENT A

TARIFF DEFICIENCIES

This Attachment is Intentionally Left Blank.

(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,¹ 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 decision.

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).

¹ 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>.

- i. 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.
- ii. Carriers must submit and pay the PUC User Fee (see Item 3.g above) upon receiving the User Fee statement sent by the Commission Instructions for reporting and 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. If Applicant 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).

5. If 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 Item 3 above.

7. 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 Communications Division, 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.

8. 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 Communications Division a copy of its executed performance bond and the carrier has not been granted an extension of time by the Communications Division.

9. Applicants providing local exchange service must submit a service area map as part of their initial tariff to the Communications Division.

10. Prior to initiating service, Applicant must provide the Commission's Consumer Affairs Branch with the name(s), address(es), and telephone number(s) of its designated contact person(s) for purposes of resolving consumer complaints. This information must be updated if the name(s), address(es), and telephone number(s) change, or at least annually.

11. In addition, Applicant must provide the Commission's Communications Division with the name(s), address(es), and telephone number(s) 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(s), address(es), and telephone number(s) change, or at least annually.

12. Applicant must notify the Director of the Communications Division, in writing submitted by email to cdcompliance@cpuc.ca.gov, no later than five days after service first begins, of the date that local exchange service is first rendered to the public.

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

14. 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.

15. Applicant must submit an annual report to the Director of the Communications Division at cdcompliance@cpuc.ca.gov, in compliance with GO 104-A, on a calendar-year basis with the information contained in Attachment C to this decision.

16. Applicant must submit an affiliate transaction report to the Director of the Communications Division at cdcompliance@cpuc.ca.gov, in compliance with D.93-02-019, on a calendar-year basis using the form contained in Attachment D.

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

18. 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 of its compliance in writing, by email to cdcompliance@cpuc.ca.gov.

19. If Applicant is 90 days or more late in submitting an annual report, or in remitting the surcharges and fee listed in #3 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.

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

21. Applicant is exempt from Pub. Util. Code §§ 816-830 and § 851.

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 submitted to 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 submit 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 submitted to 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 submit, 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)