



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

FILED

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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
(Filed January 5, 2021)

**EX PARTE COMMUNICATION
OF ETHERIC COMMUNICATIONS, LLC**

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November 23, 2022

Pursuant to Rule 8.4 of the Commission's Rules of Practice and Procedure Etheric Communications, LLC ("Etheric") hereby gives notice of a meeting with Inna Vinogradov, advisor to Commissioner Rechtschaffen via WebEx on November 21 at 10 a.m. Andrew Brickweg (Community and Government Outreach Director), Cliff Beek (Chief Financial Officer), and Anita Taff-Rice (Counsel) were in attendance.

Etheric discussed its grave concerns that the entirety of the record has not been taken into account. The clean version of the Revised Proposed Decision circulated on November 4, 2022 makes no changes from the original version issued on October 18, 2022 despite Administrative Law Judge Miles ruling that the record be re-opened and voluminous evidence submitted by Etheric on September 22, October 3 and October 4, 2022 being admitted into the record. Etheric stated that the Commission's rules and due process require that decisions must be based on the entire record.

Etheric noted that formal applications are typically granted in cases where, as here, there has been no protest and the Commission has concluded there are no disputed facts. Nonetheless, Commission staff are apparently recommending denying Etheric's request for Eligible Telecommunications Carrier ("ETC") designation despite the absence of any evidence in the record, or any evidence referenced in the revised Proposed Decision that contradicts or calls into question Etheric's affirmative showing that it meets the qualifications to operate as an ETC. Etheric noted that a formal application requires that an evidentiary record be compiled and that the Commission's decision must be based on that record, not speculation or extra-record information. Etheric also noted that the revised Proposed Decision appears to base the denial on speculation about its ability to carry out its RDOF award, and not whether Etheric meets the FCC and CPUC requirements for ETC designation.

Etheric's Fixed Wireless Cost Is Consistent With \$4,500 Set In D.22-11-013

Etheric discussed new information that weighs strongly in favor of granting its request for ETC designation. The revised Proposed Decision questions whether the \$248 million RDOF award is sufficient to cover the cost of the RDOF network. Etheric discussed D.22-11-013 approved on Nov. 17, 2022 in which the Commission established that a reasonable cost per household for fixed wireless projects is \$4,500. Evidence in Etheric's cost model that was admitted into the record after the record was reopened on Nov. 4 demonstrates that Etheric's average cost per household for the fixed wireless portion of its RDOF network is \$3,660. Thus, Etheric's cost estimate is extremely close to the Commission's own cost estimates for fixed wireless. Even if the per household cost of \$4,500 were used, the total cost for Etheric's 60,038 fixed wireless RDOF locations would cost \$270 million, and the evidence in the record shows that the tens of millions committed by Summit Partners will close the gap between its \$248 million RDOF award and the cost to construct the fixed wireless and fiber portions of the RDOF network.

Etheric also explained that the cost of the fiber portion of its RDOF network also falls within the amount of capital available from the RDOF award combined with Summit's capital. Etheric will install fiber to the home in 11 percent of locations in its RDOF service area and will use dark fiber from other providers as backbone facilities for traffic originating from fixed wireless locations.

Etheric's Speed Test Meets FCC's Requirement for 1 Gigabit Service

Etheric submitted a speed test into the record showing that its first Gigabit network installation in San Juan Bautista, California has speeds of 858.65 Mbps. While that speed test didn't indicate 1 Gigabit, Etheric noted that the FCC's 2018 Connect America Fund order does not require 1 Gigabit throughput 100 percent of the time. Rather, the FCC requires that

the throughput meet 80 percent of upload and download requirements with 80 percent of the test measurements submitted to the FCC. Therefore, the record demonstrates that Etheric's current Gigabit fixed wireless network meets the FCC's requirements.

Etheric's RDOF Project Will Not Block BEAD Funds

Etheric noted that concerns expressed in the revised Proposed Decision that granting ETC status might block other funding, such as BEAD, is incorrect. It is Etheric's understanding that BEAD funding is available for areas designated as unserved or underserved on the FCC's broadband map. The BEAD Notice of Funding Opportunity states that an RDOF area would be deemed ineligible for BEAD funding only after the FCC has issued a public notice that it is ready to authorize or has authorized funding. Based on this rule, Etheric's pending RDOF award has not disqualified its RDOF service area from BEAD funding in the FCC's Broadband Map that was issued on Nov. 18, 2022.

An ETC Denial Harms the Public Interest

During the meeting, Etheric discussed why a denial of its ETC application is not in the public interest. If ETC is denied, the FCC will deny the RDOF award, which will deprive Californians \$248 million in federal funds to California to construct broadband in unserved tribal, rural and low-income areas. Etheric noted that the Bishop Paiute Tribe and its telecommunications consultant recently submitted an ex parte letter stating that they need and deserve broadband service, which will be delayed for years if the Commission causes Etheric to lose the RDOF award. Additionally, a denial of Etheric's ETC designation undermines the Commission's Environmental and Social Justice goals because it will deprive unserved Californians in tribal, low income and rural areas access to the same advance telecommunications services that are available to Commission staff and other Californians in urban areas.

Etheric noted the extremely flawed process which has treated its ETC request more like an informal advice letter, for which no formal record is compiled and no formal process is required. Etheric stressed that any decision denying ETC designation based on speculation or negative evidence not disclosed to Etheric or referenced in the revised Proposed Decision would be a serious denial of due process.

Signed and dated November 23, 2022 at Walnut Creek, CA.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Anita Taff-Rice", written over a horizontal line.

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