



**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

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Application of AVX Networks for a Certificate of
Public Convenience and Necessity to Provide Full
Facilities-Based and Resold Competitive Local
Exchange and Non-Dominant Interexchange Service

A.22-01-015

**AMENDED APPLICATION OF AVX NETWORKS FO A CERTIFICATE
OF PUBLIC CONVENIENCE AND NECESSITY TO PROVIDE FULL
FACILITIES-BASED AND RESOLD COMPETITIVE LOCAL EXCHANGE
AND NON-DOMINANT INTEREXCHANGE SERVICE**

[PUBLIC VERSION]

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June 20, 2022

Pursuant to the Rules of Practice and Procedure (the “Rules”) of the California Public Utilities Commission (the “Commission”), and the Commission’s decisions authorizing competition in California’s telecommunications markets, AVX Networks (“AVX” or “Applicant”), by and through its attorneys, hereby files this amended application for a Certificate of Public Convenience and Necessity (“CPCN”) (“Application”) in order to provide full facilities-based and resold competitive local exchange and non-dominant interexchange services in California. This amended application is filed at the direction of Administrative Law Judge Brian Korpics who requested a more detailed description of the services AVX intends to offer to various customer types.

AVX requests authority to operate as a full facilities-based competitive local exchange carrier (“CLC”) in the territories currently served by AT&T California (“AT&T”), Frontier California, Inc., Consolidated Communications of California Company, and Citizens Telecommunications Company of California d/b/a Frontier Communications of California, Inc. (“Citizens”), and as a non-dominant interexchange carrier (“NDIEC”) in the entire State of California. Pursuant to Articles 2 and 3 of the Commission’s Rules of Practice and Procedure, AVX submits information in support of its CPCN Application.

I. APPLICATION FOR CERTIFICATE OF CONVENIENCE AND NECESSITY

1. Name of Applicant [Rule 2.1(a)]

Applicant’s legal name is AVX Networks and is wholly owned by Lance Ware. AVX is a California corporation with its principal place of business at 305 Sumner Avenue, Avalon, California, 90704. This is a physical location, not a virtual address. Employees are located at this principal place of business address. Lance Ware is the Chief Executive Office. His phone number is 310-510-6929 and his email address is: lance@avxnetworks.com. Contact information for AVX is as follows:

Phone: 310-510-6924

Toll-free: 855-607-3220

Website: www.avxnetworks.com

2. Correspondence or Communications [Rule 2.1(b)]

Correspondence or other communications regarding this Application should be addressed to counsel for AVX:

Anita Taff-Rice
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1547 Palos Verdes #298
Walnut Creek, CA 94597
Phone: (415) 699-7885
Fax: (925) 274-0988
Email: anita@icommlaw.com

With copies to:

Lance Ware
AVX Networks
PO Box 172, Avalon, California, 90704
Phone: 310-510-6924
Email: lance@avxnetworks.com

Notices, orders and other papers may be served upon these persons, and such service shall be deemed to be service upon the Applicant. Commission staff should contact these persons to resolve customer complaints.

3. Description of AVX's Services [Rule 3.1(e) and D.13-05-035]

AVX proposes to provide full-facilities-based and resold competitive local exchange and interexchange services in California. AVX will be providing retail services to a mixture of residential, business, institutional, and wholesale services to other carriers. AVX's planned local exchange and interexchange services for residential customers are Voice over Internet Protocol ("VoIP") and broadband provide predominantly via fiber-to-the-home (GPON and Ethernet LAN). AVX does not plan to submit a tariff for these residential services because it understands such services are not eligible for tariffing.

AVX's planned local exchange and interexchange services for business customers include TDM voice, VoIP, and broadband. AVX does not plan to submit a tariff for these and instead will

offer them on a non-discriminatory basis via contract. AVX's planned local exchange and interexchange services for carrier customers will be broadband or high-capacity data circuits. AVX does not plan to submit a tariff for these and instead will offer them on a non-discriminatory basis via contract.

AVX will offer its services to residential, business and carrier customers via fiber, but it may deploy wireless technologies, including microwave, where fiber installation is not feasible, for temporary service delivery, or backup services. AVX will provide services using its own facilities, such as fiber optic cable and associated electronics, fixed wireless facilities, switches, and routers, as well as services or facilities from other carriers. Wherever feasible, AVX will install or use facilities in or on existing structures. In some instances, however, existing structures or routes may not be available, in particular to service unserved/unserved and otherwise marginalized communities, and AVX will install new infrastructure such as poles and conduit.

4. Commission jurisdiction and AVX eligibility to receive CPCN.

Entities applying for CPCN authority must demonstrate that they meet the definition of "public utility" definition pursuant to the Pub. Util. Code. § 216(a), which defines a "public utility" to include a "telephone corporation". California Public Utilities Code § 234(a) defines "telephone corporation" as "every corporation or person owning, controlling, operating, or managing any telephone line for compensation within this state." The Commission may issue a CPCN upon the applicant's declaration that it is a telephone corporation and that it intends to offer services and operate in a fashion that brings it within the Commission's jurisdiction. Declarations from AVX's key management personnel provided with this application attest that AVX will provide telephone services under the state law definitions above and that it will be subject to the Commission's jurisdiction.

AVX will need a CPCN in order to use public infrastructure such as poles and conduit, and/or

to access public rights of way, utility corridors or otherwise meet local jurisdictions' criteria for obtaining permits to install telecommunications facilities.

5. Demonstration of Compliance with Commission Rules

Attached as Exhibit A to this Application is a schedule listing AVX's compliance with the requirements of the Commission's Rules governing issuance of CPCNs.

6. Certificate of Incorporation and Certificate of Good Standing [Rule 2.2]

AVX filed Articles of Organization with the California Secretary of State's office on January 5, 2022. This certificate is attached as Exhibit B. Additionally, AVX is including a current Certificate of Good Standing with the California Secretary of State as Exhibit C.

7. Description of Proposed Construction [Rule 3.1(a)]

AVX will utilize both facilities obtained from other carriers and facilities it constructs. AVX will undertake relatively minor ground-disturbing activities, including: placement of fiber optic facilities in aerial and underground conduit configurations; installation or replacement of utility poles or conduit; installation of underground vaults; trenching, boring and grading. Much of the construction will take place inside public rights of way, but occasionally, a portion of this activity may take place on private property in existing easements.

AVX respectfully submits that the above construction activities are similar to those undertaken by other carriers that the Commission has ruled are categorically exempt from CEQA.² The construction would be of the type exempt from CEQA review, similar to the types of construction described by Synergy in D. 13-07-039³ and falling within CEQA Exemptions 3, 4, and 32. In addition, the Commission has found that boring and installation of new conduit in an existing right-of-way⁴ and placing aerial fiber on existing utility poles are all activities exempt from CEQA.⁵ In addition, Commission decisions and local ordinances often grant exemptions to utilities for aerial construction, thus this procedure will apply to installing utility poles in underground districts where

local jurisdictions grant such exceptions. AVX anticipates using the Commission's 21-day review process for these CEQA exempt activities.

AVX does not yet have detailed deployment plans, and therefore does not know the specific locations where it will construct facilities. The Commission has previously granted full facilities-based authority to many other carriers looking to undertake minor ground-disturbing activities, while not yet having specific construction locations, as those are driven by customer demand.⁶ AVX requests that it be allowed to utilize the review and exemption procedure for full facilities-based construction that has been approved for other similar carriers once AVX has identified locations for construction of network facilities.⁷ Whenever AVX wishes to obtain review by the Energy Division staff, Exhibit D sets forth the 21-day expedited review process used by other full facilities-based carriers. In the unlikely event that AVX must install facilities in areas for which there is no CEQA exemption, it will submit the required Proponent's Environmental Assessment ("PEA") to the Commission for review.

8. California Environmental Quality Act (CEQA) Compliance [Rule 2.4]

Pursuant to Rule 2.4(b) of the Commission's Rules of Practice and Procedure, a copy of the Proponent's CEQA Procedure is provided as Exhibit D.

² See, e.g., D.06-04-063, *ClearLinx Network Corporation*; D.06-04-067, *CA-CLEC-LLC*.

³ See D.13-07-039, at p. 4-5.

⁴ D.03-12-017, at p. 10-11, *Application of Zephyr Communications*.

⁵ D.13-07-039, at p. 4, *Application of Synergy DAS, LLC for a Certificate of Public Convenience and Necessity in order to provide Limited Facilities-based, Full Facilities Based and Resold Competitive Local Exchange, Access and Interexchange Service*, July 25, 2013 ("Synergy Application").

⁶ Decisions which have granted full facilities-based authority to carriers without specific construction location include: D.17-05-023, p. 8-9; D.13-07-039, p. 3-5; D.13-07-032, p.4; D.13-02-010, p. *4-5; D.14-10-035, p. *4-8; D.15-04-012, p. *4-7; D.15-02-012, p. *4-5; D. 07-08-026, p. *5-8; D.08-12-027, p. *17-19; D.12-06-009, p. *3-5; D.16-04-025, p. *4-6; D. 09-07-043, p. *5-6; D.06-04-063, p. *3-4; D.10-01-014, p. *8-10.

⁷ See e.g. D.17-02-008, *Application of Cal.Net for a Certificate of Public Convenience and Necessity in order to provide Limited Facilities-based, Full Facilities Based and Resold Competitive Local Exchange, Access and Interexchange Service*. D.13-07-039, *Synergy Application*, p.4; D.08-12-027, *Application of ATC Outdoor DAS, LLC for a Certificate of Public Convenience* to undertake ground disturbing activities that it believes are categorically or statutorily exempt from CEQA.

9. California Environmental Quality Act (CEQA) Compliance [Rule 2.4]

Pursuant to Rule 2.4(b) of the Commission's Rules of Practice and Procedure, a copy of the Proponent's CEQA Procedure is provided as Exhibit D.

10. California Environmental Quality Act (CEQA) Compliance [Rule 2.4]

Pursuant to Rule 2.4(b) of the Commission's Rules of Practice and Procedure, a copy of the Proponent's CEQA Procedure is provided as Exhibit D.

11. Names of Competitors and Names of Counties [Rule 3.1(b)]

AVX will provide competitive local service in competition with those other carriers authorized by this Commission to provide similar services. AVX notes that pursuant to D. 97- 06-107, issued in Commission Proceeding R.94-02-003/I.94- 02-004, CLCs no longer are required to comply with Rule 3.1(b) and General Order 96-A, subsections (G)(1) and (G)(2). Thus, AVX has not mailed its application to all potential competitors and counties. AVX will, however, provide a copy of its application upon request to potential competitors and counties.

12. Areas of Service [Rule 3.1(c)]

AVX seeks authority to provide its services in those exchanges where the Commission has authorized local competition. At present, CLC service may be provided in the geographic areas of California served by AT&T California, Frontier California, Inc., Consolidated Communications of California Company, and Citizens Telecommunications Company of California d/b/a Frontier Communications of California, Inc. In addition, AVX seeks non-dominant interexchange authority on a statewide basis. Attached as Exhibit E is a map of the service areas where AVX will provide service.

13. Facts Showing Public Convenience and Necessity [Rule 3.1(e)]

The Commission has previously determined that the public convenience and necessity require that competition be allowed in the provision of competitive local exchange service, R.95- 04-043/I.95-

04-044. Applicant asserts that this application will serve the public interest generally because Applicant's provision of services will result in greater variety of telecommunications services and products in the telecommunications market. In particular, the Applicant will provide a competitive facilities-based alternative focusing on fiber deployment in the residential market, where the Commission's analysis shows that level of competition has not increased. Consumers benefit from increased competition including greater customer choice for efficient, innovative, and technologically advanced telecommunications services, and competitive prices in California.

AVX will significantly benefit California consumers by providing not only innovative services and technologies, but by providing fiber via the last mile and middle mile to enable immediate increases in broadband speeds, as well as increased reliability over wireless and microwave supported networks. AVX's initial focus will be unserved and underserved areas where the incumbents and others have abandoned consumers or they are left with legacy options. AVX will also further the environmental and social equity goals by enabling schools and libraries to have better access to the internet and public safety better connectivity where it is marginal or non-existent. Finally, AVX intends to enable power utilities to connectivity to enable remote monitoring for fire and other disasters.

AVX's initial market is Catalina Island, a community that has been chronically underserved for broadband and has little to no competition for voice or other telecommunications services. AVX's entry into the market on Catalina Island is consistent with the Commission's Environmental and Social Justice Action Plan goals applicable to communications carriers. In particular, granting this application will improve access to high-quality communications services (Goal 3). Version 2 of the Commission's ESJ Plan continues its commitment to assist low-income Californians and communities of color ("ESJ Communities") with access to essential utility services. Version 2 confirmed the Commission's commitment to extend essential communications services to ESJ

communities at affordable rates. AVX will provide competitive in areas without robust competition, and thereby will help drive down prices and offer new services and features to customers. AVX anticipates that some of its service area will include ESJ communities.

14. Estimated Cost of Construction, Annual Fixed and Operating Costs and Economic Feasibility [Rule 3.1(f)]

AVX's estimated annual fixed and operating costs are set forth in Confidential Exhibit F to this Application. Because Confidential Exhibit F contains highly proprietary and competitively sensitive business information, AVX is requesting confidential treatment of Confidential Exhibit F in a Motion for Leave to File Confidential Materials Under Seal ("Motion") filed concurrently with this Application.

15. Financial Statements and the Ability to Finance [Rules 3.1(g) and 2.3]

AVX is financially qualified to offer the telecommunications services for which authority is sought. Attached as Confidential Exhibit G is a Guaranty issued by AVX's corporate affiliate, South Coast Holdings, LLC, along with 12 months of bank statements to reflect South Coast Holdings, LLC's financial stability. Confidential Exhibit H is AVX's estimate of customers for first and fifth years.

AVX does not yet have ICAs or agreements with other carriers to purchase services, but it anticipates that the requirement for a deposit (if any) will be negotiated as part of such agreements. If a deposit is required, it would be no more than \$10,000.

The amount of AVX's cash and assets are fully sufficient to show financial ability to operate and to post any necessary carrier deposits. If in the future, AVX pursues the purchase of services that require deposits or require deposits in amounts greater than identified herein, it will notify the Commission and promptly comply with any regulatory requirements. For all of the reasons above, AVX fully meets the financial qualifications set forth in the Initial Rules for Competitive Local

Exchange Carriers issued in D.95-07-054 and D.96-02-072 and Rule 3.1(g).

16. Proposed Rates [Rule 3.1(b)]

AVX does not intend to offer basic service or switched access and therefore seeks an exemption from filing a tariff pursuant to GO 96-B, Telecommunications Industry Rule 5.3.⁸ Consistent with D.07-09-018, the Commission has granted exemptions from tariff filing requirements to CPCN applicants that did not offer residential basic service.⁹

AVX intends to offer its services through individual case basis (“ICB”) contracts, and at this time is not submitting a tariff. AVX commits to offer ICB services on a non- discriminatory basis to similarly situated customers. AVX acknowledges that it will need to file a tariff if it wishes to offer basic residential service or switched access. Applicant will comply with the Commission’s consumer protection rules adopted in D.98-08-031 and it will collect and remit all applicable end-user surcharges and fees.

17. General Order 104-A Statement

AVX is not a publicly traded company, and has no proxy statements, 10-Ks or annual reports to provide. Further, AVX states that none of its officers, directors, or stockholders, whether record or beneficial owners of stock, have a material financial interest (as that term is defined in Section 2 of G.O. 104-A) in any transaction involving the purchase of materials or equipment, or the contracting, arranging or paying for construction, maintenance, or service for or on behalf of Applicant.

18. Expected Customer Base [Rule 3.1(j)]

AVX’s estimate of its customers for the first and fifth year is contained in Confidential Exhibit H which contains highly proprietary and competitively sensitive information.

⁸ G.O. 96-B, Telecommunications Industry Rule 5, provides that the Commission may “grant[...] exceptions from the general requirement . . . that a Utility serve its California customers under its filed tariff.” In D. 07-09-018, the Commission established detariffing rules for carriers such as CLCs.

⁹ See, e.g., D.11-12-014, D.12-08-036, and D.13-01-010.

Therefore, AVX also requests confidential treatment of Confidential Exhibit H in its Motion to File Under Seal filed concurrently with this Application.

19. Managerial and Technical Competence

AVX has the managerial and technical qualifications necessary to provide the proposed services in its service territory. Redacted Exhibit I demonstrates that AVX's executive team possesses significant managerial and technical expertise for operating a telecommunications company, consistent with the Commission's requirements. To the extent that additional expertise is required, Etheric will retain consultants.

20. Request for Exemptions

Applicant requests that it be accorded the same streamlined regulatory treatment previously accorded to other CLCs as a non-dominant interexchange carrier as set forth in D.96-02-075 and as adopted by NDIECs, including the following:

A. The Applicant seeks exemption from the provisions of PU Code Section 816-830 (pertaining to the issuance of stocks and securities) and PU Code Section 851 (pertaining to the transfer or encumbrance of utility assets when such transfer or encumbrance is for the purpose of securing debt). The Commission has previously concluded that NDIECs should be exempt from the provisions and requirements of PU Code Sections 816-830 and 851 (insofar as these sections pertain to the issuance of securities and transfer or encumbrance of utility property for purposes of securing debt) in D.85-07-081, D.85-11-044 and D.86-08-057, as confirmed by D.90-09-032. This exemption was extended to CLCs in D.96-02-072, Ordering Paragraph 18.

B. The applicant also requests that it be exempted from any requirement to maintain its books and records in accordance with the Uniform System of Accounts specified in Title 47 I.E. Part 32 consistent with D.99-02-038, which relieved CLCs that are not part of an ILEC corporate

entity from the requirement to keep their books of account in conformance with the Uniform System of Accounts.

21. Continuous Performance Bond (D.13-05-035)

D. 13-05-035 requires new and existing CPCN holders to submit a continuous performance bond in the amount of \$25,000 issued by a corporate surety company authorized to transact surety business in California with the Commission listed as an obligee on the bond. AVX will obtain such bond and submit it to the Commission within five days of accepting its CPCN.

22. SB 960 Compliance – Scoping Memorandum Information [Rule 2.1(c)]

AVX respectfully submits that its application for resale and full facilities-based authority will serve the public interest and is non-controversial. In accordance with the Commission’s Rules, AVX provides the following information:

1. Proposed Category: This Application should be categorized as rate setting in accordance with Rule 7.1(e)(2) as it does not clearly fit into the categories defined in Rules 1.3 (a), (d), or (e).
2. Need for hearing: No hearings are necessary to address the matters in this Application as it is non-controversial and does not raise any material issues of fact.
3. Issues to be Considered: Whether AVX is qualified to provide resold and full facilities-based competitive local exchange and non-dominant interexchange services in California.
4. Proposed Schedule: AVX proposes the following schedule:
5. Application filed: January 27, 2022
Protests due: 30 days after appearance of Application on Commission Daily Calendar
Final Decision Adopted: 60 days after submission of amended complaint

Signed and Dated: June 20, 2022, at Walnut Creek, CA.

Respectfully submitted,

A handwritten signature in cursive script, reading "Anita Taff-Rice", written over a horizontal line.

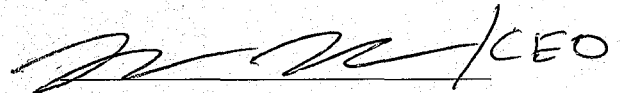
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Counsel for AVX Networks

VERIFICATION

I, Lance Ware, CEO of AVX Networks, do hereby declare under penalty of perjury of the laws of the State of California, including Rule 1.1 of the California Public Utilities Commission's Rules of Practice and Procedure, that I have personal knowledge about the contents of the attached document, and that it is true and correct to the best of my knowledge and belief.

Executed on July 21, 2022.

A handwritten signature in black ink, appearing to read 'Lance Ware', followed by a horizontal line and the letters 'CEO'.

Lance Ware
Chief Executive Officer