

Decision No. C24-0269

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 24A-0119T

IN THE MATTER OF THE APPLICATION OF HYPERFIBER OF COLORADO, LLC FOR A
CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO PROVIDE PART IV
SERVICES (4 CCR 723-2-2103).

**COMMISSION DECISION DEEMING
APPLICATION COMPLETE AND GRANTING
APPLICATION WITH CONDITIONS**

Mailed Date: April 24, 2024

Adopted Date: April 17, 2024

I. BY THE COMMISSION

A. Statement

1. By this Decision, we grant, with conditions, the Application filed by HyperFiber of Colorado, LLC (HyperFiber) for a Certificate of Public Convenience and Necessity (CPCN) to provide local exchange telecommunications services throughout the State of Colorado, pursuant to 4 *Code of Colorado Regulations* (CCR) 723-25-4, Commission's Rules Regulating Telecommunications Service and Providers of Telecommunications Service.

B. Background

2. On March 12, 2024, HyperFiber filed an Application for a CPCN to provide Part IV services. HyperFiber seeks to provide broadband services in the counties of Adams, Boulder, Denver, Jefferson, Larimer, and Morgan.

3. On March 12, 2024, notice of the Application was provided to all persons, firms, or corporations, interested in, or affected by the grant or denial of the request.

Interventions were due on or before April 11, 2024. No interventions were received in this proceeding.

4. On April 2, 2024, HyperFiber filed a supplement to their application, a notarized attestation.

5. On April 9, 2024, HyperFiber filed a supplement to its application, a statement of willingness to provide financial assurance in the form of a bond or a letter of credit as a condition of obtaining its CPCN.

C. Discussion

6. No one has filed an intervention opposing the Application. We, therefore, find that the Application is unopposed and considered without a formal hearing pursuant to § 406109(5), C.R.S.

7. The Commission modified its Rules Regulating Telecommunications Services and Providers of Telecommunications Services, 4 CCR 723-2 (Proceeding No. 16R-0453T, effective September 1, 2017). The modified rules allow providers offering Part IV services under §40-15-401, C.R.S., to apply to the Commission to obtain a CPCN. No CPCN is required for services classified in Part IV of Article 15 of Title 40 of the Colorado Revised Statutes. Pursuant to § 4015-503.5, C.R.S., and Commission Rule 2111, 4 CCR 723-2, the Commission may require an applicant requesting an operating authority to post a bond or provide other security as a condition of obtaining a Commission operating authority. With the issuance of this authority, HyperFiber must: (1) have an effective interconnection agreement with the underlying carrier CenturyLink, as necessary, to provide its services; (2) provide the central office name and CLLI code where HyperFiber has collocated its telecommunications equipment; (3) file and have an

effective switched access tariff on file with the Commission; and, (4) comply with all statutory and regulatory requirements pursuant to Rule 2103(a)(XVI).

8. Due to the financial information provided by HyperFiber, we conclude that financial assurance in the amount of \$50,000 for the issuance of a CPCN is necessary and appropriate in the form of either a bond or a letter of credit and shall be required to be posted with the Commission under the terms and conditions specified in the Attachments to this Decision. The issuance of a bond or letter of credit is consistent with previously issued Commission decisions granting CPCNs when financial fitness is an issue. Section 40-15-503.5, C.R.S., and Commission Rule 2111 allow the Commission to impose a bond or other security as a condition of obtaining an operating authority.

9. With the issuance of this authority, HyperFiber must: (1) file a bond or letter of credit consistent with the terms and conditions in the Attachment A and AA to this Decision; and (2) comply with all applicable statutory and regulatory requirements pursuant to Rule 2103(a)(XVI), 4 CCR 723-2.

II. ORDER

A. The Commission Orders That:

1. The Application, filed by HyperFiber of Colorado, LLC on March 12, 2024, is deemed complete within the meaning of § 40-6-109.5, C.R.S., and is granted with conditions herein.

2. HyperFiber of Colorado, LLC, is granted a Certificate of Public Convenience and Necessity to provide wholesale Part IV services in the following counties: Adams, Boulder, Denver, Jefferson, Larimer, and Morgan.

3. HyperFiber of Colorado, LLC is not required to create and provide tariffs to the Commission for its CPCN.

4. HyperFiber of Colorado, LLC, shall not unjustly discriminate among customers in the same class of service, per Commission Rule 4 *Code of Colorado Regulations* 723-2-2103.

5. Before commencing operations under this CPCN to provide Part IV services, HyperFiber of Colorado, LLC shall file with the Commission, financial assurance in the form of a bond or letter of credit consistent with the terms and conditions as described in the Attachments to this Decision.

6. If HyperFiber of Colorado, LLC fails to file financial assurance within one year from the Mailed Date of this Decision, this CPCN to provide Part IV services shall be deemed null and void without further action of the Commission. For good cause shown, and if a proper request is filed within one year of the Mailed Date of this Decision, the Commission may grant additional time within which to file financial assurance.

7. Consistent with terms and conditions established in previous Commission decisions, HyperFiber of Colorado, LLC will be required to contribute, as prescribed by statute, rule, or order of the Commission, based on the entirety of its intrastate services regardless of the technology, to the Public Utilities Commission's Telecommunications Utilities Fund, the Colorado High-Cost Support Mechanism, the Colorado Telephone Users Disabilities Fund, the Statewide 9-1-1 Surcharge Trust Cash Fund, the Statewide 9-8-8 Surcharge, and other financial support mechanisms that may be created in the future by the Commission to implement §§ 4015-502(4) and (5), C.R.S.

8. The 20-day period provided for in § 40-6-114, C.R.S., within which to file applications for rehearing, reargument, or reconsideration begins on the first day following the effective date of this Decision.

9. This Decision is effective on its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
April 17, 2024**

(S E A L)



ATTEST: A TRUE COPY

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

ERIC BLANK

MEGAN M. GILMAN

Commissioners

A handwritten signature in cursive script that reads 'Rebecca E. White'.

Rebecca E. White,
Director

COMMISSIONER TOM PLANT
ABSENT