

ALJ/MMV/jds 09/29/2023



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09/29/23

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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of O2 Fiber, LLC for a Certificate of Public Convenience and Necessity to provide full facilities-based and resold competitive local exchange and interexchange services.

Application 23-04-001

**ADMINISTRATIVE LAW JUDGE'S RULING REQUIRING APPLICANT TO FILE
A RESPONSE TO INFORMATION REQUEST WITHIN SEVEN DAYS**

On April 3, 2023, O2 Fiber, LLC (O2 Fiber or Applicant) filed Application (A.) 23-04-001 for a Certificate of Public Convenience and Necessity (CPCN) to provide resold full facilities and competitive local exchange and interexchange, in the service territories of AT&T California, Frontier California, Inc., Telecommunications Company of California, Inc. d/b/a Frontier Communications of California and Consolidated Communications of California Company pursuant to Public Utilities (Pub. Util.) Code Section 1001.

Upon review of A.23-04-001, the Commission requires additional information to process this Application, including the following:

With respect to the Description of the Proposed Construction [Rule 3.1(a)] at No. 6, Paragraph 2, Page 5, in A.23-04-001, the Applicant stated in pertinent part, "...Applicant 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 Applicant has identified locations for construction of network facilities. Whenever Applicant wishes to obtain review

by the Energy Division staff, **Exhibit C** sets forth the 21-day expedited review process used by other full facilities-based carriers.”

In Rule 2.4(b) Proponent’s Environmental Assessment, at **Exhibit D**, Applicant states in pertinent part, “...Applicant intends to provide infrastructure facilities (i.e., fiber-based network) in California, which Applicant plans to construct to customer locations. . . Applicant expects that outside plant construction ordinarily will be small in scale, consisting of construction of relatively short conduit routes, installations of poles or conduit, and installation or construction of other small above-ground facilities. Further, such construction generally will occur in existing roadways or other previously developed and disturbed rights-of-way.”

Pursuant to the California Environmental Quality Act (CEQA) and Rule 2.4 of the Commission’s Rules of Practice and Procedure (Rules), the Commission acts as the designated lead agency to consider the environmental consequences of projects that are subject to the Commission’s approval to determine any potential environmental impacts, to avoid adverse effects, and ensure that any affected environmental is restored or otherwise mitigated to the fullest extent possible under CEQA.

In addition to providing the Commission with a description of its proposed construction activities in its Proponent’s Environmental Assessment, the Applicant must indicate the class exemption(s) referenced directly below that Applicant contends exempts it from CEQA.

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

1. 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. (California Code of Regulations Title 14, Section 15301.)
2. Class 2 Exemption: replacement or reconstruction of existing structures and facilities where the new structure will be located on the same site as the structure replaced and will have substantially the same purpose and capacity as the structure replaced. (14 CCR, §15302.)
3. 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 small new facilities or utility extensions. (14 CCR, §15303.)
4. Class 4 Exemption: minor public or private alterations in the condition of land, water, and/or vegetation which do not involve the removal of healthy, mature, scenic trees except for forestry and agricultural purposes. Among other things, this includes filling of earth into previously excavated land with material compatible with the natural features of the site, and minor trenching and backfilling where the surface is restored (14 CCR, §15304).
5. Class 32(a-e) Exemption: consists of projects characterized as in-fill development meeting the following conditions:
 - a. The project is consistent with applicable general plan designation, general plan policies, and applicable zoning designation and regulations;
 - b. The proposed development occurs within city limits on a project site of no more than five acres substantially surrounded by urban uses;
 - c. The project site has no value, as habitat for endangered, rare or threatened species;

- d. Approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality; and;
- e. The site can be adequately served by all required utilities and public services. (14 CCR, §15332.)

Pub. Res. Code Section 21080.51, which provides an exemption from CEQA for projects that consist of linear broadband deployment that meet certain requirements.

REQUEST 1: If Applicant contends that it is exempt from CEQA, the Applicant shall indicate the class exemption(s) as referenced above that exempts it from CEQA and explain why its proposed construction activities falls under the selected class exemption(s).

If there are questions regarding the required information, Applicant may contact the Assigned Administrative Law Judge, Margery L. Melvin, at Margery.Melvin@cpuc.ca.gov.

Within seven days of the date of this ruling, the Applicant must provide all the necessary clarifications and requests for additional information discussed above. Failure to provide the requested information may result in dismissal of the Application for failure to prosecute. Applicant's filing must be titled, "Response to Administrative Law Judge Inquiry," otherwise a new protest period will be triggered.

IT IS SO RULED.

Dated September 29, 2023, at San Francisco, California.

/s/ MARGERY L. MELVIN

Margery L. Melvin
Administrative Law Judge