

Decision 24-09-032 September 26, 2024

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Optic Networks, LLC
for a certificate of public convenience
and necessity to provide full facilities-
based and resold competitive local
exchange service and interexchange
service on a statewide basis.

Application 24-02-007

**DECISION GRANTING OPTIC NETWORKS, LLC A CERTIFICATE
OF PUBLIC CONVENIENCE AND NECESSITY TO PROVIDE
FULL FACILITIES-BASED AND RESOLD COMPETITIVE
LOCAL EXCHANGE SERVICES AND FULL
FACILITIES-BASED AND RESOLD
INTEREXCHANGE SERVICES**

DECISION GRANTING OPTIC NETWORKS, LLC A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO PROVIDE FULL FACILITIES-BASED AND RESOLD COMPETITIVE LOCAL EXCHANGE SERVICES AND FULL FACILITIES-BASED AND RESOLD INTEREXCHANGE SERVICES.....	1
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Summary

Pursuant to Public Utilities Code Section 1001, the Commission grants Optic Networks, LLC a Certificate of Public Convenience and Necessity to provide full facilities-based and resold competitive local exchange services and full facilities-based and resold interexchange services subject to the terms and conditions set forth in the Ordering Paragraphs.

Application 24-02-007 is closed.

1. Background

On February 20, 2024, Optic Networks, LLC (Optic Networks), a California limited liability company, filed an application for a certificate filed an application for a certificate of public convenience and necessity (CPCN) to provide full facilities-based and resold competitive local exchange service 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) and full facilities-based and resold interexchange services on a statewide basis.

Optic Networks seeks authority to provide full facilities-based, and resold competitive local exchange and interexchange services in the aforementioned territories across the state. In addition to offering broadband access services to residential and business end-user customers, Optic Networks intends to provide

infrastructure facilities (such as conduit and dark/lit fiber) for use in connection with the transportation and transmission of communications. Optic Networks may provide services using its own facilities as well as leased facilities, leased capacity, or other arrangements that make use of other carriers' telecommunications facilities.

Optic Networks' principal place of business is located at 1368 E Turner Rd., Lodi, CA 95240.

The assigned ALJ evaluated the application and determined that further information was needed from Optic Networks. On April 17, 2024, the assigned ALJ issued a ruling setting a prehearing conference (PHC) for April 25, 2024. The PHC was held on that day as scheduled. On May 7, 2024, the assigned ALJ issued a ruling requiring Optic Networks to file additional information within 10 business days. On May 21, 2024, Optic Networks filed its response to the ruling. In its May 21, 2024 response, Optic Networks stated that it would submit the requested supplemental financial documentation by June 14, 2024. Ultimately, Optic Networks did not provide this information by June 14, 2024.

On May 22, 2024, the assigned ALJ issued another ruling requesting information, to which Optic Networks responded on June 6, 2024. On June 17, 2024, the assigned Commissioner issued a Scoping Ruling. On July 11, 2024, the assigned ALJ issued another ruling requesting information requesting the supplemental financial documentation that Optic Networks failed to provide by June 14, 2024. Optic Networks responded to this last ruling and provided the necessary financial documentation on July 17, 2024.

2. Submission Date

This matter was submitted on July 17, 2024 upon receipt and review of all rulings requesting information.

3. Issues Before the Commission

The Commission must consider: (1) whether Optic Networks, LLC meets all of the Commission requirements for a CPCN, including, but not limited to, financial, technical, and California Environmental Quality Act (CEQA) requirements; and (2) whether Optic Networks, LLC should be authorized to use the Commission Energy Division's 21-day expedited environmental review process for its full facilities-based construction activities under statutory or categorical exemptions to the CEQA.

4. Jurisdiction

The Commission has broad jurisdiction over "public utilities,"¹ as defined in Public Utilities (Pub. Util.) Code Section 216.² California's constitution extends the Commission's jurisdiction to companies engaged in "the transmission of telephone and telegraph messages," which includes both public utility services and facilities.³ The Commission classifies entities providing two-way voice communications service for compensation within California as "telephone corporations"⁴ and regulates them as public utilities.^{5,6}

As part of its regulatory authority over "telephone corporations," the Commission authorizes certificates of public convenience and necessity to "telephone corporations" seeking to construct a "line, plant, or system, or any

¹ Pub. Util. Code § 216.

² Pub. Util. Code § 234.

³ See D.20-07-011, at 14-15, *See* Cal. Const., Art. XII, §§ 1-6; Pub. Util. Code § 701.

⁴ Pub. Util. Code §§ 216, 233, 234; D.22-10-021 at 68.

⁵ Pub. Util. Code § 216(a).

⁶ Telephone corporations are required to file annual affiliate transaction reports and pay surcharges and user fees.

extension thereof” in California.⁷ Pub. Util. Code Section 233 defines a “telephone line” to include “all conduits, ducts, poles, wires, cables, instruments, and appliances, and other real estate, fixtures, and personal property owned or controlled, operated, or managed in connection with or to facilitate communication by telephone, whether such communication is had with or without the use of transmission wires.” This includes services delivered over any technology, including but not limited to, traditional copper lines, coaxial cable, fiber optic cable, and mobile or fixed wireless radios.

Optic Networks seeks authority to provide full facilities-based, and resold competitive local exchange and interexchange services in the aforementioned territories across the state. Optic Networks will offer broadband access services to residential and business end-user customers, and it also intends to provide infrastructure facilities (such as conduit and dark/lit fiber) for use in connection with the transportation and transmission of communications, including telecommunications services regulated by the California Public Utilities Commission (Commission). Optic Networks may provide services using its own facilities as well as leased facilities, leased capacity, or other arrangements that make use of other carriers’ telecommunications facilities. Optic Networks plans to own, control, operate, and manage a fiber network in California. Optic Networks is a telephone corporation and a public utility subject to the Commission’s jurisdiction.

⁷ Pub. Util. Code § 1001.

5. California Environmental Quality Act (CEQA)

Pursuant to CEQA and Rule 2.4⁸ of the Commission's Rules, the Commission acts as the designated lead agency to consider the environmental consequences of projects that are subject to the Commission's approval to determine any potential environmental impacts, to avoid adverse effects, and ensure that any affected environment is restored or otherwise mitigated to the fullest extent possible under CEQA.

Optic Networks' description of proposed construction activities indicates they will provide broadband access services to residential and business end-user customers, and also provide infrastructure facilities (such as conduit and dark/lit fiber) for use in connection with the transportation and transmission of communications. Optic Networks may acquire or obtain access to existing facilities from other carriers and utilities or construct its own facilities, as necessary. Optic Networks' proposed construction may involve ground-disturbing activities in utility easements and public rights-of-way. Optic Networks argues that such construction will take place in existing roadways or other previously developed and disturbed rights-of-way. As such, Optic Networks seeks full facilities-based authorities for these activities subject to an expedited 21-day environmental review process.

These activities are expected to 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.⁹

⁸ Unless otherwise noted, items labeled "Rule" are from the Commission's Rules of Practice and Procedure.

⁹ The Commission considers both Categorical (Classes 1, 3, 4, and 32 listed herein) and Statutory Exemptions (Public Resources (Pub. Res.) Code Section 21080.51 listed herein).

Footnote continued on next page.

1. Class 1 Exemption: operation, repair, maintenance, leasing or minor alteration of existing public or private structures and facilities, with negligible or no expansion of an existing use. This includes existing facilities used to provide public utility services. (California Code of Regulations Title 14, Section 15301.)
2. Class 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.)
3. Class 4 Exemption: minor public or private alterations in the condition of land, water, and/or vegetation which do not involve the removal of healthy, mature, scenic trees except for forestry and agricultural purposes. Among other things, this includes filling of earth into previously excavated land with material compatible with the natural features of the site, and minor trenching and backfilling where the surface is restored. (14 CCR Section 15304.)
4. Class 32(a-e) Exemption: consists of projects characterized as in-fill development meeting the following conditions: (a) The project is consistent with applicable general plan designation, general plan policies, and applicable zoning designation and regulations; (b) The proposed development occurs within city limits on a project site of no more than five acres substantially surrounded by urban uses; (c) The project site has no value, as habitat for endangered, rare or threatened species; (d) Approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality; and (e) The site can be adequately served by all required utilities and public services. (14 CCR Section 15332.)

Categorical Exemptions apply to classes of projects that generally do not have potential substantial impacts on the environment. Statutory Exemptions are projects specifically excluded from CEQA consideration as detailed by California law.

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

Exemption of these activities is consistent with Commission precedent.

Optic Networks' proposed new construction activities are similar to those undertaken by other carriers that the Commission has decided are categorically exempt from CEQA. *See, e.g.,* Decision (D) 06-04-063 (*ClearLinx Network Corporation*); D.06-04-067 (*CA-CLEC LLC*).

Optic Networks 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 the Commission approved for other carriers. Such a process will expedite the review and is appropriate for the type of construction outlined here, which will likely be categorically exempt. By establishing this expedited review process, the Commission is 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 review process will enable Optic Networks to undertake construction of its projects in an efficient manner.

Similar to the procedure approved for other carriers, the following procedure will be used to obtain Commission approval of Optic Networks' claimed CEQA exemptions for proposed construction projects:

1. Optic Networks' will provide 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, to include at a minimum:
 - i. Cultural, historical, and paleontological resources;
 - ii. Biological resources; and
 - iii. Current land use and zoning.
 - c. A construction workplan, to include:
 - 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; and
 - v. A list of other agencies contacted with respect to siting, land use planning, and environmental resource issues, including contact information.
 - 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) is (are) applicable.
2. The Energy Division will review Optic Networks' submission for the proposed project to confirm that the claimed exemption(s) from CEQA are applicable; and
 3. Within 21 days from the date of Optic Networks' submittal, 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) are not applicable to the proposed project.

The Commission reviewed the application and Supplement and finds that:

1. Optic Networks' proposed facilities-based project activities are very 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 Optic Networks' 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 Optic Networks 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.

This decision therefore approves Optic Networks' proposed process for Commission review of claimed CEQA exemptions for construction projects undertaken pursuant to Optic Networks' 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 rejects Optic Networks' claimed CEQA exemption(s) and issues a letter of denial to Optic Networks, Optic Networks' 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.

Optic Networks 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.

The Commission previously determined that public convenience and necessity requires it to allow competition 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 for authority to provide full facilities-based and resold competitive local exchange services and full facilities-based and resold interexchange services in California, a new applicant must demonstrate that it has a minimum of \$100,000 cash or cash equivalent, reasonably liquid and readily available to meet the company's start-up expenses.¹⁰ In Exhibit F to the application, Optic Networks provided a bank account statement as of January 29, 2024 showing that it maintained a minimum balance of \$100,000. Since Optic Networks provided documentation that it possesses a minimum of \$100,000 that is reasonably liquid and available, it has demonstrated that it has sufficient funds to meet its start-up expenses and has fulfilled this requirement. Optic Networks' financial documentation will be subject to verification and review by the Commission for one year to ensure that such funds are available. Accordingly, Optic Networks must demonstrate that it maintained at least \$100,000 that was

¹⁰ The financial requirement for Competitive Local Exchange Carriers (CLEC) is contained in D.13-05-035 and D.95-12-056, Appendix C. The financial requirement for Non-Dominant Interexchange Carriers (NDIEC) is contained in D.14-11-004.

reasonably liquid and available for its first year of operations by providing the Commission's Communications Division with a confidential copy of its updated financial documentation at both six and 12 months from the issuance date of this decision by email to cdcompliance@cpuc.ca.gov.

In addition to demonstrating financial fitness, Optic Networks 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 that would be available to Optic Networks for one year following certification. Optic Networks proposed to initially interconnect with AT&T California, Frontier California, Frontier Communications, and Consolidated Communications

On July 11, 2024, the ALJ issued a ruling requesting information seeking evidence that Optic Networks had the requisite amount of money available to cover any deposits that would be required by the aforementioned carriers. On July 17, 2024, Optic Networks responded to the ALJ's July 11, 2024 ruling and provided evidence that it had an additional \$25,000 to cover any deposits that would be required by those carriers.

7. Technical Qualifications

To be granted a CPCN for authority to provide competitive local exchange and/or interexchange service, an applicant must make a reasonable showing of managerial and technical expertise in telecommunications or a related business.¹¹ Optic Networks supplied biographical information on its management in Exhibit G to its application as well as in its June 6, 2024 response to the ALJ's May 22, 2024 Ruling requesting additional information. These documents

¹¹ D.13-05-035; D.95-12-056 at Appendix C, Rule 4.A.

demonstrate that Optic Networks has sufficient expertise and training to operate as a telecommunications provider.

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

- (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.¹²

Also, to the best of Optic Networks' knowledge, neither Optic Networks, nor any affiliate, officer, director, partner, nor owner of more than 10 percent of Optic Networks, or any person acting in such capacity whether or not formally

¹² These certifications are required by D.13-05-035, OP 14.

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.¹³

For the foregoing reasons, this decision finds that Optic Networks is in compliance with the requirements of D.13-05-035.

8. Tariffs

Applicant requested detariffed status and may be exempt from the requirement to file tariffs provided that Applicant complies with the consumer protection rules identified in D.98-08-031. Applicant indicated it will not offer basic service, such as residential local exchange voice or VoIP services, or switched access service, and therefore detariffed status is granted.

Pursuant to D.12-12-038, Appendix A, Section II, parts a and b, basic service must be tariffed or scheduled. In the future, if Applicant decides to offer services that require a tariff or schedule, such as basic service, Applicant must submit proposed tariffs and/or user guides to the Commission's Communications Division by Tier 2 Advice Letter using the General Order 96-B advice letter process at least 30 days before initiation of service.

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.¹⁴ Optic Networks provided a map of the location of its proposed service territory in Exhibit E to the Application, thereby complying with this requirement.

¹³ *Ibid.*

¹⁴ 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. Optic Networks states that it is not aware of any reportable matters pursuant to GO 104-A, Section 2. Optic Networks, therefore, has nothing to report under this rule. Going forward, however, Optic Networks must file all reports required of a public utility under Commission jurisdiction.

11. Expected Customer Base

Optic Networks confidentially provided its estimated customer base for the first and fifth years of operation in its application. Therefore, Optic Networks has complied with this requirement.

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

Optic Networks 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. Optic Networks 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.

This decision denies Optic Networks' request for NDIEC status because it is a full-facilities CLEC provider, for whom the Commission has never extended NDIEC status. However, Optic Networks' request for exemption from Pub. Util.

Code Section 851 for the sole purpose of securing debt pursuant to the decisions referenced above, is granted as it is available for all CLECs.

13. 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. The Commission considered the potential safety implications here and is satisfied that Optic Networks will meet the Commission's minimum safety goals and expectations of CLECs because: (1) Optic Networks has taken steps to meet the financial requirements as set forth in this decision for a facilities-based CLEC, and (2) Optic Networks 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."

14. Conclusion

Optic Networks' application conforms with the Commission's rules for certification as a competitive local exchange and interexchange carrier. Accordingly, the Commission grants Optic Networks a CPCN to provide full facilities-based and resold in the service territories of AT&T California, Frontier California, Frontier Communications, and Consolidated Communications and full facilities-based and resold interexchange services on a statewide basis subject to compliance with the terms and conditions set forth in the Ordering Paragraphs (OPs).

The CPCN granted by this decision provides benefits to Optic Networks and corresponding obligations. Optic Networks receives authority to operate in

the prescribed service territory, and this authority enables Optic Networks, 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.¹⁵ This authority also enables Optic Networks 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. 5th 1107 (2019)" - subject to the CEQA requirements set forth in this decision.

In return, Optic Networks 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, Optic Networks 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. 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."

15. Request to File Under Seal

Pursuant to Rule 11.4, Optic Networks has filed a motion for leave to file under seal confidential information included in the application and Exhibits F & H of the application. Optic Networks also filed a motion for leave to file under

¹⁵ The California Pub. Util. Code uses the term "telephone corporation." Its counterpart in federal law is a "telecommunications carrier."

seal Confidential Exhibit 1 of its July 17, 2024 response to the July 11, 2024 ALJ Ruling Requesting Information. Optic Networks represents that the aforementioned information is sensitive, and disclosure could place Optic Networks at an unfair business disadvantage. The Commission has granted similar requests in the past and does so here.

16. Summary of Public Comments

Rule 1.18 allows any member of the public to submit written comment in any Commission proceeding using the “Public Comment” tab of the online Docket Card for that proceeding on the Commission’s website. Rule 1.18(b) requires that relevant written comment submitted in a proceeding be summarized in the final decision issued in that proceeding. No public comments were posted on the public comments tab of this proceeding.

17. Comments on Draft Decision

The proposed decision of ALJ Suman Mathews in this matter was mailed to the parties in accordance with Pub. Util. Code Section 311 and comments were allowed under Rule 14.3 of the Commission’s Rules of Practice and Procedure. No comments were filed.

18. Assignment of Proceeding

John Reynolds is the assigned Commissioner and Suman Mathews is the assigned ALJ in this proceeding.

Findings of Fact

1. Optic Networks is a telephone corporation and a public utility as defined in Pub. Util. Code Sections 234(a) and 216(a).
2. Optic Networks’ proposed construction activities may fall within one or more CEQA categorical exemptions.
3. Optic Networks has a minimum of \$100,000 of cash or cash equivalent that is reasonably liquid and readily available to meet its start-up expenses.

4. Optic Networks 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.

5. Optic Networks' management possesses sufficient experience, knowledge, and technical expertise to provide local exchange services to the public.

6. No one associated with or employed by Optic Networks as an affiliate, officer, director, partner, agent, or owner (directly or indirectly) of more than 10 percent of Optic Networks, or anyone acting in a management capacity for Optic Networks: (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 Section 17000 *et seq.*, Section 17200 *et seq.*, or Section 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; (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.

7. To the best of Optic Networks' knowledge, neither Optic Networks or any affiliate, officer, director, partner, nor owner of more than 10 percent of Optic

Networks, or any person acting in such capacity whether or not formally appointed, is being, or has been investigated by the FCC or any law enforcement or regulatory agency for failure to comply with any law, rule or order.

8. Optic Networks requested and is eligible for exemption from tariffing requirements and must observe the consumer protection rules adopted in D.98-08-031.

9. Optic Networks provided a map of the location of its proposed service territory.

10. Optic Networks 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.

11. Optic Networks provided an estimate of its customer base for the first and fifth year of operation.

12. Pursuant to Rule 11.4, Optic Networks filed motions for leave to file confidential materials under seal, including confidential information in the application, Exhibits F & H of the application, and Confidential Exhibit 1 of its July 17, 2024 response to the July 11, 2024 ALJ Ruling Requesting Information.

Conclusions of Law

1. Optic Networks should be granted a CPCN to provide full facilities-based and resold competitive local exchange service in the service territories of AT&T California, Frontier California, Frontier Communications, and Consolidated Communications and full facilities-based and resold interexchange services on a statewide basis, subject to the terms and conditions set forth in the OPs.

2. Optic Networks should be allowed to use the Energy Division 21-day CEQA exemption review process.

3. In order to ensure that Optic Networks maintains its financial requirements, Optic Networks should be required to provide the Commission's Communications Division with updated financial documentation both six and 12 months from the issuance date of this decision by email to cdcompliance@cpuc.ca.gov.

4. Optic Networks, once granted a CPCN, should be subject to the applicable Commission rules, decisions, GOs, and statutes that pertain to California public utilities.

5. Optic Networks is exempt from tariffing. In the future, if Optic Networks decides to offer services that require a tariff or schedule, such as basic service, Applicant should submit proposed tariffs and/or user guides to the Commission's Communications Division via Tier 2 Advice Letters using the General Order 96-B advice letter process at least 30 days before initiation of service.

6. Optic Networks' motion to file under seal confidential information in the application, Exhibits F & H of the application, and Confidential Exhibit 1 of its July 17, 2024 response to the July 11, 2024 ALJ Ruling Requesting Information should be granted for three years.

7. Optic Networks should not 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.

8. Optic Networks should be exempt from Pub. Util. Code Section 851 for the sole purpose of securing debt.

9. This proceeding should be closed.

O R D E R

IT IS ORDERED that:

1. A Certificate of Public Convenience and Necessity (CPCN) is granted to Optic Networks, LLC to provide full facilities-based and resold competitive local exchange service in the service 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 full facilities-based and resold interexchange services on a statewide basis, subject to the terms and conditions in this decision.
2. Optic Networks is exempt from Pub. Util. Code Section 851 for the sole purpose of securing debt.
3. The certificate granted, and the authority for Optic Networks, LLC to render service to customers under the rates, charges, and rules authorized, will expire if not exercised, by offering or actively providing service on a wholesale and/or resale basis, after 12 months from the effective date of this decision. Optic Networks, LLC is responsible for seeking approval for an extension of time to comply with this decision pursuant to Rules of Practice and Procedure Rule 16.6.
4. Optic Networks, LLC is assigned utility identification number U-7460 and is responsible for using this as its corporate identification number in the caption of all original filings with this Commission, in the titles of other pleadings filed in existing cases, and informal submissions to the Commission.
5. Optic Networks, 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. The written acceptance filed in this docket does not reopen the proceeding.

6. Optic Networks, LLC must provide the name, address, e-mail address, and telephone number of its designated primary regulatory/official contact person to the California Public Utilities Commission's Communications Division within five days of written acceptance of its certificate. Refer to Attachment B for additional information related to updating contact information.

7. Optic Networks, LLC must provide the name, address, e-mail address, and telephone number of its designated contact person for purposes of resolving consumer complaints to the California Public Utilities Commission's Consumer Affairs Branch within five days of written acceptance of its certificate. Refer to Attachment B for additional information related to updating contact information.

8. Optic Networks, LLC must submit a Tier-1 Advice Letter containing a copy of the license holder's executed performance bond in accordance with Decision 13-05-035 to the California Public Utilities Commission's Communications Division within five days of the effective date of this decision. Optic Networks, LLC is responsible, if needed, for seeking approval for an extension of time to submit the Tier-1 Advice Letter containing a copy of the performance bond. Optic Networks, LLC is responsible for ensuring that the performance bond is active for all periods of its operations and comply with the annual performance bond filing on or before March 31 of each year. Refer to Attachment B for additional information on performance bond requirements.

9. Optic Networks, LLC must submit its compliance with Public Utilities Code Section 708, Employee Identification Cards, to the California Public Utilities Commission's Director of the Communications Division, in writing, by

email to cdcompliance@cpuc.ca.gov, within 60 days of the effective date of this decision.

10. Optic Networks, LLC may operate on a detariffed basis. In the future, if Optic Networks, LLC decides to offer services that require a tariff or schedule, such as basic service, Optic Networks, LLC must submit proposed tariffs and/or user guides to the Commission's Communications Division via a Tier 2 Advice Letter using the General Order 96-B advice letter process at least 30 days before initiation of service.

11. Optic Networks, LLC must provide the date that competitive local exchange service is first rendered to the public, to the California Public Utilities Commission's Director of the Communications Division, in writing, by email to cdcompliance@cpuc.ca.gov, no later than five days after service first begins.

12. Optic Networks, LLC must demonstrate that it maintained at least \$100,000 that was reasonably liquid and available for its first year of operations by providing the California Public Utilities Commission's Communications Division with a confidential copy of its updated financial documentation at both six and 12 months from the issuance date of this decision by email to cdcompliance@cpuc.ca.gov.

13. Optic Networks, LLC is subject to California public purpose program surcharges (surcharges) and user fees; and is responsible for timely reporting and remittance of surcharges and user fees using the California Public Utilities Commission's proprietary Telecommunications and User Fee Filing System. Refer to Attachment B for additional information on surcharges and user fees requirements.

14. Optic Networks, LLC is responsible for submitting an annual report in accordance with General Order 104-A to the California Public Utilities

Commission's Director of the Communications Division, by e-mail to cdcompliance@cpuc.ca.gov, no later than March 31 of the year following the calendar year for which the annual report is submitted. Refer to Attachment C for additional information on annual report requirements.

15. Optic Networks, LLC is responsible for submitting its annual affiliate transaction report in accordance with Decision 93-02-019 to the California Public Utilities Commission's Director of the Communications Division, by e-mail to cdcompliance@cpuc.ca.gov, no later than May 1 of the year following the calendar year for which the annual affiliate transaction report is submitted. Refer to Attachment D for additional information on annual affiliate transaction report requirements.

16. Optic Networks, LLC is subject to all the current requirements applicable to competitive local exchange carriers and interexchange carriers included in Attachments B, C, and D to this decision; all Consumer Protection Rules contained in General Order 168; and all applicable California Public Utilities Commission rules, decisions, General Orders, and statutes that pertain to California public utilities on an ongoing basis.

17. Optic Networks, LLC must submit an application for expanded authority to operate without NDIEC status prior to construction of full facilities.

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

19. If Optic Networks, LLC wishes to engage in full facilities-based construction activities and believes that these activities are exempt from California Environmental Quality Act, Optic Networks, LLC shall first apply to

the California Public Utilities 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 Optic Networks, LLC of either its approval or its

denial of Optic Networks, LLC's claim for exemption from California Environmental Quality Act review within 21 days from the time that Optic Networks, LLC's submittal is complete.

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

21. If the California Public Utilities Commission's Energy Division disapproves Optic Networks, LLC's claimed California Environmental Quality Act (CEQA) exemption(s), Optic Networks, 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.

22. Optic Networks, LLC is responsible for sending a copy of this decision to the concerned local permitting agencies no later than 30 days from the date of this decision.

23. Optic Networks, LLC's motion to file under seal confidential information in the application, Exhibits F & H of the application, and Confidential Exhibit 1 of its July 17, 2024 response to the July 11, 2024 ALJ Ruling Requesting Information 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 Optic Networks, LLC believes that it is necessary for this information to remain under seal for longer than three years, Optic Networks, 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.

24. Application 24-02-007 is closed.

This decision is effective today.

Dated September 26, 2024, at San Francisco, California.

ALICE REYNOLDS

President

DARCIE L. HOUCK

JOHN REYNOLDS

KAREN DOUGLAS

MATTHEW BAKER

Commissioners

ATTACHMENT A

This Attachment is Intentionally Left Blank

(END OF ATTACHMENT A)

ATTACHMENT B

REQUIREMENTS APPLICABLE TO COMPETITIVE LOCAL EXCHANGE CARRIERS AND INTEREXCHANGE CARRIERS (Carrier)

1. Carrier is subject to all the current applicable California Public Utilities Commission (CPUC or Commission) rules, decisions, General Orders, and statutes that pertain to California public utilities and telephone corporations on an ongoing basis.

2. Carrier is responsible for rendering services to customers under the rates, charges and rules authorized by the Commission within 12 months from the date of the decision. Rendering services may include but are not limited to offering and/or actively providing services to its customers on a wholesale and/or resale basis.

3. Carrier is responsible for keeping all contact information up to date with the Commission. Changes to its primary regulatory and/or complaint contact 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. Carrier is responsible for updating this information within 30 days of the change, or at least annually by June 1 of each calendar year.

4. Carrier is subject to California public purpose program surcharges and user fees. Pursuant to Decision (D.) 22-10-021, all telephone corporations operating in California must assess, collect, report and remit public purpose program surcharges based on the number of active access lines. For definition of access line, see Section 5.2.2 of D.22-10-021. The surcharge funds the following California public purpose programs:

- a. The Universal Lifeline Telephone Service Trust Administrative Committee Fund (Pub. Util. Code § 277);
- b. The California Relay Service and Communications Devices Fund (Pub. Util. Code § 2881; D.98-12-073);
- c. The California High Cost Fund-A (Pub. Util. Code § 275.6); D.96-10-066, at 3-4, App. B, Rule 1.C);
- d. The California High Cost Fund-B (Pub. Util. Code § 276.5), D.96-10-066, at 191, App. B, Rule 6.F.; D.07-12-054);
- e. The California Advanced Services Fund (Pub. Util. Code § 281; D.07-12-054); and
- f. The California Teleconnect Fund (Pub. Util. Code § 280; D.96-10-066, at 88, App. B, Rule 8.G).

User Fees must be assessed and collected based on intrastate telecommunications revenues. The User Fee funds the CPUC's annual operating budget for regulating the telecommunications corporations under its jurisdiction (Pub. Util. Code §§ 431-435).

5. Carrier is responsible for obtaining guidance and directive from the Commission's Communications Division for timely reporting and remitting of public purpose program surcharges and the user fees through the Commission's proprietary Telecommunications and User Fee Filing System (TUFFS).

Additional information about telecommunications surcharges and user fees is available from the CPUC website: <https://www.cpuc.ca.gov/industries-and-topics/internet-and-phone/telecommunications-surcharges-and-user-fees>.

6. Carrier is responsible for timely and accurately reporting its number of access lines and remitting the resulting public purpose program surcharges through TUFFS even if there is zero access line to report and zero resulting surcharges to remit. Carriers that report and/or remit surcharge funds after the

due date will be charged a penalty equal to an annual rate of 10 percent. Send an email to Telcosurcharge@cpuc.ca.gov for questions related to surcharges and access to TUFFS. Current and historical surcharge rates can be found at <https://www.cpsc.ca.gov/industries-and-topics/internet-and-phone/telecommunications-surcharges-and-user-fees/surcharge-rates>.

7. Carrier is responsible for timely and accurately reporting and remitting the user fees based on a standard user fee remittance rate applied to the gross intrastate revenue or an annual minimum user fee of \$100, whichever is greater. The user fee remittance rate is determined annually by the Commission and posted on the Commission's webpage. The reporting and remittance of user fees must be through TUFFS within 15 days after the end of each calendar quarter (March 31, June 30 and September 30, and December 31) or January 15 due date for those paying the annual minimum user fee of \$100. TUFFS will automatically adjust the minimum user fee amount due to \$100 when the annual gross intrastate revenue is zero or less than the annual minimum user fee of \$100. Under Pub. Util. 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 April 15, July 15, October 15, and January 15, or more than 30 days after the January 15 due date for those utilities paying the annual minimum user fee of \$100, will be subject to automatic penalties including suspension or revocation of their authority to operate in California. Send an email to userfees@cpuc.ca.gov for questions related to user fees. Current and historical user fee rates can be found at <https://www.cpsc.ca.gov/industries-and-topics/internet-and-phone/telecommunications-surcharges-and-user-fees/user-fee-rates>.

8. In compliance with Resolution T-16901, December 2, 2004, Carrier is responsible for checking the joint tariff for public purpose program surcharges

and user fees filed by Pacific Bell Telephone Company dba AT&T California and apply the current public purpose program surcharges and user fees amounts in that joint tariff on end-user bills until further revised.

9. Carrier is responsible for ensuring that its tariff filings reflect all surcharges and fees to which it is subject to, as identified above.

10. If Carrier 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).

11. If Carrier 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).

12. Carrier providing competitive local exchange service is responsible for submitting a service area map as part of its initial tariff filed via Advice Letter to the Communications Division.

13. Carrier is responsible for submitting a copy of its complete tariff in use to the California Public Utilities Commission's Director of the Communications Division, by e-mail to cdcompliance@cpuc.ca.gov, in compliance with Public Utilities Codes Section 489(a), no later than February 15 of each year. If Carrier is de-tariffed, it is responsible for providing an annual certification that it is granted exemption from tariff filing or is a de-tariffed carrier and identify the authorization granting such status.

14. Carrier is responsible for obtaining a performance bond of at least \$25,000 in accordance with Decision 13-05-035. Within five business days after the effective date of CPCN authority, carrier is required to submit a Tier-1 advice letter to the Director of the Communications Division with a copy of the license holder's executed bond. 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. Pursuant to Decision 13-05-035, the Commission must 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.

15. Carrier is required to submit a Tier-1 Advice Letter on an annual basis, no later than March 31 of each year, with a copy of the executed performance bond. Carrier is responsible for ensuring that its performance bond does not lapse during any period of its operation. Additional information regarding performance bond requirement is available at

<https://www.cpuc.ca.gov/industries-and-topics/internet-and-phone/carrier-reporting-requirements/performance-bond-requirements>.

16. Carrier is responsible for ensuring that its employees comply with the provisions of Pub. Util. Code Section 2889.5 regarding solicitation of customers.

17. If Carrier is 90 days or more late in complying with its reporting obligations to the Commission including but not limited to filing its annual reports (e.g., Operations and Financials, and Affiliated Transaction Reports), submitting Performance Bonds, reporting and remitting surcharges and user fees; and has not received written permission from the Commission or Communications Division to file or remit late, the Communications Division may 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 Commission's Consumer Protection

and Enforcement Division for enforcement action, which could result in additional fines, penalties, or other sanctions.

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

19. Carrier is exempt from Pub. Util. Code Sections 816-830.

20. If Carrier decides to discontinue service or file for bankruptcy, it must immediately notify the California Public Utilities Commission's Director of the Communications Division, by e-mail to cdcompliance@cpuc.ca.gov.

(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 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 Pub. Util. Code Sections 2107 and 2108.

Required information:

1. Exact legal name and Utility ID number of the reporting utility.
2. Address of the reporting utility.
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 31 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 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 Form¹⁶ via e-mail to cdcompliance@cpuc.ca.gov no later than May 1 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 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.

¹⁶ An Annual Affiliate Report form (in PDF format) has been developed to help facilitate the submission of this reporting obligation and it is available at: https://www.cpsc.ca.gov/-/media/cpsc-website/divisions/communications-division/documents/licensing-compliance/annual-reporting-requirements/annual-affiliate-transaction-report-form_.pdf.

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 item 1 and item 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 information, documents, or other material that a utility is unable to provide must be reasonably described and the reasons they cannot be obtained, as well as the efforts expended to obtain them, 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 with a subject line that includes: “CD Annual Reports.”

(END OF ATTACHMENT D)