

**PUBLIC UTILITIES COMMISSION**505 VAN NESS AVENUE
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September 12, 2022

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Ratesetting

TO PARTIES OF RECORD IN APPLICATION 21-01-002:

This is the proposed decision of Administrative Law Judge Patricia Miles. Until and unless the Commission hears the item and votes to approve it, the proposed decision has no legal effect. This item may be heard, at the earliest, at the Commission's October 20, 2022 Business Meeting. To confirm when the item will be heard, please see the Business Meeting agenda, which is posted on the Commission's website 10 days before each Business Meeting.

Parties of record may file comments on the proposed decision as provided in Rule 14.3 of the Commission's Rules of Practice and Procedure.

The Commission may hold a Ratesetting Deliberative Meeting to consider this item in closed session in advance of the Business Meeting at which the item will be heard. In such event, notice of the Ratesetting Deliberative Meeting will appear in the Daily Calendar, which is posted on the Commission's website. If a Ratesetting Deliberative Meeting is scheduled, *ex parte* communications are prohibited pursuant to Rule 8.2(c)(4).

/s/ Anne E. Simon

Anne E. Simon
Chief Administrative Law Judge

AES:sgu
Attachment

Decision PROPOSED DECISION OF ALJ MILES (Mailed 9/12/2022)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Etheric Communications, LLC for a Certificate of Public Convenience and Necessity to Provide Full Facilities-Based and Resold Competitive Local Exchange and Non-Dominant Interexchange Service and Designation as an Eligible Telecommunications Carrier in California.

Application 21-01-002

DECISION GRANTING ETHERIC A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY IN ORDER TO PROVIDE FULL FACILITIES-BASED AND RESOLD COMPETITIVE LOCAL EXCHANGE SERVICES AND RESOLD INTEREXCHANGE SERVICES BUT DENYING DESIGNATION AS AN ELIGIBLE TELECOMMUNICATIONS CARRIER

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**DECISION GRANTING ETHERIC A CERTIFICATE OF PUBLIC
CONVENIENCE AND NECESSITY IN ORDER TO PROVIDE FULL
FACILITIES-BASED AND RESOLD COMPETITIVE LOCAL EXCHANGE
SERVICES AND RESOLD INTEREXCHANGE SERVICES BUT DENYING
DESIGNATION AS AN ELIGIBLE TELECOMMUNICATIONS CARRIER**

Summary

Pursuant to Public Utilities Code § 1001, we grant Etheric Communications, LLC a certificate of public convenience and necessity to provide full facilities-based and resold competitive local exchange services and resold interexchange services subject to the terms and conditions set forth in the Ordering Paragraphs. We deny Etheric's request for designation as an Eligible Telecommunications Carrier in California, at this time.

Application 21-01-002 is closed.

1. Background

On January 5, 2021, Etheric Communications, LLC (Etheric)¹ filed this application for a certificate of public convenience and necessity (CPCN) to operate as a competitive local exchange carrier in the territories currently 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., and as a non-dominant interexchange carrier (NDIEC) in the entire State of California. Etheric is concurrently seeking designation as an Eligible Telecommunications Carrier (ETC).

¹ Etheric is a California limited liability company which is wholly owned by Etheric Networks, Inc. Etheric's principal place of business is located at 1009 S. Claremont Street, San Mateo CA 94402.

Etheric is wholly owned by its parent company, Etheric Networks, Inc. Etheric proposes to provide voice and broadband to residential and small business customers using services and facilities of other carriers or its own facilities, such as fiber optic cable and associated electronics, fixed wireless facilities, switches, and routers. Etheric will install or utilize facilities in or on existing structures. Etheric describes itself as a fixed-wireless broadband and internet service provider (ISP). Its parent company, Etheric Networks, Inc. represents that it has built, maintained and grown a fixed wireless network that covers over 10,000 square miles in the San Francisco Bay Area with a mix of long, medium and short range licensed and unlicensed fixed wireless.

1.1. Procedural Background

A prehearing conference was held on March 2, 2021, to determine the issues of law and fact, determine the need for hearing, set the schedule for resolving the matter and address other matters, as necessary. No protests or responses were filed with respect to the application.

The assigned Commissioner issued a Scoping Memorandum and Ruling on April 7, 2021.

On April 19, 2021, Etheric filed supplemental information in response to the assigned Administrative Law Judge (ALJ) ruling dated March 22, 2021, which requested additional information.

On July 28, 2021, Etheric filed additional information in response to the ALJ ruling dated May 17, 2021, which required audited financial information.

On September 24, 2021, Etheric filed a response to the ALJ ruling dated September 24, 2021, which requested certain information about Etheric's responses to the FCC.

On December 12, 2021, counsel for Etheric uploaded (via the California Public Utilities Commission's (Commission) secure document transfer platform) numerous documents to Communications Division (CD) in response to a data request from CD. By Decision (D.) 22-05-025 an extension of the statutory deadline was granted to October 20, 2022, to permit CD staff to thoroughly rereview the application, to allow the ALJ sufficient time to draft a proposed decision, to provide CD staff and the assigned Commissioner adequate opportunity to review the Proposed Decision (PD), and to give the Commission sufficient time thereafter to deliberate and to issue its final decision.

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 Public Utilities Code § 234(a) as "every corporation or person owning, controlling, operating, or managing any telephone line for compensation within this state." Etheric is a telephone corporation and a public utility subject to our jurisdiction.

Etheric represents that it will offer Session Initiation Protocol (SIP) based Voice over Internet Protocol (VoIP) standalone service with unlimited local and domestic calling included.²

2.1. Commission Authority to Designate Eligible Telecommunications Carrier in California

The Commission has authority to grant requests for designation of ETC status, pursuant to Resolution (Res.) T-17002; and in accordance with the federal delegation of authority set forth in the Communications Act in 47 United States Code (U.S.C.) § 214, which states in part: A State commission shall upon its own motion or upon request designate a common carrier that meets the requirements

² See Application at 15.

of paragraph [214(e)] (1) as an ETC for a service area designated by the State commission. In order to request ETC status, the applicant must hold a CPCN. Etheric is requesting both a CPCN as well as ETC status in the instant application. This limited process was made available to Rural Digital Opportunity Fund (RDOF) Phase I recipients to facilitate quicker review of ETC designation requests.

3. California Environmental Quality Act (CEQA)

Pursuant to CEQA and Rule 2.4³ of the Commission's Rules of Practice and Procedure, the Commission examines 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.

According to the application, Etheric's proposed activities will utilize both facilities obtained from other carriers and facilities it constructs. Etheric 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 in underground vaults, trenching, boring and grading. Etheric anticipates that construction will take place inside public rights of way, and occasionally, on private property in existing easements.⁴

These activities fall within the following classes of projects that are exempt from CEQA and for which neither an Environmental Impact Report nor a Negative Declaration is required.

³ Unless otherwise noted, items labeled "Rule" are from the Commission's Rules of Practice and Procedure.

⁴ See Application at 5.

- 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.)

Etheric's proposed activities involve construction of reasonably short utility extensions (Class 3). Exemption of these activities is consistent with Commission precedent. Etheric'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 (CACLEC LLC)*).

Etheric does not yet have detailed deployment plans but requests approval to utilize a procedure for expedited review of its projects once it has identified specific site(s) in which it plans construction.⁵ 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 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 Etheric to undertake construction of its projects in an

⁵ Application at 6.

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 Etheric's claimed CEQA exemptions for proposed construction projects:

- Etheric 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 Etheric's submission for the proposed project to confirm that the claimed exemption(s) from CEQA are applicable.
- Within 21 days from the date of Etheric'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:

- Etheric'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 Etheric'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 Etheric 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 Etheric's proposed process for Commission review of claimed CEQA exemptions for construction projects undertaken pursuant to Etheric'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 Etheric's claimed CEQA exemption(s) and issues a letter of denial to Etheric, Etheric 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.

Etheric 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 full facilities--based and resold competitive local exchange services and resold interexchange services must demonstrate that it has a minimum of \$100,000 cash or cash equivalent, reasonably liquid and readily available to meet the firm's start-up expenses.⁶ In the application, Etheric provided documentation that it

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.

has \$100,000.⁷ Since Etheric has provided documentation that it possesses a minimum of \$100,000 that is reasonably liquid and available, it has demonstrated that it has sufficient funds to meet its start-up expenses and has fulfilled this requirement. Etheric's financial documentation will be subject to verification and review by the Commission for one year to ensure that such funds are available.

In addition to demonstrating financial fitness, Etheric must also demonstrate that an additional amount equal to the deposit required by AT&T California, Frontier California, Frontier Communications, and Consolidated Communications is available to Etheric for one year following certification.⁸ Etheric proposes to initially interconnect with AT&T California, Frontier California, Frontier Communications, and Consolidated Communications. Etheric indicates that it has not yet negotiated agreements with the carriers to purchase services, however, it anticipates that the deposit requirement will be no more than \$10,000, and that its financials demonstrate that Etheric's cash and assets are sufficient to post the necessary deposits.⁹

Etheric also represents that it will obtain and submit to the Commission a continuous performance bond in the amount of \$25,000 issued by a corporate surety company authorized to transact surety business in California, as required by D.13-05-035. Etheric will obtain such a bond, with the Commission listed as

⁷ See Application at 9. Etheric provided documentation in confidential Exhibits G & H.

⁸ The requirement for Competitive Local Carrier (CLC) applicants to demonstrate that they have additional financial resources to meet any deposits required by underlying Local Exchange Carriers (LEC) and/or IECs is set forth in D.95-12-056, Appendix C. For NDIECs, the requirement is found in D.93-05-010.

⁹ See Application at 9.

an obligee on the bond and will submit it to the Commission within five days of accepting its CPCN authority.¹⁰

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.¹¹ Etheric supplied biographical information on its management in Exhibit J to its application that demonstrates it has sufficient expertise and training to operate as a telecommunications provider.

In its application,¹² Etheric verified that no one associated with or employed by Etheric as an affiliate, officer, director, partner, or owner of more than 10 percent of Etheric, or anyone acting in a management capacity for Etheric:

(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 (to his/her knowledge) 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

¹⁰ See Application at 12.

¹¹ D.95-12-056 at Appendix C, Rule 4.A.

¹² See Application at 59-60, "Sworn Affidavit of William Alexander Hagen, Chief Executive Officer of Etheric.

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; or (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.¹³

Also, to the best of Etheric's knowledge, neither Etheric, or any affiliate, officer, director, partner, nor owner of more than 10% of Etheric, or any person acting in such capacity whether or not formally appointed, is being, or has been investigated by the Federal Communications Commission (FCC) or any law enforcement or regulatory agency for failure to comply with any law, rule or order.¹⁴ For the above reasons, we find that Etheric is in compliance with the requirements of D.13-05-035.

6. Tariffs

Etheric has requested detariffed status and may be exempt from the requirement to file tariffs provided that Etheric complies with the consumer protection rules identified in D.98-08-031. Etheric states that it plans to offer services on a non-discriminatory basis as well as individual case basis contracts.

Detariffed status is not available for carriers providing residential local exchange service. Based on the application, it does not appear that Etheric intends to provide residential local exchange service at this time. Pursuant to D.12-12-038, Appendix A, Section II, parts a and b, basic service must be tariffed or scheduled. In the future, if Etheric decides to offer services that require a tariff or schedule, such as basic service, Etheric must submit proposed tariffs and/or

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

¹⁴ *Id.*

user guides to the Communications Division via Tier 2 Advice Letters using the General Order (GO) 96-B advice letter process at least 30 days before initiation of service.

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.¹⁵ Etheric provided a map of the location of its proposed service territory, in compliance with this requirement.¹⁶

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. Etheric states that it is not aware of any reportable matters pursuant to General Order 104-A, Section 2. Etheric, therefore, has nothing to report under this rule.¹⁷

9. Expected Customer Base

Etheric provides its estimated customer base for the first and fifth years of operation in its confidential Exhibit I to its application. Therefore, Etheric has complied with this requirement.

10. 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 Etheric will meet the Commission's minimum safety goals and

¹⁵ D.95-12-056 at Appendix C, Rule 4.F.

¹⁶ See Application, Exhibit E.

¹⁷ See Application at 10.

expectations of competitive local exchange carriers (CLECs) because: (1) Etheric has taken steps to meet the financial requirements as set forth in this decision for a facilities-based CLEC, and (2) Etheric 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.”

11. Request for Treatment as a Non-Dominant Interexchange Carrier

Applicant requests treatment as a nondominant interexchange carrier (NDIEC)-, which would include exemption from the requirements of Pub. Util. Code §§ 816-830 concerning stocks and security. Applicant also requests an exemption from Pub. Util. Code § 851 solely for the transfer and encumbrance of utility property in order to secure debt. The Commission detailed its rules regarding exemption of NDIECs in D.85-01-008, and subsequently modified in D.85-07-081 and D.85-11-044. Pursuant to D.85-07-081 and D.85-11-044 (addressing NDIECs) and D.97-01-015 (addressing CLECs), NDIECs and CLECs are exempt from Pub. Util. Code § 851 for the sole purpose of the transfer or encumbrance of utility assets to secure debt.

11.1. Treatment as a NDIEC Granted

Etheric meets the financial and technical requirements to obtain a CPCN. Therefore, we grant Applicant’s request for NDIEC- status, which provides an exemption from Pub. Util. Code §§ 816-830 concerning stocks and security, provided Applicant follows all rules detailed in the above referenced decisions. We also grant Applicant’s request for exemption from Pub. Util. Code § 851 for the sole purpose of securing debt pursuant to the decisions referenced above.

12. Request for Designation As An Eligible Telecommunications Carrier

On February 7, 2020, the FCC adopted the Rural Digital Opportunity Fund (RDOF) program to build broadband in rural and unserved/underserved communities.¹⁸ The RDOF program has a budget of \$20.4 billion over 10 years to support infrastructure with minimum broadband speeds of 25/3 megabytes per second (mbps). The RDOF program is awarding funding in two phases – Phase I targets unserved communities, and Phase II will target partially served communities.¹⁹

On December 7, 2020, the FCC issued a Public Notice announcing the winning bidders for the RDOF Phase I Auction 904. There were 180 winning bidders nationwide in Auction 904. The award amount totals \$9.23 billion over a 10-year period, with 5,220,833 locations covering 49 states and one territory. Over 99.7% of locations in Auction 904 areas have bidders providing download speeds of at least 100 mbps.²⁰ There were 15 companies in California provisionally awarded Phase I amounts totaling \$695 million.²¹

The FCC will also provide oversight of the projects whereby bidders are subject to penalties or forfeiture if they do not meet service milestones.²² Bidders must meet certain deployment obligations to receive RDOF support. For example, carriers must commercially offer voice and broadband services to 40%

¹⁸ See *In the Matter of Rural Digital Opportunity Fund, Connect America Fund*, Report and Order, WC Dkts. 19-126 & 10-90, (FCC 20-5), released February 7, 2020.

¹⁹ *Id.*, at 3.

²⁰ See *Rural Digital Opportunity Fund Phase I Auction (Auction 904) Closes, Winning Bidders Announced*, Public Notice, AU Dkt. 20-34, WC Dkts. 19-126 & 10-90, (DA 20-1422), released December 7, 2020.

²¹ *Id.*, Attachment B.

²² RDOF Order, paras. 45-55.

of the locations receiving RDOF support within each state, as applicable, by the end of the three-year funding cycle, and then 20% of the locations each year thereafter until reaching 100%.²³ Winning RDOF bidders must obtain an ETC designation in the state(s) where it seeks support to receive federal funding.

Etheric is among the 15 bidders that provisionally won RDOF awards in California. Etheric must satisfy all federal and state ETC requirements to receive an ETC designation. For RDOF, Etheric proposes to use fixed wireless access network technologies to satisfy the Gigabit speed tier requirement as mandated by the FCC in Auction 904.²⁴

12.1. Designation as an Eligible Telecommunications Carrier Not Granted

Staff conducted a due diligence review to determine Etheric's financial capabilities, technical and operational capabilities, and customer protection that may call into question its fitness to be granted ETC designation to serve California consumers. Although Etheric meets the financial and technical requirements to obtain a CPCN, after review, we have determined that approving an ETC for Etheric is not in the public interest. We find that Etheric does not meet the substantial operational, financial, and technical capabilities required to construct and operate a broadband and voice telecommunications network serving up to 64,463²⁵ new locations over a large area of the state

²³ RDOF Order, para. 45.

²⁴ See *Rural Digital Opportunity Fund Phase I Auction (Auction 904) Closes, Winning Bidders Announced*, Public Notice, AU Dkt. 20-34, WC Dkts. 19-126 & 10-90, (DA 20-1422), released December 7, 2020.

²⁵ 64,463 is the number of RDOF locations in Etheric's winning bid announced by the FCC in the Public Notice of 12/07/2020. However, in an Ex Parte filing of May 19, 2022, the applicant included a letter of support signed by an officer of a commercial credit firm which stated Etheric "plans to provide high-speed broadband service for up to 51,00 locations in California."

Footnote continued on next page.

comprising 25 counties. Moreover, absent additional financial surety to ensure the network will be built and operated as required by the FCC, the RDOF award of \$248,634,963 appears to be insufficient. Given these considerations, we deny Etheric's request for an ETC designation, at this time, for the following reasons:

1) Operational Capability

We find that Etheric is not operationally capable of scaling its business to build a network capable of providing voice and gigabit-capable service to 64,463 locations, in line with RDOF build requirements.²⁶ Most of Etheric's proposed buildout would be in rural counties.²⁷ Based on public information, we find the company has no current networks or subscribers in a majority of those counties.²⁸ Etheric's proposed buildout would therefore amount to a substantial increase over its present customer base. We find that this scale of increase is not feasible given the present size of the Etheric service area, its management, or its operating capabilities.

2) Financial Capability

The support letter gives no explanation for this difference of more than 13,000 locations. Staff believes a possible reason for this difference is a reduction in the winning bid locations for Etheric because of the FCC's post-auction assessment that tens of thousands of RDOF winning bid locations nationally were not actually eligible for the program. FCC staff sent letters to 197 winning bidders, including Etheric, on July 26, 2021, which listed the bidders' "census blocks covered by winning bids" in which concerns were raised about possible ineligible locations. The FCC staff letter to Etheric listed an estimated 464 such census blocks. *See: J. Engebretson (July 26, 2020) FCC Ready to Authorize 48 RDOF Winning Bidders, Releases List of Defaults, Telecompetitor; and: Letter of M. Janson, K. Monteith, G. McHenry, FCC to Etheric Communications LLC, July 26, 2021, linked from: Rural Digital Opportunity Fund Auction Support for 1,460 Winning Bids Ready to be Authorized; Public Notice, DA 21-909, Rel. July 26, 2021.*

²⁶ FCC RDOF Rules are summarized here: <https://www.fcc.gov/auction/904/factsheet>.

²⁷ Etheric's proposed RDOF network buildout may be seen and analyzed by area via the CPUC's RDOF Map: <https://www.broadbandmap.ca.gov/federal/funding/>

²⁸ Based on the company's website, staff estimates Etheric now operates in the 9 counties of Alameda, Contra Costa, Marin Monterey, San Benito, San Francisco, San Mateo, Santa Clara, and Santa Cruz Counties. (*See: <https://ethericnetworks.com/>.*)

We find that Etheric is not financially capable of building a network capable of providing voice and gigabit speed broadband to 64,463 locations. Etheric proposes to use a mix of optical fiber and fixed wireless technology to satisfy its RDOF build requirements to make broadband and voice services available to these new locations within the timeframe established by the RDOF rules. We note that, in an Ex Parte filing of May 19, 2022, Etheric submitted a letter of support dated May 11, 2022, from the Managing Director of the commercial credit subsidiary of the private equity firm Summit Partners. While the letter stated that the firm conducted due diligence to support Etheric's CPCN /ETC application before this Commission, it made no statement that a commercial credit facility or private equity financing was pledged to support either Etheric's proposed RDOF-subsidized project or the company in general. In fact, the letter's single footnote states, "While Summit is very excited about this opportunity, this letter is not, and cannot be relied upon by you or any third party as a binding commitment or other agreement to provide any financing or consummate the Facility."²⁹

3) Technical Capability

We find that Etheric is not technically capable of providing reliable voice and gigabit speed broadband services at low latency using mostly fixed wireless technology for its last mile access network. In its application to the CPUC, Etheric proposes to use a combination of licensed and unlicensed spectrum.

²⁹ See Ex Parte Communications by Etheric Communications, dated May 19, 2022. Ex Parte communications are not evidence that the Commission relies upon in reaching a determination. However, we note that Etheric's recent Ex Parte filing, which included a statement from Summit Partners, does not provide any indication that there is financial surety to guarantee any revenue shortfalls or unanticipated costs in Etheric's financial planning for its California RDOF network. In fact, Summit Partner's letter explicitly suggests that this is not the case.

Despite Etheric's assurance of its technical ability, fixed wireless technology generally depends on line-of-sight and can be particularly spectrum-constrained in unlicensed bands. An increase in users will require significant increases in base stations and antennas, as well as adding additional access points on residential property to support the minimum required broadband speeds. Building in mountainous, hilly, and forested rural areas will substantially increase the cost of the network to overcome the line-of-sight issue. Etheric's RDOF bid includes areas such as, among others, Inyo, Mono, and Humboldt counties. Deploying and providing gigabit broadband speeds in rural underserved areas using a fixed wireless network is challenging, costly and time consuming.³⁰

Furthermore, Etheric plans to customize delivery of gigabit service depending on the complexity of each location and may result in unplanned changes and affect performance and cost of the service.

4) Public Interest

Section 214(e)(2) of the Communications Act states that, "[u]pon request and consistent with the public interest, convenience, and necessity, the state commission may, in the case of an area served by a rural telephone company, and shall, in the case of all other areas, designate more than one common carrier as an eligible telecommunications carrier for a service area designated by the state commission" so long as the requesting carrier meets the requirements of Section 214(e)(1). We have reviewed Etheric's application and determined that it would not be in the public interest to approve their ETC designation pursuant to

³⁰ We are informed by a report published by the Benton Institute for Broadband & Society, "Fixed Wireless Technologies and Their Suitability for Broadband Delivery" by Andrew Afflerbach, Ph.D., P.E. CTC Technology & Energy, dated June 2022.

RDOF at this time. We have broad authority to review any ETC designation request on a case-by-case basis and grant or deny such designation after considering the local circumstances particular to each application. Based on this authority, we must take into account the ability of each applicant to carry out the RDOF build with its existing financial, technical, and operational expertise. Moving forward with an applicant that does not meet the RDOF buildout and service requirements would potentially lock-out federal and/or state funding for census geographies for years to those that are most in need of broadband access and would not be in the public interest.

13. Conclusions

13.1. Etheric Is Granted A CPCN

We conclude that the application conforms to our rules for certification as a competitive local exchange and interexchange carrier. Accordingly, we grant Etheric a CPCN to provide full facilities-based and resold competitive local exchange services in the service territory of AT&T California, Frontier California, Frontier Communications, and Consolidated Communications and resold interexchange services in California and broadband internet, and voice-over-internet service provider service, subject to compliance with the terms and conditions set forth in the Ordering Paragraphs.

The CPCN granted by this decision provides benefits and corresponding obligations to Etheric. Etheric receives authority to operate in the prescribed service territory, and this authority enables Etheric, 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.³¹ This

³¹ The California Public Utilities Code uses the term “telephone corporation.” Its counterpart in federal law is a “telecommunications carrier.”

authority also enables Etheric to obtain access to public rights-of-way subject to the CEQA requirements set forth in this decision.

In return, Etheric is obligated to comply with all Public Utilities Code provisions, Commission rules, GOs, and decisions applicable to telephone corporations providing approved services. The applicable statutes, rules, GOs, and decisions include, but are not limited to consumer protection rules, tariffing, and reporting requirements. Moreover, Etheric must 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 § 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."

13.2. Etheric Is Denied Eligible Telecommunications Carrier Status

For reasons discussed above, we decline to grant ETC status to Etheric. We have broad authority to review any ETC designation request on a case-by-case basis and grant or deny such designation after considering the local circumstances particular to each application. We have reviewed Etheric's application and determined that it would not be in the public interest to approve their ETC designation pursuant to RDOF at this time.

14. Request to File Under Seal

Pursuant to Rule 11.4 of the Commission's Rules of Practice and Procedure, Etheric filed a January 7, 2021 motion for leave to file Exhibits F, G, H, I, J, N and V1 to the application as confidential materials under seal. Etheric also filed an April 19, 2021 motion for leave to file Exhibits A, B, C, D and E to its

April 19 Response to the March 21, 2021 ALJ Ruling Requiring Supplemental Information. Etheric represents that the information in each of the exhibits is sensitive, and disclosure could place Etheric at an unfair business disadvantage. Having reviewed the exhibits, we agree that this material should be kept confidential for three years after the date of this decision, and grant the request for that period.

15. Categorization and Need for Hearings

In Resolution ALJ 176-3479, dated February 11, 2021, the Commission preliminarily categorized this application as ratesetting, and preliminarily determined that hearings were necessary. There were no protests to the application. On April 7, 2021, the assigned Commissioner issued a scoping memo stating that evidentiary hearings are not necessary.

16. Comments on Draft Decision

As provided by Rule 14.3 of the Commission's Rules of Practice and Procedure and Pub. Util. Code § 311(g)(1), the draft decision of the ALJ in this matter was mailed to the parties on _____. Comments were filed on _____.

17. Assignment of Proceeding

Genevieve Shiroma is the assigned Commissioner and Patricia B. Miles is the assigned ALJ in this proceeding.

Findings of Fact

1. Etheric has a minimum of \$100,000 of cash or cash equivalent that is reasonably liquid and readily available to meet its start-up expenses.
2. Etheric's financials demonstrate that its cash and assets are sufficient to post deposits which may be required by other telephone carriers should Etheric need to purchase services from other carriers in order to provide services.

3. Etheric has demonstrated that its management personnel possess sufficient experience, knowledge, and technical expertise to operate as a telecommunications provider.

4. Etheric meets the requirements to be treated as a NDIEC exempt from Pub. Util. Code §§ 816-830 and § 851 for the sole purpose of the transfer or encumbrance of utility assets to secure debt.

5. Etheric is eligible for exemption from tariffing requirements provided that Etheric complies with the consumer protection rules adopted in D.13-05-035 and D.98-08-031.

6. Etheric meets the Commission's minimum safety goals and expectations of competitive local exchange carriers.

7. Etheric provided a map of the location of its proposed service territory.

8. Etheric 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.

9. Etheric provided an estimate of its customer base and customer requirements for the first and fifth year of operation.

10. Pursuant to Rule 11.4, Etheric filed motions for leave to file confidential materials under seal.

11. On February 7, 2020, the FCC adopted the RDOF Order program to build broadband and voice capable networks in rural and unserved/underserved communities.

12. On December 7, 2020, the FCC issued a Public Notice announcing the winning bidders for the RDOF Phase I Auction 904. Etheric is among the 15 bidders that provisionally won RDOF awards in California.

13. Winning RDOF bidders must obtain an ETC designation in the state(s) where they seek support in order to receive federal funding.

14. Etheric's proposed buildout to provide voice and broadband service to 64,463 locations in line with RDOF build requirements is not feasible given the present size of the Etheric service area, its management or its operating capabilities.

15. Etheric's RDOF award of \$248,634,963 appears insufficient to construct and operate a telecommunications and broadband capable network serving up to 64,463 new locations within the state of California.

16. Granting an ETC designation to Etheric at this time is not in the public interest.

Conclusions of Law

1. Pursuant to Pub. Util. Code § 1001, the Commission has authority to determine whether Etheric has met requirements for issuance of a CPCN to operate as a local exchange carrier.

2. Etheric should be granted a CPCN to provide (i) full facilities-based and resold competitive local exchange services in the service territories of AT&T California, Frontier California, Frontier Communications, Consolidated Communications, (ii) full facilities-based and resold interexchange services in California, (iii) broadband internet and voice-over-internet service\subject to the terms and conditions set forth in the Ordering Paragraphs.

3. Etheric should be allowed to use the Energy Division 21-day CEQA exemption process.

4. Etheric is a telephone corporation and a public utility subject to the Commission's jurisdiction as defined in Pub. Util. Code § 234(a) and § 216(a).

5. Once granted a CPCN, Etheric should be subject to the applicable Commission rules, decisions, GOs, and statutes that pertain to California public utilities.
6. Etheric should be granted an exemption from the requirement to file tariffs at this time.
7. Should Etheric decide to offer services that require a tariff or schedule in the future, Etheric must submit proposed tariffs and/or user guides to the Communications Division via Tier 2 Advice Letters using the GO 96-B Advice Letter process before initiation of service.
8. Etheric's motions to file its Exhibits F,G,H, I, J, N and V1 to the Application, and Exhibits A, B, C, D and E to its April 19 Response to the March 21, 2021 ALJ Ruling should be granted pursuant to the Ordering Paragraphs herein.
9. Etheric 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.
10. Etheric's request for a limited exemption from Pub. Util. Code § 851 regarding the transfer or encumbrance of utility assets to secure debt should be granted.
11. Etheric should obtain a performance bond of at least \$25,000 in accordance with D.13-05-035 and submit it to the Commission within five days of accepting CPCN authority.
12. The Commission has broad authority to grant or deny requests for designation of ETC status, pursuant to Resolution T-17002, and in accordance with the federal delegation of authority set forth in the Communications Act in 47 U.S.C. § 214.

13. The Commission has authority to evaluate whether it is in the public interest to deny an ETC designation to Etheric after taking into account deficiencies within its existing financial, technical and operational expertise that would affect Etheric's ability to carry out the RDOF build.

14. Etheric's request for ETC designation should be denied.

O R D E R

IT IS ORDERED that:

1. A certificate of public convenience and necessity is granted to Etheric Communications, LLC to operate as a non-dominant interexchange carrier and to operate as a competitive local exchange carrier to provide (i) full facilities-based and resold competitive local exchange services in the territories of Pacific Bell Telephone Company d/b/a AT&T California, Frontier California Inc., Citizens Telecommunications Company of California, Inc. d/b/a/ Frontier Communications of California, and Consolidated Communications of California Company, (ii) full facilities-based and resold interexchange services in California, and (iii) broadband internet and voice-over-internet service in California, subject to the terms and conditions in this decision.

2. The request of Etheric Communications, LLC to be designated as an Eligible Telecommunications Carrier is denied.

3. Etheric Communications, LLC must file, in this docket, a written acceptance of the certificate of public convenience and necessity 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. If the applicant requires additional time to commence service, applicant must submit a request for an

extension of time to comply with a Commission decision by e-mail or letter to the Executive Director at least five business days before the existing date for compliance pursuant to Rule 16.6 of the Commission's Rules of Practice and Procedure.

5. Etheric Communications LLC must notify the Director of the Communications Division of the date that competitive 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. Etheric Communications, LLC 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, Etheric Communications, LLC 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 of each year, with a copy of the executed bond.

7. Etheric Communications, 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 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, Etheric Communications, LLC is subject to the Consumer Protection Rules contained in General Order (GO)168, and all applicable Commission rules, decisions, GOs, and statutes that pertain to California public utilities.

9. Etheric Communications, LLC must report intrastate revenue and pay the resulting public purpose program surcharges specified in Attachment B monthly, through the Commission's proprietary Telecommunications and User Fee Filing System (TUFFS) even if there are no revenues (\$0) and resulting surcharges to report and remit. Communications Division must issue a compliance directive to Etheric Communications, LLC, providing directions for reporting and remitting surcharges and the User Fee through the TUFFS system.

10. Prior to initiating service, Etheric Communications, LLC must: (a) provide the Commission's Consumer Affairs Branch with the name(s), address(es), e-mail address, 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, and (b) must provide the Commission's Communications Division with the name(s), address(es), e-mail address, and telephone number(s) of its designated regulatory/official contact person(s). This information must be provided electronically, using the "Contact Information Request Update" form at <https://www.cpuc.ca.gov/industries-and-topics/internet-and-phone> under Service Provider Requirements and Programs. This information must be updated if the name or telephone number changes, or at least annually by June 1 of each calendar year.

11. Etheric Communications, LLC must submit, on a calendar year basis: (a) an affiliate transaction report to the Director of the Communications Division,

by e-mail to cdcompliance@cpuc.ca.gov, in compliance with Decision 93-02-019 using the form contained in Attachment D, and annual report to the Director of the Communications Division, by e-mail to cdcompliance@cpuc.ca.gov, in compliance with General Order 104-A with the information contained in Attachment C to this decision.

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

13. Should Etheric Communications, LLC engage in full facilities-based construction activities and believes that these activities are exempt from California Environmental Quality Act (CEQA), Etheric Communications, LLC shall first apply to the Commission's Energy Division staff for a determination of exemption from CEQA 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 CEQA exemption(s) claimed to apply to the proposed project; and
 - e. Documentation supporting the finding of exemption from CEQA.
 - f. The Energy Division will then review the submittal and notify Etheric Communications, LLC of either its approval or its denial of the claim for exemption from CEQA review within 21 days from the time that Etheric Communication, LLC's submittal is complete.

14. If the Energy Division approves Etheric Communications, LLC's claimed California Environmental Quality Act (CEQA) 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 does not approve the claimed exemption, the staff shall issue to Etheric Communications, LLC a letter which states the specific reasons that the claimed CEQA exemptions do not apply to the proposed project. Upon disapproval, Etheric Communications, LLC 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.

15. Etheric Communications, LLC is granted an exemption from the requirement to file tariffs at this time. In the future, if Etheric Communications, LLC decides to offer services that require a tariff, such as basic service,

Etheric Communications, LLC must submit proposed tariffs and/or user guides to the Communications Division via Tier 2 Advice Letters using the General Order 96-B Advice Letter process 30 days before initiation of service.

16. Etheric Communications, LLC's request for a limited exemption from Public Utilities Code § 851 regarding the transfer or encumbrance of utility assets to secure debt is granted.

17. Etheric Communications, LLC's motions to file under seal its Exhibits F,G,H, I, J, N and V1 to the Application, and Exhibits A, B, C, D and E to its April 19 Response to the March 21, 2021 Administrative Law Judge (ALJ) Ruling are 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 ALJ ruling. If Etheric Communications, LLC believes that it is necessary for this information to remain under seal for longer than three years, it may file a new motion showing good cause for extending this order by no later than 30 days before the expiration of this order.

18. Application 21-01-002 is closed.

This order is effective today.

Dated _____, at San Francisco, California.

ATTACHMENT A

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, carriers authorized to operate in California shall report intrastate revenue and remit the resulting public purpose program surcharges specified as follows monthly, through the Commission's proprietary Telecommunications and User Fee Filing System (TUFFS) even if there is no intrastate revenue (\$0) and resulting surcharges to report and remit. Communications Division shall issue a compliance directive to the carrier's primary contact, providing directions for reporting and remitting surcharges and the User Fee through TUFFS.

- a. The Universal Lifeline Telephone Service Trust
Administrative Committee Fund (Pub. Util. Code § 277);
- 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 § 275.6);
D.96-10-066, at 3-4, App. B, Rule 1.C);
- d. The California High-Cost Fund-B (Pub. Util. Code § 276.5),
D.96-10-066, at 191, App. B, Rule 6.F.; D.07-12-054);
- e. The California Advanced Services Fund (Pub. Util.
Code § 281; D.07-12-054);
- f. The California Teleconnect Fund (Pub. Util. Code § 280;
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 (d/b/a 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

<https://www.cpuc.ca.gov/industries-and-topics/internet-and-phone/telecommunications-surcharges-and-user-fees/surcharge-rates>.

- i. Carriers must report and remit CPUC telephone program surcharges online using the CPUC TUFFS. Information and instructions for online reporting and payment of surcharges are available at <https://www.cpuc.ca.gov/industries-and-topics/internet-and-phone/telecommunications-surcharges-and-user-fees>. To request a user ID and password for TUFFS online filing and for questions, please e-mail Telcosurcharge@cpuc.ca.gov.
- ii. Carriers must submit and pay the PUC User Fee (*see* Item 3.g above) quarterly, through the Commission's TUFFS system within 15 days after the end of each calendar quarter (December 31, March 31, June 30 and September 30) and by the 30th day after the 15-day reporting and payment requirement to avoid a one-time 25% penalty. For questions regarding the User Fee, please e-mail userfees@cpuc.ca.gov.

4. If Applicant is a competitive local exchange carrier, the effectiveness of its future competitive local exchange carrier 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, the effectiveness of its future non-dominant interexchange carrier 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), e-mail address(es) and telephone number(s) of its designated contact person(s) for purposes of resolving consumer complaints. This information must be provided electronically, using the "Contact Information Request Update" form found at <https://www.cpuc.ca.gov/industries-and-topics/internet-and-phone> under Service Provider Requirements and Programs. This information must be updated if the name(s), address(es), and telephone number(s) change, or at least annually by June 1 of each calendar year.

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 "Contact Information Request Update" form found at <https://www.cpuc.ca.gov/industries-and-topics/internet-and-phone> under Service Provider Requirements and Programs. This information must be updated if the name(s), address(es), and telephone number(s) change, or at least annually by June 1 of each calendar year.

12. Applicant must notify the Director of the Communications Division, in writing submitted by e-mail 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 e-mail 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 issue a citation pursuant to Resolution T-17601. Failure to comply with the issued citation or timely appeal the citation may result in a revocation of the company's operating authority and/or a referral to the CPUC Consumer Protection and Enforcement Division (CPED) for enforcement action, which could result in additional fines, penalties, or other sanctions.

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

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

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 concern local permitting agencies no later than 30 days from the date of this order.

(END OF ATTACHMENT B)

**ATTACHMENT C
ANNUAL REPORT**

In addition to the annual reports requirement pursuant to General Order 104-A, submit the following information electronically via e-mail to cdcompliance@cpuc.ca.gov 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.

1. Required information: 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.

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For any questions concerning this report, please send an e-mail to cdcompliance@cpuc.ca.gov with a subject line that includes: "CD Annual Reports."

(END OF ATTACHMENT C)

ATTACHMENT D
CALENDAR YEAR AFFILIATE TRANSACTION REPORT

Submit the following information electronically via e-mail to cdcompliance@cpuc.ca.gov no later than May 1st of the year following the calendar year for which the annual affiliate transaction 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.

For any questions concerning this report, please send an e-mail to cdcompliance@cpuca.ca.gov with a subject line that includes: "CD Annual Reports."

(END OF ATTACHMENT D)