

Decision \_\_\_\_\_

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

Application of Velocity Fiber, LLC for a  
Certificate of Public Convenience and  
Necessity to Provide Full Facilities-Based  
and Resold Competitive Local Exchange  
and Interexchange Services Throughout  
the State of California

Application 20-01-014

**DECISION GRANTING VELOCITY FIBER, LLC A CERTIFICATE OF PUBLIC  
CONVENIENCE AND NECESSITY TO PROVIDE FULL FACILITIES-BASED AND  
RESOLD COMPETITIVE LOCAL EXCHANGE SERVICE AND FULL  
FACILITIES-BASED RESOLD INTEREXCHANGE SERVICE**

## TABLE OF CONTENTS

Title	Page
DECISION GRANTING VELOCITY FIBER, LLC A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO PROVIDE FULL FACILITIES-BASED AND RESOLD COMPETITIVE LOCAL EXCHANGE SERVICE AND FULL FACILITIES-BASED RESOLD INTEREXCHANGE SERVICE .....	2
Summary .....	2
1. Background .....	2
2. Jurisdiction .....	3
3. California Environmental Quality Act .....	4
4. Financial Qualifications .....	9
5. Technical Qualifications and Legal Matters .....	10
6. Tariffs .....	11
7. Map of Service Territory .....	11
8. Rule 3.1(i) Statement .....	12
9. Expected Customer Base .....	12
10. Safety Considerations .....	12
11. Conclusion .....	13
12. Motions to File Under Seal .....	14
13. Categorization and Need for Hearings .....	14
14. Comments on Draft Decision .....	15
15. Assignment of Proceeding .....	15
Findings of Fact .....	15
Conclusions of Law .....	18
ORDER .....	19
 <b>ATTACHMENT A</b>	
<b>ATTACHMENT B</b>	
<b>ATTACHMENT C</b>	
<b>ATTACHMENT D</b>	

**DECISION GRANTING VELOCITY FIBER, LLC A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO PROVIDE FULL FACILITIES-BASED AND RESOLD COMPETITIVE LOCAL EXCHANGE SERVICE AND FULL FACILITIES-BASED RESOLD INTEREXCHANGE SERVICE**

**Summary**

In this decision, we grant Velocity Fiber, LLC, a certificate of public convenience and necessity pursuant to Public Utilities Code Section 1001 to provide full facilities-based and resold competitive local exchange services and full facilities-based interexchange services in California subject to the terms and conditions set forth in the Ordering Paragraphs.

This proceeding is closed.

**1. Background**

On January 31, 2020, Velocity Fiber, LLC, (Velocity), a Kansas limited liability company qualified to do business in California, filed an application with the California Public Utilities Commission (Commission) for a certificate of public convenience and necessity (CPCN). An Administrative Law Judge's (ALJ) Ruling (Ruling) filed on March 18, 2020 directed Velocity to provide additional information regarding its application. On April 9, 2020, Velocity filed its response to the Ruling that contained the additional information requested by the Commission and clarified that Velocity proposes to provide full facilities-based and resold competitive local exchange services in the service territories in California of Pacific Bell Telephone Company doing business as AT&T California, Frontier California, Inc., Citizens Telecommunications Company of California, Inc., Frontier Communications of the Southwest, Inc., and Consolidated Communications of California Company, and full facilities-based interexchange services throughout California.<sup>1</sup>

<sup>1</sup> Velocity's January 31, 2020 Application as supplemented by its April 9, 2020 response to the Ruling is referred to in this decision as the Application.

In its Application, Velocity proposes to construct aerial and underground fiber optic wide area networks for businesses, school districts, and other governmental entities. Velocity proposes to build, own, and operate those networks and lease them to customers for a fixed term.

Velocity's principal place of business is located at 13430 West 98<sup>th</sup> Street, Lenexa, Kansas 66215.

## **2. Jurisdiction**

Under Public Utilities (Pub. Util.) Code Section 1001, a telephone corporation shall obtain a certificate of public convenience and necessity from the Commission before beginning construction of any line, plant, or system. A "telephone corporation" is defined in Pub. Util. Code Section 234(a) as "every corporation or person owning, controlling, operating, or managing any telephone line for compensation within this state." A telephone corporation where the service is performed for the public or any portion of the public is a "public utility" under Pub. Util. Section 216(a).

In its Application, Velocity proposes to construct, own, and operate fiber optic networks and seeks authority to operate as a provider of full facilities-based and resold competitive local exchange and interexchange services under Pub. Util. Code Section 1001 and the Rules of Practice and Procedure of the Commission. Therefore, Velocity is a telephone corporation and a public utility, and the Commission has jurisdiction regarding Velocity's Application.

### 3. California Environmental Quality Act

The California Environmental Quality Act (CEQA)<sup>2</sup> and Rule 2.4 of the Commission's Rules of Practice and Procedure<sup>3</sup> require that the Commission examine 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.

Velocity's Application states that its proposed construction activities will include the installation of fiber and related facilities and electronics in public rights-of-way. Where there are no existing available conduits or other suitable facilities in place, Velocity will install its own conduits and other necessary facilities in public rights-of-way and on existing utility easements or utility poles. These construction activities may, depending on the location and the nature of the facilities, require trenching, micro-trenching, or boring. In addition, Velocity may install facilities in these areas, including small structures, vaults, hand holes, poles, small cabinets, and associated facilities and equipment. Velocity's Application further states that these activities will take place in areas generally along public roads and streets or existing utility rights-of-way where ground-disturbing construction has previously occurred.

Velocity contends that these construction activities fall within one or more of the following categorical exemptions from CEQA, and therefore neither an Environmental Impact Report nor a Negative Declaration is required:

- Class 3 Exemption: construction and location of limited numbers of new, small facilities or structures and installation of small new equipment and facilities in small structures, including water main, sewage, electrical, gas

<sup>2</sup> Public Resources Code Section 21000 *et seq.*

<sup>3</sup> The Commission's Rules of Practice and Procedure are in Title 20, California Code of Regulations (CCR), Division 1, Chapter 1. In this decision, any reference to a Rule shall be to a Rule in the Commission's Rules of Practice and Procedure.

- and other utility extensions of reasonable length to serve such construction.<sup>4</sup>
- Class 4 Exemption: minor public or private alterations in the condition of land, water, and/or vegetation which do not involve removal of healthy, mature, scenic trees except for forestry and agricultural purposes, including the 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.<sup>5</sup>
  - Class 32 Exemption: in-fill development (a) consistent with the applicable general plan designation and all applicable general plan policies and applicable zoning designation and regulations, (b) that occurs within city limits on a project site of no more than five acres substantially surrounded by urban uses, (c) for a project site that has no value as habitat for endangered, rare or threatened species, (d) that would not result in significant effects relating to traffic, noise, air quality, or water quality, and (e) for a site that can be adequately served by all required utilities and public services.<sup>6</sup>

Velocity's proposed activities include construction of small facilities and utility extensions that it contends fall within the Class 3 exemption. However, Velocity does not yet have any customer agreements in California, and therefore it does not yet know where its California customers will be located and cannot identify where it will place facilities in order to provide its services. As a result, Velocity has not proposed any specific construction in its Application. The new construction activities contemplated by Velocity in the event it enters into customer agreements are similar to the activities undertaken by other carriers that the Commission has decided are categorically exempt from CEQA.<sup>7</sup>

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<sup>4</sup> 14 CCR Section 15303.

<sup>5</sup> 14 CCR Section 15304.

<sup>6</sup> 14 CCR Section 15332.

<sup>7</sup> See, e.g., Decision (D.) 06-04-063 (*ClearLinx Network Corporation*); D.06-04-067 (*CA-CLEC LLC*).

Velocity requests approval to utilize an expedited review procedure of its projects once it is aware of a specific site in which it plans construction. The proposed procedure tracks the expedited review procedure that we have approved for other carriers. This procedure expedites CEQA review and is appropriate for the construction activities proposed here that are likely to be categorically exempt. Although the review process is expedited, the Commission will examine the information on a specific project to confirm that it is categorically exempt from CEQA or to determine that further environmental review is required. At the same time, this proposed CEQA review process will enable Velocity to undertake construction of CEQA-exempt projects in an efficient manner without experiencing delays caused by an unnecessarily protracted CEQA review.

The following procedure, which is similar to the procedure approved for other carriers, will be used to obtain Commission approval of Velocity's claimed CEQA exemptions for proposed construction projects:

1. Velocity will provide the Commission's Energy Division with:
  - (a) 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.
  - (b) A description of the environmental setting, including at a minimum:
    - Cultural, historical, and paleontological resources;
    - Biological resources; and
    - Current land use and zoning.

- (c) A construction workplan, including:
    - 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.
  - (d) A statement of the CEQA exemption(s) applicable to the proposed project; and
  - (e) Documentation and factual evidence sufficient to support a finding that the claimed exemption(s) is (are) applicable.
2. The Energy Division will review Velocity's submission for the proposed project to confirm that the claimed exemption(s) from CEQA is (are) applicable.
  3. Within 21 days from the date that Velocity's submittal is complete, the Energy Division will issue either:
    - (a) A Notice to Proceed (NTP) and file a Notice of Exemption with the State Clearinghouse, Office of Planning and Research; or
    - (b) A letter of denial stating the specific reasons why the claimed exemption(s) do not apply to the proposed project.

The Commission has reviewed Velocity's Application and finds that:

1. Velocity's proposed facilities-based project activities are limited;
2. These activities would in almost all circumstances be very likely to qualify for an exemption from CEQA; and



3. The proposed process for reviewing the applicability of CEQA exemptions to Velocity's facilities-based projects is not only adequate for the Commission's purposes as the CEQA Lead Agency but is also in the public interest because it enables Velocity to respond in a timely manner to requests for service without the delay or burden of a full CEQA review when that review is unnecessary.

Therefore, the Commission approves Velocity's proposed process for Commission review of claimed CEQA exemptions for construction projects undertaken pursuant to Velocity's full facilities-based authority based upon 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 Velocity's claimed CEQA exemption(s) and issues a letter of denial to Velocity, Velocity must either redesign 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.

Velocity shall not perform any full facilities-based construction activities without first obtaining a NTP from the Energy Division or authorization by the Commission after the requisite environmental review.

The Commission has previously determined that the public convenience and necessity require that competition be allowed in the provision of competitive local exchange service.<sup>8</sup> Granting this Application will benefit the public interest by expanding the availability of technologically advanced telecommunications services in California.

#### **4. Financial Qualifications**

<sup>8</sup> Rulemaking (R.) 95-04-043/Investigation (I.) 95-04-044.

To be granted a CPCN, an applicant for authority to provide full facilities-based and resold local exchange and interexchange services must demonstrate that it has a minimum of \$100,000 in cash or cash equivalent that is reasonably liquid and readily available to meet the applicant's start-up expenses.<sup>9</sup> An applicant must also demonstrate that it has sufficient additional resources to cover all deposits required by local exchange carriers and/or interexchange carriers in order to provide the proposed service.<sup>10</sup> In its Application, Velocity represented that it has a minimum of \$100,000 in cash or cash equivalent to fund its start-up expenses, submitted an irrevocable guarantee executed by its owner and Chief Executive Officer unconditionally guaranteeing Velocity's accounts payable for one year following Velocity's certification, and represented that it does not anticipate being required to provide deposits to local exchange carriers or interexchange carriers. Based upon those submissions, Velocity has demonstrated that it has sufficient funds to meet its start-up expenses and therefore has fulfilled these financial requirements.

<sup>9</sup> The financial requirement for Competitive Local Exchange Carriers (CLECs) is contained in D.95-12-056, Appendix C. The financial requirement for Non-Dominant Interexchange Carriers (NDIECs) is contained in D.91-10-041.

<sup>10</sup> The requirement for CLCs to demonstrate that they have additional financial resources to meet any deposits required by underlying LECs and/or IECs is set forth in D.95-12-056, Appendix C. For NDIECs, the requirement is found in D.93-05-010.

## 5. Technical Qualifications and Legal Matters

To be granted a CPCN for authority to provide local exchange and interexchange services, an applicant must make a reasonable showing of managerial and technical expertise in telecommunications services.<sup>11</sup> Velocity supplied management biographical information in its Application that demonstrated that it has sufficient expertise and training to operate as a telecommunications provider.

In its Application, Velocity affirmed that neither it nor any of its affiliates, officers, directors, partners, agents, or owners (directly or indirectly) of more than 10 percent of Velocity or anyone acting in a management capacity for Velocity:

- held one of those positions with a company that filed for bankruptcy,
- had been personally found liable or held one of those positions with a company that had been found liable for fraud, dishonesty, failure to disclose, or misrepresentations to consumers or others,
- had been convicted of a felony,
- had been the subject of a criminal referral by a judge or public agency,
- had a telecommunications license or operating authority denied, suspended, revoked, or limited in any jurisdiction,
- had personally entered into a settlement or held one of those positions with a company that had entered into a settlement of criminal or civil claims involving violations of sections 17000 *et seq.* of the California Business and Professions Code or of any other statute, regulation, or decisional law relating to fraud, dishonesty, failure to disclose, or misrepresentations to consumers or others,
- had been found to have violated any statute, law, or rule pertaining to public utilities or other regulated industries,
- had entered into any settlement agreements or made any voluntary payments or agreed to any other type of

<sup>11</sup> D.95-12-056 at Appendix C, Rule 4.A.

- monetary forfeitures in resolution of any action by any regulatory body, agency, or attorney general, or
- is being or has been investigated by the Federal Communications Commission or any law enforcement or regulatory agency for failure to comply with any law, rule, or order.<sup>12</sup>

Based thereon, the Commission finds that Velocity has satisfied the requirements regarding managerial and technical qualifications and legal matters necessary for approval of its Application.

## **6. Tariffs**

Velocity does not intend to provide services for which the Commission requires the filing of a tariff. Therefore, the requirement for filing a tariff is waived provided that Velocity complies with the consumer protection rules identified in D.98-08-031. In the future, Velocity shall file a tariff if it determines that it will provide services that require a tariff. If a tariff is required, Velocity will offer its service on a non-discriminatory basis and at competitive rates, but it will do so through individual case basis contracts.

## **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 territory it proposes to serve.<sup>13</sup> In its Application, Velocity provided a map of the location of its proposed service territory that complies with this requirement.

<sup>12</sup> These certifications are required by D.13-05-035, Ordering Paragraph 14.

<sup>13</sup> D.95-12--056 at Appendix C, Rule 4.F.

**8. Rule 3.1(i) Statement**

Rule 3.1(i) requires that an applicant under Pub. Util. Code Section 1001 provide a statement regarding General Order (GO) 104-A, Section 2 regarding the designation of matters included in an annual report. Velocity states that it is not publicly held and therefore does not have an annual report available. Therefore, Velocity does not have any reporting requirement regarding this Rule. In the future, Velocity must file all reports required of it by the Commission.

**9. Expected Customer Base**

Rule 3.1(j) requires an applicant to estimate its customers after its first year and fifth year of operations in California. Velocity estimates that it will have one to four customers at the end of its first year of operations in California and 25 customers at the end of its fifth year of operations in California. Therefore, Velocity has satisfied 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 regarding Velocity's Application. The Commission is satisfied that Velocity will meet the Commission's minimum safety goals and expectations of CLECs because (1) Velocity has taken steps to meet the financial requirements as set forth in this decision for a full facilities-based CLEC, and (2) Velocity is a public utility that is required under Pub. Util. Code Section 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. Conclusion

Velocity's Application satisfies all requirements for certification as a competitive local exchange and interexchange carrier. Accordingly, the Commission grants Velocity a CPCN to provide full facilities-based and resold local exchange telecommunications service in the service territories in California set forth in this decision and interexchange service throughout California subject to the terms and conditions set forth in the Ordering Paragraphs.

The CPCN granted by this decision provides benefits to Velocity and corresponding obligations. Velocity receives authority to operate in the prescribed service territories, request interconnection with other telecommunications carriers in accordance with 47 U.S.C. Section 251, and access public rights-of-way in California as set forth in D.98-10-058 and approved in *T-Mobile West LLC v. City and County of San Francisco* (2019) 6 Cal.5<sup>th</sup> 1107 subject to the CEQA requirements set forth in this decision.

In return, Velocity is obligated to comply with all applicable laws and Commission Rules, GOs, and decisions applicable to telephone corporations providing approved services, including, without limitation, consumer protection rules, tariffing, and reporting requirements. Moreover, Velocity is obligated to pay all Commission-prescribed user fees and public purpose program surcharges as set forth in Appendix B of this decision, comply with CEQA, and adhere to the requirement of Pub. Util. Code Section 451 that every public utility "...shall 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."

**12. Motions to File Under Seal**

Pursuant to Rule 11.4 of the Commission's Rules of Practice and Procedure, Velocity has filed a motion for leave to file profit and loss and balance sheet information contained in Exhibit 4 to its Application as confidential materials under seal. Velocity represents that the information is sensitive and that disclosure could place Velocity at an unfair business disadvantage. The Commission has previously granted similar requests from applicants for CPCNs. The Commission grants Velocity's motion for leave to file Exhibit 4 to its Application as confidential materials under seal.

Velocity has also filed a motion for leave to file certain other materials responsive to Item 6 of the Ruling as confidential materials under seal. Velocity's response to Item 6 does not contain any proprietary, confidential, or financial information or any materials regarding the current operations of Velocity. The Commission therefore denies Velocity's motion for leave to file the materials responsive to Item 6 of the Ruling under seal.

**13. Categorization and Need for Hearings**

In Resolution ALJ 176-3456 filed on February 27, 2020, the Commission preliminarily categorized this Application as ratesetting, and preliminarily determined that hearings were not necessary. No protests have been received. There is no apparent reason why the Application should not be granted. Given these developments, a public hearing is not necessary. Thus, the preliminary determinations are confirmed.

**14. Comments on Draft Decision**

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Pub. Util. Code Section 311(g)(2) and Rule 14.6(c)(2), the otherwise applicable 30-day period for public review and comment is waived.

**15. Assignment of Proceeding**

Liane Randolph is the assigned Commissioner and Peter Wercinski is the assigned ALJ in this proceeding.

**Findings of Fact**

1. Velocity filed its application for a CPCN on January 31, 2020.
2. On April 9, 2020, Velocity filed its response to a March 18, 2020 Administrative Law Judge's Ruling (Ruling) directing Velocity to file additional information regarding its application. (Velocity's application filed on January 31, 2020 and the additional information filed on April 9, 2020 are collectively referred to hereafter as the "Application.")
3. No protests to the Application have been filed.
4. Velocity is a telephone corporation and a public utility as defined Pub. Util. Code Sections 234(a) and 216(a).
5. Velocity proposes to provide full facilities-based and resold competitive local exchange services in the service territories in California of Pacific Bell Telephone Company doing business as AT&T California, Frontier California, Inc., Citizens Telecommunications Company of California, Inc., Frontier Communications of the Southwest, Inc., and Consolidated Communications of California Company, and full facilities-based interexchange services throughout California.
6. Velocity proposes to construct aerial and underground fiber optic wide area networks for businesses, school districts, and other governmental entities.



Velocity proposes to build, own, and operate those networks and lease them to customers for a fixed term.

7. Velocity does not yet have any customer agreements in California, and therefore it does not yet know where its California customers will be located and cannot identify where it will place facilities in order to provide its services. As a result, Velocity has not proposed any specific construction in its Application.

8. The Commission is the lead agency for Velocity's proposed construction activities under CEQA.

9. Velocity's proposed construction activities will very likely qualify for an exemption from CEQA.

10. Velocity has a minimum of \$100,000 of cash or cash equivalent that is reasonably liquid and readily available to meet its startup expenses.

11. Velocity has submitted an irrevocable guarantee executed by its owner and Chief Executive Officer unconditionally guaranteeing Velocity's accounts payable for one year following Velocity's certification,

12. Velocity does not anticipate deposits being required by other telecommunications carriers to provide the proposed services.

13. Velocity's management possesses sufficient experience, knowledge, and technical expertise to provide local exchange services to the public.

14. Neither Velocity nor any of its affiliates, officers, directors, partners, agents, or owners (directly or indirectly) of more than 10 percent of Velocity or anyone acting in a management capacity for Velocity held one of those positions with a company that filed for bankruptcy, had been personally found liable or held one of those positions with a company that had been found liable for fraud, dishonesty, failure to disclose, or misrepresentations to consumers or others, had been convicted of a felony, had been the subject of a criminal referral by a judge

or public agency, had a telecommunications license or operating authority denied, suspended, revoked, or limited in any jurisdiction, had personally entered into a settlement or held one of those positions with a company that had entered into a settlement of criminal or civil claims involving violations of Sections 17000 *et seq.* of the California Business and Professions Code or of any other statute, regulation, or decisional law relating to fraud, dishonesty, failure to disclose, or misrepresentations to consumers or others, had been found to have violated any statute, law, or rule pertaining to public utilities or other regulated industries, had 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, or is being or has been investigated by the Federal Communications Commission or any law enforcement or regulatory agency for failure to comply with any law, rule, or order.

15. Velocity does not intend to provide services for which the Commission requires the filing of a tariff and is eligible for exemption from tariffing requirements provided that Velocity complies with the consumer protection rules adopted in D.98-08-031.

16. Velocity provided a map of the location of its proposed service territory.

17. Velocity is not publicly held, does not issue an annual report, and does not have information to report under Rule 3.1(i), which requires that a utility filing an application under Pub. Util. Code Section 1001 provide a statement regarding compliance with GO 104-A, Section 2.

18. Velocity estimates that it will have one to four customers at the end of its first year of operations in California and 25 customers at the end of its fifth year of operations in California.

19. Velocity filed a motion for leave to file under seal profit and loss and balance sheet information contained in Exhibit 4 to its Application.

20. Velocity filed a motion for leave to file under seal materials responsive to Item 6 of the Ruling.

### **Conclusions of Law**

1. Velocity should be granted a CPCN to provide full facilities-based and resold competitive local exchange services in the service territories in California of Pacific Bell Telephone Company doing business as AT&T California, Frontier California, Inc., Citizens Telecommunications Company of California, Inc., Frontier Communications of the Southwest, Inc., and Consolidated Communications of California Company, and full facilities-based interexchange services throughout California, subject to the terms and conditions in the Ordering Paragraphs.

2. Velocity should be allowed to use the Commission Energy Division's 21-day CEQA exemption process.

3. Once granted a CPCN, Velocity should be subject to the applicable Commission rules, decisions, General Orders, and statutes that pertain to California public utilities and telephone corporations.

4. Velocity's proposed services do not require filing of a tariff.

5. Velocity's motion for leave to file under seal profit and loss and balance sheet information contained in Exhibit 4 to its Application should be granted.

6. Velocity's motion for leave to file under seal materials responsive to Item 6 of the Ruling should be denied.

7. This proceeding should be closed.

**O R D E R****IT IS ORDERED** that:

1. A Certificate of Public Convenience and Necessity is granted to Velocity Fiber, LLC to provide full facilities-based and resold competitive local exchange services in the service territories in California of Pacific Bell Telephone Company doing business as AT&T California, Frontier California, Inc., Citizens Telecommunications Company of California, Inc., Frontier Communications of the Southwest, Inc., and Consolidated Communications of California Company, and full facilities-based interexchange services throughout California, subject to the terms and conditions set forth below.
2. The corporate identification number assigned to Velocity Fiber, LLC, [REDACTED] U7372C, must be included in the caption of all original filings with the California Public Utilities Commission and in the titles of other pleadings filed in existing cases.
3. The certificate granted by this order will expire if not exercised within 12 months of the effective date of this decision.
4. Velocity Fiber, LLC must file in this docket a written acceptance of the certificate granted in this proceeding within 30 days of the effective date of this decision.
5. Filing of the ordered written acceptance by Velocity Fiber, LLC shall not reopen this proceeding.
6. Velocity Fiber, LLC must notify the Director of the Commission's Communications Division of the date that local exchange service is first rendered to the public no later than five days after service begins by email to [cdcompliance@cpuc.ca.gov](mailto:cdcompliance@cpuc.ca.gov).

7. Velocity Fiber, LLC must immediately 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.

8. Within five days of acceptance of its Certificate of Public Convenience and Necessity authority, Velocity Fiber, LLC must submit a Tier 1 advice letter to the Director of the Commission's 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.

9. Velocity Fiber, LLC must not allow its performance bond to lapse during any period of its operation, and under Decision 13-05-035, any failure to maintain the performance bond may result in revocation of the Certificate of Public Convenience and Necessity granted in this decision, if a carrier is more than 120 days late in providing the Director of the Commission's Communications Division a copy of its executed performance bond and the carrier has not been granted an extension of time by the Commission's Communications Division.

10. 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, Velocity Fiber, LLC must comply with 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 and telephone corporations.

11. Velocity Fiber, LLC must pay annually the public purpose surcharges specified in Attachment B to this decision, and the Combined California Public

Utilities Commission Telephone Surcharge Transmittal Form must be submitted even if the amount due is \$0.

12. Velocity Fiber, LLC must pay annually the user fee specified in Attachment B to this decision. Velocity must pay a minimum user fee of \$100 or 0.34% of gross intrastate revenue, whichever is greater. Under Public Utilities Code Section 405, carriers that are in default of reporting and submitting user fees for a period of 30 days or more will be subject to penalties including suspension or revocation of their authority to operate in California.

13. Prior to initiating service, Velocity Fiber, LLC must provide the Commission's Consumer Affairs Branch with the name(s), address(es), 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.

14. Prior to initiating service, Velocity Fiber, LLC must provide the Commission's Communications Division with the name(s), address(es), and telephone number(s) of its designated regulatory/official contact person(s). This information must be provided electronically, using the "Regulatory/Official Contact Information Update Request" found at <http://www.cpuc.ca.gov/communications/>. This information must be updated if the name(s), address(es), or telephone number(s) change, or at least annually.

15. Velocity Fiber, LLC must submit an affiliate transaction report to the Director of the Commission's Communications Division, by email to [dcompliance@cpuc.ca.gov](mailto:dcompliance@cpuc.ca.gov), in compliance with Decision 93-02-019, on a calendar-year basis using the form contained in Attachment D to this decision.

16. Velocity Fiber, LLC must submit an annual report to the Director of the Commission's Communications Division, by email to

[cdcompliance@cpuc.ca.gov](mailto:cdcompliance@cpuc.ca.gov), in compliance with General Order 104-A, on a calendar-year basis with the information contained in Attachment C to this decision.

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

18. If Velocity Fiber, LLC (Velocity) wishes to engage in full facilities-based construction activities and believes that these activities are exempt from the California Environmental Quality Act (CEQA), Velocity 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) applicable to the proposed project; and
- e. Documentation and factual evidence sufficient to support a finding that the claimed exemption(s) from CEQA are applicable.
- f. Within 21 days from the date that Velocity's submittal is complete, the Energy Division will issue either:
  - i. A Notice to Proceed (NTP) and file a Notice of Exemption with the State Clearinghouse, Office of Planning and Research; or
  - ii. A letter of denial stating the specific reasons that the claimed CEQA exemption(s) do not apply to the proposed project.
- g. If the Energy Division disapproves Velocity's claimed CEQA exemption(s), Velocity shall either redesign 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.

19. Velocity Fiber, LLC's (Velocity) motion for leave to file under seal profit and loss and balance sheet information contained in Exhibit 4 to its Application is 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 by further Commission order or Administrative Law Judge ruling. After expiration of the three-year period, if Velocity believes that it is necessary for sealed information to remain under seal for longer than three years, Velocity may file a



new motion showing good cause for extending this period by no later than 30 days before the expiration of this order.

20. Velocity Fiber, LLC's motion for leave to file under seal materials responsive to Item 6 of the March 18, 2020 Administrative Law Judge's Ruling is denied.

21. Application 20-01-014 is closed.

This decision is effective today.

Dated \_\_\_\_\_, 2020, at San Francisco, California.

**ATTACHMENT A**

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**(END OF ATTACHMENT A)**

**ATTACHMENT B****REQUIREMENTS APPLICABLE TO COMPETITIVE LOCAL EXCHANGE CARRIERS AND INTEREXCHANGE CARRIERS**

1. Velocity Fiber, LLC (Velocity) must file, in this docket with reference to this decision number, a written acceptance of the certificate of public convenience and necessity (CPCN) granted in this proceeding within 30 days of the effective date of this order. Written acceptance filed in this docket does not reopen this proceeding.

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. Velocity 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, the Combined California PUC Telephone Surcharge Transmittal Form must be submitted even if the amount due is \$0.

- a. The Universal Lifeline Telephone Service Trust  
Administrative Committee Fund (Public Utilities (Pub. Util.) Code Section 879);
- b. The California Relay Service and Communications Devices  
Fund (Pub. Util. Code Section 2881; D.98-12-073);
- c. The California High Cost Fund-A (Pub. Util. Code Section  
739.3; D.96-10-066, at 3-4, App. B, Rule 1.C);
- d. The California High Cost Fund-B (D.96-10-066, at 191, App.  
B, Rule 6.F.; D.07-12-054);
- e. The California Advanced Services Fund (D.07-12-054);
- f. The California Teleconnect Fund (D.96-10-066, at 88, App.  
B, Rule 8.G);

- g. The User Fee provided in Pub. Util. Code Sections 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, Velocity must check the joint tariff for surcharges and fees filed by Pacific Bell Telephone Company (doing business as 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 <http://www.cpuc.ca.gov/General.aspx?id=1124>.

- i. Carriers must report and remit California Public Utilities Commission (Commission) telephone program surcharges online using the Commission Telecommunications and User Fees Filing System (TUFFS). Information and instructions for online reporting and payment of surcharges are available at <http://www.cpuc.ca.gov/General.aspx?id=1010>. To request a user ID and password for TUFFS online filing and for questions, please e-mail [TelcoSurcharge@cpuc.ca.gov](mailto:TelcoSurcharge@cpuc.ca.gov).
  - ii. Carriers must submit and pay the PUC User Fee (see item 3.g above) upon receiving the User Fee statement sent by the Commission. Instructions for reporting and filing are available at <http://www.cpuc.ca.gov/General.aspx?id=1009>. Please send an email to [userfees@cpuc.ca.gov](mailto:userfees@cpuc.ca.gov) for questions regarding User Fee reporting and payment.
4. Velocity is a competitive local exchange carrier. The effectiveness of any future tariffs is subject to the requirements of General Order (GO) 96-B and the Telecommunications Industry Rules (D.07-09-019).
5. Any future tariff filings must reflect all fees and surcharges to which Velocity is subject, as reflected in Item 3 above.
6. Velocity must submit to the Commission's Communications Division a service area map as part of any future initial tariff.

7. Velocity must obtain a performance bond of at least \$25,000 in accordance with D.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, Velocity must submit a Tier-1 advice letter to the Commission's 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. Velocity must not allow its performance bond to lapse during any period of its operation. Pursuant to D.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 Commission's Communications Division a copy of its executed performance bond and the carrier has not been granted an extension of time by the Commission's Communications Division.

9. Prior to initiating service, Velocity must provide the Commission's Consumer Affairs Branch with the name(s), address(es), 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), and telephone number(s) change, or at least annually.

10. Velocity 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 "Regulatory/Official Contact Information Update Form" found at <http://www.cpuc.ca.gov/communications>. This information must be

updated if the name(s), address(es), or telephone number(s) change, or at least annually.

11. Velocity must notify the Director of the Commission's Communications Division in writing submitted by email to [cdcompliance@cpuc.ca.gov](mailto:cdcompliance@cpuc.ca.gov), no later than five days after service begins, of the date that local exchange service is first rendered to the public.

12. Velocity must keep its books and records in accordance with the Generally Accepted Accounting Principles.

13. In the event Velocity's books and records are required for inspection by the Commission or its staff, Velocity 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 Velocity's office.

14. Velocity must submit an annual report to the Director of the Commission's Communications Division at [cdcompliance@cpuc.ca.gov](mailto: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.

15. Velocity must submit an affiliate transaction report to the Director of the Commission's Communications Division at [cdcompliance@cpuc.ca.gov](mailto:cdcompliance@cpuc.ca.gov), in compliance with D.93-02-019, on a calendar-year basis using the form contained in Attachment D to this decision.

16. Velocity must ensure that its employees comply with the provisions of Pub. Util. Code Section 2889.5 regarding solicitation of customers.

17. Within 60 days of the effective date of this order, Velocity must comply with Pub. Util. Code Section 708, Employee Identification Cards, and notify the Director of the Commission's Communications Division in writing of its compliance by email to [cdcompliance@cpuc.ca.gov](mailto:cdcompliance@cpuc.ca.gov).

18. If Velocity is 90 days or more late in submitting an annual report, or in remitting the surcharges and fees listed in Item 3 above, and has not received written permission from the Commission's Communications Division to file or remit late, the Commission's Communications Division must prepare for Commission consideration a resolution that revokes Velocity's CPCN.

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

20. Velocity is exempt from Pub. Util. Code Sections 816-830 and 851.

21. If Velocity decides to discontinue service or file for bankruptcy, it must immediately notify the Commission Communications Division's Bankruptcy Coordinator.

22. Velocity must send a copy of this decision to the concerned 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 email to [cdcompliance@cpuc.ca.gov](mailto:cdcompliance@cpuc.ca.gov) no later than March 31 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 Public Utilities Code Sections 2107 and 2108.

Required information:

1. 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 California Public Utilities 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 31 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 for California operations as of December 31 of the calendar year for which information is submitted.

For any questions concerning this report, please send an email to [cdcompliance@cpuc.ca.gov](mailto: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 email to [cdcompliance@cpuc.ca.gov](mailto:cdcompliance@cpuc.ca.gov) no later than May 1 of the year following the calendar year for which the annual 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.

- a. Form of organization (*e.g.*, corporation, partnership, joint venture, strategic alliance, etc.);
- b. Brief description of business activities engaged in;
- c. Relationship to the utility (*e.g.*, controlling corporation, subsidiary, regulated subsidiary, affiliate);
- d. Ownership of the utility (including type and percent ownership);
- e. Voting rights held by the utility and percent; and
- f. Corporate officer.

2. Each 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 Item 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 Items 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 pursuant to Code of Civil Procedure Section 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 pursuant to Code of Civil Procedure Section 2015.5 that the annual report is complete and accurate with no material omissions.

For any questions concerning this report, please send an email to [cdcompliance@cpuc.ca.gov](mailto:cdcompliance@cpuc.ca.gov) with a subject line that includes: "CD Annual Reports."

**(END OF ATTACHMENT D)**

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Description	A2001014 Wercinski (REV. 1) Agenda Dec Application of Velocity Fiber LLC
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