

Decision \_\_\_\_\_

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

Application of BIF IV Intrepid OpCo  
LLC for a Certificate of Public  
Convenience and Necessity to Provide  
Full Facilities-Based and Resold  
Competitive Local Exchange and  
Interexchange Services.

Application 22-06-013

**DECISION GRANTING BIF IV INTREPID OPCO LLC A CERTIFICATE  
OF PUBLIC CONVENIENCE AND NECESSITY IN ORDER  
TO PROVIDE FULL FACILITIES-BASED AND RESOLD  
COMPETITIVE LOCAL EXCHANGE AND  
INTEREXCHANGE SERVICES**

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**DECISION GRANTING BIF IV INTREPID OPCO LLC A CERTIFICATE  
OF PUBLIC CONVENIENCE AND NECESSITY IN ORDER  
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INTEREXCHANGE SERVICES**

**Summary**

Pursuant to Public Utilities (Pub. Util.) Code Section 1001, we grant BIF IV Intrepid OpCo LLC a Certificate of Public Convenience and Necessity (CPCN) to provide full facilities-based and resold competitive local exchange services and interexchange services, subject to the terms and conditions set forth in the Ordering Paragraphs (OPs).

Application 22-06-013 is closed.

**1. Background**

On June 24, 2022, BIF IV Intrepid OpCo LLC (BIF IV) (Applicant), a limited liability corporation in California, filed an application for a certificate of public convenience and necessity (CPCN) to provide full facilities-based and resold competitive local exchange services in the service territories of Pacific Bell Telephone Company d/b/a AT&T California (AT&T California), Frontier California Inc. (Frontier California), Citizens Telecommunications Company of California, Inc. d/b/a Frontier Communications of California (Frontier Communications), and Consolidated Communications of California Company (Consolidated Communications, formerly SureWest Telephone) and resold interexchange services throughout California.

BIF IV proposes to build full facilities to provide service to customers in California.

ESJ Applicant BIF IV's principal place of business is located at 2033 11th Street, Suite 5, Boulder, Colorado 80302.

A prehearing conference (PHC) was held on August 18, 2022, to address the

issues of law and fact, determine the need for hearing, set the schedule for resolving the matter, and address other matters as necessary. Only the Applicant appeared at the PHC.

A Scoping Memo was issued on August 31, 2022. No hearings were held for this Application.

On January 24 and February 9, 2023, the assigned Administrative Law Judge (ALJ) issued rulings seeking additional information. BIF IV filed and served its responses to the ALJ's request on February 3 and February 17, 2023, respectively.

## **2. Submission Date**

This matter was submitted on February 17, 2023 upon the Applicant responded to the assigned ALJ's ruling.

## **3. Jurisdiction**

Public Utilities (Pub. Util.) Code Section 216(a) defines the term "Public utility" to include a "telephone corporation," which in turn 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."

BIF IV proposes to build a fiber optic cable network and plans to provide point-to-point telecommunication services to enterprise customers in California.<sup>1</sup> Applicant plans to use fiber optic cable along with other equipment and facilities, which will support transport and transmission of a variety of communications,

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<sup>1</sup> Application at 2,3. Applicant's response on February 17, 2023, at 3.

including Ethernet, Voice over Internet Protocol (VoIP)<sup>2</sup>, and other similar high bandwidth services to enterprise customers.

BIF IV certified that it is a Common Carrier as defined by Section 153 of the Federal Telecommunications Act of 1996 (Act) eligible to interconnect with the public switched telephone network pursuant to Sections 251 and 252 of the Act, and that if granted a CPCN, it will operate as a telephone corporation under Pub. Util. Code Section 234(a), and obey the Pub. Util. Code and all California Public Utilities Commission (Commission) rules, decisions, and orders applicable to telephone corporations.<sup>3</sup>

Therefore, BIF IV is a telephone corporation and a public utility subject to our jurisdiction.

#### **4. Full Facilities-Based CPCN**

In its application, BIF IV requests authorization for a CPCN to provide full facilities-based and resold competitive local exchange and interexchange telecommunications services. A Proponent's Environmental Assessment (PEA) is required for a full facilities-based CPCN. In its application, BIF IV provided a copy of the PEA in Exhibit D to its Application. In its PEA, BIF IV indicates that it intends to build a fiber-based network in California, with plans to construct to customer locations. Thus, the application supports a request for a full facility based CPCN.

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<sup>2</sup> Applicant's response on February 17, 2023, at 3.

<sup>3</sup> Applicant's Response on February 17, 2023, at 2-7.

## 5. California Environmental Quality Act (CEQA)

Pursuant to CEQA<sup>4</sup> and Rule 2.4<sup>5</sup> of the Commission's Rules of Practice and Procedure (Rules), 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.

In the Proponent's Environmental Assessment and Response, BIF IV's proposed construction activities will generally include the installation 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.

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.

- 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 Section 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 Section 15303.)

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<sup>4</sup> Public Resources Code § 21000 *et seq.*

<sup>5</sup> Unless otherwise noted, items labeled "Rule" are from the Commission's Rules of Practice and Procedure.

BIF IV's proposed activities involve construction of reasonably short utility extensions (Class 3). In order to provide its service, BIF IV will build fiber optic facilities along with other equipment to provide point-to-point telecommunication services such as Ethernet and other similar high-bandwidth services.<sup>6</sup>

Exemption of these activities is consistent with Commission precedent. BIF IV'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., Decision (D) 06-04-063 (ClearLinx Network Corporation); D.06-04-067 (CA-CLEC LLC).*

BIF IV requests approval to utilize a procedure for expedited review of its projects once it is aware of a specific site(s) in which it plans construction. 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 BIF IV to undertake construction of its projects in an 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 BIF IV's claimed CEQA exemptions for proposed construction projects:

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<sup>6</sup> Applicant's Response on February 17, 2023, at 3.

- BIF IV 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; and
  - A list of other agencies contacted with respect to siting, land use planning, and environmental resource issues, including contact information.
- 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 BIF IV's submission for the proposed project to confirm that the claimed exemption(s) from CEQA are applicable; and
- Within 21 days from the date of BIF IV'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:

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

BIF IV 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 Carrier (CLEC) service, (Rulemaking 95-04-043/Investigation 95-04-044). Granting this application will benefit the public interest by expanding the availability of technologically advanced telecommunications services within the state.

## **6. Financial Qualifications**

To be granted a CPCN, an applicant for authority to provide full facilities-based services and resold competitive local exchange and 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.<sup>7</sup> In the application, BIF IV provided the 2020-2021 audited financial statements<sup>8</sup> of its parent, Brookfield Infrastructure Fund IV, who guaranteed to this application.<sup>9</sup> BIF IV asserted that it had access to cash and assets from its parent for at least \$100,000. Since BIF IV has provided documentation that it possesses a minimum of \$100,000 that is reasonably liquid and available, it has demonstrated that it has

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<sup>7</sup> 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.

<sup>8</sup> Application, Confidential Exhibit G, at 13.

<sup>9</sup> Application, at 9.

sufficient funds to meet its start-up expenses and has fulfilled this requirement. The BIF IV'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, BIF IV must also demonstrate it has an additional \$25,000 or an amount equal to the deposit required by AT&T California, Frontier California, Frontier Communications, and Consolidated Communications would be available to BIF IV for one year following certification.<sup>10</sup>

In addition to the \$100,000 discussed above, BIF IV has provided documentation that it has the funds available for the deposit required by AT&T California, Frontier California, Frontier Communications, and Consolidated Communications. BIF IV have not contacted the carriers but has affirmed that its parent Brookfield Infrastructure Fund IV has assets to satisfy this requirement.<sup>11 12</sup>

## 7. 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.<sup>13</sup> BIF IV supplied biographical information on its management in Exhibit I to its application that demonstrates it has sufficient expertise and training to operate as a telecommunications provider.

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<sup>10</sup> 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.

<sup>11</sup> Applicant's responses at 3 on February 3, 2023.

<sup>12</sup> Application, Confidential Exhibit G at 13.

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

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

- (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 [Sections] 17000 *et seq.*, [Sections] 17200 *et seq.*, or [Sections] 17500 *et seq.* of the California Business & Professions Code, or of any other 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.<sup>14</sup>

Also, to the best of BIF IV's knowledge, neither BIF IV, or any affiliate, officer, director, partner, nor owner of more than 10 percent of BIF IV, or any person acting in such capacity whether or not formally appointed, is being, or has been investigated by the Federal Communications Commission or any law

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

enforcement or regulatory agency for failure to comply with any law, rule or order.<sup>15</sup>

For the above reasons, we find that BIF IV is in compliance with the requirements of D.13-05-035.

## **8. Tariffs**

BIF IV has requested detariffed status and may be exempt from the requirement to file tariffs provided that BIF IV complies with the consumer protection rules identified in D.98-08-031. Applicant will not offer residential voice services using VoIP technology.<sup>16</sup>

Applicant states that it plans to offer services on a non-discriminatory basis as well as individual case basis contracts.<sup>17</sup>

## **9. 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.<sup>18</sup> In its application, BIF IV provided a map of the location of its proposed service territory in Exhibit F, in compliance with this requirement.

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<sup>15</sup> *Id.*

<sup>16</sup> Applicant's response on February 17, 2023, at 3.

<sup>17</sup> Applicant, at 10.

<sup>18</sup> D.95-12-056 at Appendix C, Rule 4.F.

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

Rule 3.1(i) sets forth the requirement that a utility filing an application under Pub. Util. Code Section 1001, provide a statement regarding General Order (GO) 104-A, Section 2. BIF IV states that it is not aware of any reportable matters pursuant to GO 104-A, Section 2.<sup>19</sup> BIF IV, therefore, has nothing to report under this rule.

On a going forward basis, though, BIF IV must file all reports required of a public utility under Commission jurisdiction.

**11. Expected Customer Base**

BIF IV provided its estimated customer base for the first and fifth years of operation in Exhibit H of its application. Therefore, BIF IV has complied with this requirement.

**12. Request for Treatment as a Non-dominant Interexchange Carrier**

BIF IV requests treatment as a non-dominant interexchange carrier (NDIEC), which would exempt it from the requirements of Pub. Util. Code Sections 816-830 concerning stocks and security. Applicant also requests an exemption from Pub. Util. Code Section 851, solely for the transfer and encumbrance of utility property to secure debt. The Commission detailed its rules regarding exemption of non-dominant carriers 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 Section 851 for the sole purpose of the transfer or encumbrance of utility assets to secure debt. We grant Applicant's request for NDIEC status, which provides an exemption from Pub. Util.

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<sup>19</sup> Application, at 10.

Code Sections 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 Section 851 for the sole purpose of securing debt pursuant to the decisions referenced above.

### **13. Environmental and Social Justice (ESJ) Action Plan**

On January 24, 2023, the assigned ALJ issued a ruling requiring that BIF IV explain how the authority sought is consistent with the Commission's ESJ Action plan. On February 3, 2023, BIF IV filed a response to the ALJ's Inquiry and affirmed that BIF IV's application aligns or is consistent with the nine goals stated in the Public Utilities Commission's updated ESJ Action Plan, adopted April of 2022. Based on the information provided in the Application and Response to ALJ Inquiry, we find that approval of the application is consistent with the Commission's ESJ goals.

### **14. Safety Considerations**

With the adoption of the *Safety Policy Statement of the California Pub. Util. 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 BIF IV will meet the Commission's minimum safety goals and expectations of CLECs because: (1) BIF IV has taken steps to meet the financial requirements as set forth in this decision for a facilities-based CLEC, and (2) BIF IV is a public utility that is required pursuant to 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."

## 15. Conclusion

We conclude that the application conforms to our rules for certification as a competitive local exchange and interexchange carrier. Accordingly, we grant BIF IV 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 subject to compliance with the terms and conditions set forth in the OPs.

The CPCN granted by this decision provides benefits to BIF IV and corresponding obligations. BIF IV receives authority to operate in the prescribed service territory, and this authority enables BIF IV, pursuant to Section 251 of the 1934 Communications Act, as amended by the 1996 Telecommunications Act (47 U.S.C. Section 251), to interconnect with telecommunications carriers.<sup>20</sup> This authority also enables BIF IV to obtain access to 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*, 6 Cal. 5<sup>th</sup> 1107 (2019)" - subject to the CEQA requirements set forth in this decision.

In return, BIF IV is obligated to comply with all Pub. Util. 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, BIF IV is obligated to 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.

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<sup>20</sup> The California Pub. Util. Code uses the term "telephone corporation." Its counterpart in federal law is a "telecommunications carrier."

Code Section 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 Section 54.1 of the Civil Code, as are necessary to promote the safety, health, comfort, and convenience of its patrons, employees, and the public."

#### **16. Request to File Under Seal**

Pursuant to Rule 11.4, BIF IV has filed motions for leave to file Exhibits G and H to the application as confidential materials under seal. BIF IV represents that the information is sensitive, and disclosure could place BIF IV at an unfair business disadvantage. We have granted similar requests in the past and do so here.

#### **17. Comments on Draft Decision**

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

#### **18. Comments on Draft Decision**

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

#### **19. Assignment of Proceeding**

Genevieve Shiroma is the assigned Commissioner and KieuChinh Tran is the assigned ALJ in this proceeding.

#### **Findings of Fact**

1. BIF IV is a telephone corporation and a public utility as defined in Pub. Util. Code Sections 234(a) and 216(a).

2. The Commission is the Lead Agency for this project under CEQA.
3. BIF IV's proposed construction activities appear to fall within one or more CEQA categorical exemptions.
4. BIF IV's authority to provide telecommunications services will not have a significant adverse effect upon the environment.
5. BIF IV has a minimum of \$100,000 of cash or cash equivalent that is reasonably liquid and readily available to meet its start-up expenses.
6. BIF IV has sufficient additional cash or cash equivalent to cover deposits that may be required by other telephone corporations in order to provide the proposed service.
7. BIF IV'S management possesses sufficient experience, knowledge, and technical expertise to provide local exchange services to the public.
8. No one associated with or employed by BIF IV as an affiliate, officer, director, partner, agent, or owner (directly or indirectly) of more than 10 percent of BIF IV, or anyone acting in a management capacity for BIF IV: (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 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 Sections 17000 *et seq.*, Sections 17200 *et seq.*, or Sections 17500 *et seq.* of the California Business & Professions Code, or of any other 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.

9. To the best of BIF IV's knowledge, neither BIF IV, or any affiliate, officer, director, partner, nor owner of more than 10 percent of BIF IV, or any person acting in such capacity whether or not formally appointed, 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.

10. BIF IV requested and is eligible for exemption from tariffing requirements and must observe the consumer protection rules adopted in D.98-08-031.

11. BIF IV provided a map of the location of its proposed service territory.

12. BIF IV has no 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.

13. BIF IV provided an estimate of its customer base for the first and fifth year of operation.

14. BIF IV provided information regarding how the authority sought is consistent the Commission's ESJ Action Plan.

15. Pursuant to Rule 11.4, BIF IV filed motions for leave to file confidential materials under seal, including audited financial statements from certain BIF IV Entities and the estimate of customers for the first and fifth Years.

**Conclusions of Law**

1. BIF IV should be granted a CPCN to provide full facilities-based and resold competitive local exchange services in the service territories of AT&T California, Frontier California, Frontier Communications, Consolidated Communications, and interexchange services in California, subject to the terms and conditions set forth in the OPs.
2. BIF IV should be allowed to use the Energy Division 21-day CEQA exemption process.
3. BIF IV, once granted a CPCN, should be subject to the applicable Commission rules, decisions, GOs, and statutes that pertain to California Public Utilities.
4. BIF IV should be granted an exemption from the requirement to file tariffs.
5. BIF IV's motion to file under seal its Exhibits G and H to the application, should be granted for three years.
6. BIF IV 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.
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 BIF IV Intrepid OpCo LLC to provide 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, and interexchange services in California, subject to the terms and conditions in this decision.

2. The corporate identification number assigned to BIF IV Intrepid OpCo LLC, U7412C, must be included in the caption of all original filings with this Commission, and in the titles of other pleadings filed in existing cases.

3. BIF IV Intrepid OpCo 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. 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.

5. BIF IV Intrepid OpCo 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, BIF IV Intrepid OpCo 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.

6. BIF IV Intrepid OpCo 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.

7. 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, BIF IV Intrepid OpCo LLC is subject to the Consumer Protection Rules contained in General Order 168, and all applicable Commission rules, decisions, General Orders, and statutes that pertain to California public utilities.

8. BIF IV Intrepid OpCo 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. The California Public Utilities Commission's Communications Division must issue a compliance directive to the BIF IV Intrepid OpCo LLC's primary contact, providing directions for reporting and remitting surcharges and the User Fee through the TUFFS system.

9. BIF IV Intrepid OpCo LLC must pay an annual minimum user fee of \$100 or at the standard user fee remittance rate applied to the gross intrastate revenue, whichever is greater. The standard user fee remittance rate is posted on the Commission's webpage. Under Public Utilities Code Section 405, carriers that are in default of reporting and submitting user fees more than 30 days after the quarterly user fee payment due dates of January 15<sup>th</sup>, April 15<sup>th</sup>, July 15<sup>th</sup>, and October 15<sup>th</sup>, or more than 30 days after the January 15<sup>th</sup> due date for those utilities paying the annual minimum user fee of \$100, will be subject to penalties including suspension or revocation of their authority to operate in California.

10. Prior to initiating service, BIF IV Intrepid OpCo LLC must 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.

11. Prior to initiating service, BIF IV Intrepid OpCo LLC must provide the California Public Utilities 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.

12. BIF IV Intrepid OpCo LLC must submit an affiliate transaction report to the Director of the Communications Division, by e-mail to [cdcompliance@cpuc.ca.gov](mailto:cdcompliance@cpuc.ca.gov), in compliance with Decision 93-02-019, on a calendar year basis using the form contained in Attachment D.

13. BIF IV Intrepid OpCo LLC must submit an annual report to the Director of the Communications Division, by e-mail 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.

14. BIF IV Intrepid OpCo LLC must submit an application for expanded authority to operate without NDIEC status prior to construction of full facilities.

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

16. If BIF IV Intrepid OpCo LLC wishes to engage in full facilities-based construction activities and believes that these activities are exempt from California Environmental Quality Act, BIF IV Intrepid OpCo LLC shall first apply to the Commission's Energy Division staff for a determination of exemption from California Environmental Quality Act by providing the Commission's Energy Division (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 California Environmental Quality Act exemption(s) claimed to apply to the proposed project; and

- e. Documentation supporting the finding of exemption from California Environmental Quality Act.
- f. The Energy Division will then review the submittal and notify BIF IV Intrepid OpCo LLC of either its approval or its denial of BIF IV Intrepid OpCo LLC's claim for exemption from California Environmental Quality Act review within 21 days from the time that BIF IV Intrepid OpCo LLC's submittal is complete.

17. If the California Public Utilities Commission's Energy Division approves BIF IV Intrepid OpCo LLC's claimed California Environmental Quality Act 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 disapproves BIF IV Intrepid OpCo LLC's claimed California Environmental Quality Act (CEQA) exemptions, the staff shall issue to BIF IV Intrepid OpCo LLC a letter which states the specific reasons that the claimed CEQA exemptions do not apply to the proposed project.

18. If the California Public Utilities Commission's Energy Division disapproves BIF IV Intrepid OpCo LLC's claimed California Environmental Quality Act (CEQA) exemption(s), BIF IV Intrepid OpCo 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.

19. BIF IV Intrepid OpCo LLC's motion to file under seal its Exhibits G and H 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 on further Commission order or Administrative Law Judge ruling. If BIF IV Intrepid OpCo LLC believes that it is necessary for this information to remain under seal

for longer than three years, BIF IV Intrepid OpCo LLC may file a new motion showing good cause for extending this order by no later than 30 days before the expiration of this order.

20. Application 22-06-013 is closed.

This decision 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,<sup>1</sup> 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);

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<sup>1</sup>Written acceptance filed in this docket does not reopen the proceeding.

- 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);
- 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, 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](mailto: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 30<sup>th</sup> day after the 15-day reporting and payment requirement to avoid a one-time

25% penalty. For questions regarding the User Fee, please email [userfees@cpuc.ca.gov](mailto: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 email to [cdcompliance@cpuc.ca.gov](mailto: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](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.

16. Applicant must submit an affiliate transaction report to the Director of the 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.

17. Applicant must ensure that its employees comply with the provisions of Pub. Util. Code section 2889.5 regarding solicitation of customers.

18. Within 60 days of the effective date of this order, Applicant must comply with Pub. Util. Code section 708, Employee Identification Cards, and notify the Director of the Communications Division of its compliance in writing, by email to [cdcompliance@cpuc.ca.gov](mailto: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 sections 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 concerned local permitting agencies no later than 30 days from the date of this order.

**(END OF ATTACHMENT B)**

**ATTACHMENT C**

**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 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 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 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.

Additional information about the reporting requirements is available at  
<https://www.cpuc.ca.gov/industries-and-topics/internet-and-phone/carrier-reporting-requirements/annual-report-forms>.

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

**(END OF ATTACHMENT C)**

**ATTACHMENT D**

**ATTACHMENT D****CALENDAR YEAR AFFILIATE TRANSACTION REPORT**

Submit the following information electronically using the Annual Affiliate Transaction Report Form<sup>22</sup> via e-mail to [cdcompliance@cpuc.ca.gov](mailto: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

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<sup>22</sup> An Annual Affiliate Report form (in PDF format) has been developed to help facilitate the submission of this reporting obligation and it is available under <https://www.cpuc.ca.gov/-/media/cpuc-website/divisions/communications-division/documents/licensing-compliance/annual-reporting-requirements/annual-affiliate-transaction-report-form.pdf>.

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.

Additional information about the reporting requirements is available at <https://www.cpuc.ca.gov/industries-and-topics/internet-and-phone/carrier-reporting-requirements/annual-report-forms>.

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

**(END OF ATTACHMENT D)**