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BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF CALIFORNIA

In the Matter of the Application of Netly Fiber Holdings, LLC for a certificate of public convenience and necessity to provide full facilities-based and resold competitive local exchange service throughout the service territories of Pacific Bell Telephone Company, Frontier California, Inc., Frontier Communications of the Southwest, Inc., Consolidated Communications of California Company, and Citizens Telecommunications Company of California, Inc. and full facilities-based and resold interexchange services on a statewide basis.	A.20-05-011 (Filed May 27, 2020)

RESPONSE OF NETLY FIBER HOLDINGS, LLC TO ALJ RULING

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OF THE STATE OF CALIFORNIA

In the Matter of the Application of Netly Fiber Holdings, LLC for a certificate of public convenience and necessity to provide full facilities-based and resold competitive local exchange service throughout the service territories of Pacific Bell Telephone Company, Frontier California, Inc., Frontier Communications of the Southwest, Inc., Consolidated Communications of California Company, and Citizens Telecommunications Company of California, Inc. and full facilities-based and resold interexchange services on a statewide basis.	A.20-05-011 (Filed May 27, 2020)

RESPONSE OF NETLY FIBER HOLDINGS, LLC
TO ALJ RULING

Pursuant to the July 24, 2020 email ruling of Assigned Administrative Law Judge Thomas J. Glegola ("ALJ Ruling"), Netly Fiber Holdings, LLC ("NFH" or "Applicant") hereby submits its response to the ALJ Ruling.

1. **Identify in greater detail than what was provided in the application, what service(s) the Applicant intends to offer, including answering the following questions.**

   a. **Does the Applicant plan to offer voice service, Internet service or some other service? If some other service, please specify and include non-regulated services in your answer.**

   b. **Does the Applicant intend to offer telecommunications service to business customers, anchor institutions, municipalities, or residential customers? If the Applicant's intended customers are not on this list, please provide the general type of customer the Applicant intends to serve (e.g., cities). Please also include the general types of customers to whom any California-based affiliates may offer service.**

   c. **Does the Applicant currently own or lease any telecommunications facilities in California, including fiber? If yes, please specify the type of facility and the city or census designated place where the facility is located. If the facility is a fiber route, please include the length of the route in miles.**

d. Does the Applicant intend to allow other service providers to interconnect with its facilities on a competitive basis? Does the Applicant plan to sell or lease dark fiber to other Internet service providers?

e. Why did the Applicant, in its Secretary of State Statement of Information Form LLC-12 identify itself as a business that provides administrative services, instead of a company that provides telecommunications service?

Response:

As noted in its Application, NFH intends to provide infrastructure facilities (such as conduit space, and dark or lit fiber capacity) for use in connection with the transport and transmission of communications. Such facilities typically would be constructed in response to specific requests from customers seeking facilities between particular points or along a particular route. However, once infrastructure is in place, it could be used by other customers, subject to availability of sufficient unreserved capacity.

NFH will provide facilities on a competitive, nondiscriminatory basis. NFH expects that its facilities would be furnished primarily on a wholesale basis to commercial mobile radiotelephone service ("CMRS") providers, Internet access providers, and landline telecommunications service providers, who would utilize the facilities as network components for purposes of enabling them to provide voice or data services to their own customers on either a retail or wholesale basis. NFH may also provide its facilities on a retail basis to other types of customers having substantial bandwidth requirements, such as enterprise business customers, government agencies, and large educational or medical institutions, who would use the facilities to transmit voice or data over their own private networks formed in whole or in part using NFH's facilities.

NFH does not currently intend to offer voice service or Internet access service, per se. However, NFH's facilities will be capable of being used to transmit communications of any nature, and NFH expects that some of its customers will use the facilities to provide regulated voice or data communications services and that other customers will use NFH's facilities for the provision of Internet access services or other unregulated services. Moreover, NFH may at some time in the future expand its offerings to include traditional "finished" retail service offierings.

NFH notes that network interconnection arrangements are usually established by carriers providing finished voice or data services, and not their infrastructure providers. NFH's facilities will be capable of being used on an interconnected basis with facilities operated by its customers or third parties, and NFH will enable the establishment of suitable splice points or communicating conduit, at reasonable locations, to accommodate customers' requests for interconnection of facilities.

NFH does not currently operate any telecommunications facilities in California. NFH is acting as a vehicle to facilitate financing by its majority owner, Ubiquity Partners, for the ongoing installation of fiber optic facilities in Solana Beach and surrounding areas by its affiliate, Netly, LLC. Once the project is complete, NFH will retain legal title to the facilities to secure the financing. However, as the owner of the full leasehold interest, Netly, LLC will operate the infrastructure and furnish fiber optic capacity for use by one or more third-party Internet access service providers to serve end users located in those cities. At this point, then, NFH's position is purely administrative, handling the extension of financing to Netly, LLC. Accordingly, until such time as NFH is in a position to engage in the provision of telecommunications facilities and services, its current Statement of Information is accurate. NFH will revise its Statement of Information consistent with California Secretary of State rules, as may be required from time to time.

2. **Identify in greater detail than what was provided in the application, the public convenience and necessity this application provides. In addition to the items identified in Question 1, consider the following questions in your response.**

    a. **Does the Applicant intend to offer broadband Internet service in unserved areas of California?**

b. **Does the Applicant intend to participate in any of the Commission's Public Purpose Programs?**

c. **What is the difference between the services and operations of Netly Fiber Holdings and Netly, LLC? Why is the existing CPCN of Netly, LLC (U7344C) insufficient?**

Response:

As explained above, NFH intends to focus initially on providing underlying fiber optic network infrastructure that telecommunications carriers and Internet service providers may use to provide their services. NFH and its investors believe that there is and will continue to be a growing need throughout the state for such infrastructure to support the provision of high quality, advanced telecommunications services required by businesses, residents, government agencies, and institutions. NFH's provision of infrastructure will offer service providers with a competitive alternative to deploying their own facilities, which NFH believes will allow service providers to operate more efficiently and to offer services in areas or to classes of customers they might not otherwise be capable of serving on an economically viable basis.

NFH's build out of network infrastructure will follow public demand for broadband facilities, including demand of carriers seeking to deploy networks and services in under-served and unserved areas of the state. NFH has not determined whether, and if so, the extent to which it might seek to participate in established public purpose programs. However, the facilities that NFH deploys will support participation by customers, whether telecommunications providers or internet access services, in such programs. Moreover, NFH will likely be in a position to participate in certain programs supporting specialized infrastructure build out, such as the federal E-Rate program and, possibly, the California Advanced Services Fund program.

Thus, NFH submits, its entry into the marketplace will meet specific existing and future needs of Californians. Moreover, approval of NFH's Application will further the state's overall goals and interests with respect to establishment and maintenance of competition in the telecommunications market. As noted in the Application, the Commission has long recognized that increased competition within the telecommunications industry, in and of itself, is in furtherance of the public interest. As the Commission has explained, substituting a pro-competitive, marketplace-based approach for traditional command-and-control regulation over entry, pricing, and services will, “[a]bove all, encourage relentless innovation in the ways advanced telecommunications is provided and used in the state” and “[s]upport a diverse mix of services and products to meet the widely-varying needs of California business, individuals and communities.”[1] Indeed, following the Commission's lead, the Legislature specifically mandated the establishment of fair and open competition is the telecommunications marketplace as a key component of state policy.[2]

Finally, NFH notes that while there is some management overlap between NFH and Netly, LLC, the two companies are not under common control and are each subject to majority ownership and control by different groups of investors. Thus, while they are deemed affiliates under the Commission's rules, they are entirely different entities and will engage in separate operations, the nature of which may be the same or different over time as determined in accordance with the interests and goals of their respective investors. Consequently, the fact that Netly, LLC has a certificate of public convenience and necessity ("CPCN") is not relevant, as Netly, LLC's CPCN is not available to NFH for its use and cannot otherwise be used to enable NFH to lawfully carry out its proposed operations. Further, even if that were not the case, there is no Commission rule or policy that would prohibit NFH from holding its own CPCN. Indeed, it is common for carrier affiliates each to hold their own CPCNs. Pacific Bell Telephone Company d/b/a AT&T California, for example, has multiple affiliates that hold individual

[1] Public Utilities Commission of California, A Report to the Governor: Enhancing California’s Competitive Strength: A Strategy for Telecommunications Infrastructure (November 1993) (“Infrastructure Report”) at p. viii.
[2] *See, e.g.*, Public Utilities Code §§ 709(g) and 709.5.

CPCNs issued by the Commission, and there are numerous other carriers and their affiliates that are also operating under their own, separately-issued CPCNs.[3]

Accordingly, NFH submits that it has established that approval of its Application will further the public convenience and necessity, both specifically and generally, consistent with state and federal policy and law.

3. Identity states where Netly Fiber Holdings and its affiliates operate (if any). Please include both regulated and non-regulated telecommunications services. Is the Applicant or any of its affiliates registered with the FCC?

Response:

NFH does not currently operate as a provider of telecommunications, regulated or unregulated in California or any other state. None of NFH's affiliates, other than Netly, LLC., engages in telecommunications operations in any state at this time. However, NFH's affiliate, Ubiquity DFW, LP has recently entered into an agreement to acquire control of Millenium Telcom, L.C.C. dba OneSource Communications, which provides voice, data, and video services in Fort Worth, Texas, and surrounding communities. Netly, LLC operates only in California.

Ubiquity DFW, LP has been assigned Federal Registration Number (FRN) 0029641065 in the Federal Communications Commission ("FCC") CORES database, but is not yet registered as a Section 214 licensee. Neither NFH nor any other NFH affiliate has an FRN or has otherwise registered with the FCC.

[3] In fact, as noted in the Application, 47 U.S.C. § 253(a) establishes a national policy favoring competition in the provision of telecommunication services and prohibiting any regulation or other legal requirement that prohibits or has the effect of prohibiting any entity from providing a telecommunications service. Therefore, were the Commission to adopt a new policy limiting the ability of an existing carrier's affiliate from providing telecommunications services, the Commission's doing so would be unlawful.

4. Has Netly, LLC begun operations in California? The Secretary of State lists the company's status as "converted out" and the company has reported to this Commission zero dollars in revenue.

Response:

To NFH's understanding, Netly, LLC has exercised its operating authority by entering into agreements to provide telecommunications infrastructure and otherwise holding itself out to the public as in the business of doing so. NFH has no ownership interest in Netly, LLC and therefore does not have direct knowledge of Netly, LLC's revenue reporting practices. However, NFH is informed that Netly, LLC has not yet received reportable revenues from intrastate regulated operations, which is why no revenues would have been reported to the Commission.

NFH notes that, upon reviewing the California Secretary of State website, Netly, LLC (entity no. 201735210033, a Delaware limited liability company), appears to be active and in good standing. The report that Netly, LLC has "converted out" appears to be referring to an earlier version of the company, identified as entity no. 201711110387, a California limited liability company, before it was converted to a Delaware limited liability company.

Respectfully submitted August 5, 2020 at San Francisco, California.

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By *_/s/ John L. Clark_*
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