

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of Dynalink Communications, Inc. for a Certificate of Public Convenience and Necessity to Provide Resold Local Exchange and Interexchange Telecommunications Services within California.

Application 14-03-006
(Filed March 14, 2014)

DECISION ADOPTING THE JOINT SETTLEMENT AGREEMENT AND GRANTING A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY IN ORDER TO PROVIDE RESOLD LOCAL EXCHANGE AND INTEREXCHANGE TELECOMMUNICATIONS SERVICES

Summary

This decision approves and adopts the December 3, 2014 settlement agreement between Dynalink Communications Inc. (Dynalink) and the Safety and Enforcement Division (SED) (collectively the “Parties”). The settlement resolves the issues raised in the April 18, 2014 protest filed by SED concerning Dynalink’s: 1) operation in California after November 2009 when Dynalink’s certification to provide telecommunication’s services was revoked pursuant to Resolution T-17228 for failure to comply with the Commission’s reimbursement account fee filing and reporting requirements; 2) failure to disclose prior adverse

regulatory actions in other jurisdictions, and 3) erroneous statements of fact in its Application, in violation of Rule 1.1.¹

Pursuant to Public Utilities Code § 1001,² we grant Dynalink a certificate of public convenience and necessity to provide resold local exchange and interexchange telecommunication services within the State of California, subject to compliance with the settlement and with the terms and conditions set forth in this decision.

1. Background and Procedural History

Dynalink Communications Inc. (Dynalink)³ filed Application (A.) 14-03-006 on March 14, 2014, seeking authority to provide resold local and interexchange telecommunication services in the State of California.

Dynalink was originally issued a certificate of public convenience and necessity (CPCN) to provide resold local exchange and interexchange telecommunications services in the State of California on April 25, 2008. However, its certification U7080C was revoked on November 29, 2009, pursuant to Resolution T-17228,⁴ for failure to comply with the Commission's reimbursement account fee filing and reporting requirements. Dynalink

¹ All rule references are to the Commission's Rules of Practice and Procedure (http://docs.cpuc.ca.gov/published/RULES_PRAC_PROC/70731.htm) unless otherwise specified.

² All section references are to the California Public Utilities Code.

³ Dynalink is a corporation whose principal place of business is located at 927 McDonald Avenue, Brooklyn, New York 11218.

⁴ Resolution T-17228 revoked the operation authority of 97 carriers, including Dynalink, for failure to comply with the Commission's reimbursement account fee filing and reporting requirements under Code Sections 401 through 435.

continued to report revenues and pay surcharges through October 2013 and user fees to the Commission through March 2014.

The Safety and Enforcement Division (SED) filed a protest on April 18, 2014 opposing approval of the application. SED protested that the sworn affidavit by Dynalink President Sol Birnbaum, which was filed with the application, failed to disclose: (1) Dynalink's earlier revocation by this agency; (2) the revocation of Dynalink's Pennsylvania telecommunications license; (3) a consent decree between the Federal Communications Commission and New Bridge Technologies (a company co-founded by Birnbaum), and (4) tariff filing issues in Massachusetts and Maryland.

Dynalink filed a reply on June 9, 2014. It enclosed a further affidavit dated June 3, 2014⁵ by Dynalink's Secretary/Treasurer, Gity Birnbaum, explaining why Dynalink was unaware that its certification had been revoked and explaining the status of certification issues in other jurisdictions. Dynalink says that because it did not receive a copy of Resolution T-17228, and never received any indication from the Commission that its operating authority was in question, it had continued to file payments and reports as required, and noted that the Commission had continued to accept them. Dynalink indicated that as soon as it became aware of the revocation, it filed this A.14-03-006.

A Prehearing Conference (PHC) was held on July 23, 2014, in San Francisco. At the PHC, the parties indicated that they were pursuing resolution of the disclosure issues. On September 9, the parties indicated that their negotiations were continuing and that they anticipated being able to

⁵ See Attachment A to Reply dated June 9, 2014.

determine whether the matter could be informally resolved sometime after September 30.

On October 3, 2014, the Assigned Commissioner issued a Scoping Memo and Ruling under which the following matters were deemed to be within the scope of the proceeding:

- a. Should this Commission grant Dynalink's application for a CPCN?
- b. Was certification actually revoked pursuant to Resolution T-17228 if, as Dynalink contends, Dynalink was not served with notice of the pending revocation or notice of the actual revocation?
- c. Is the revocation of Dynalink's prior CPCN a bar to future certification?
- d. Did Dynalink actually operate in California without authority if the Commission accepted surcharges and fees after the Commission revoked Dynalink's certification November 29, 2009? If so, is such operation a bar to future certification?
- e. Does Dynalink's failure to disclose past and pending regulatory inquiries/actions in other jurisdictions bar us from granting this application?

An evidentiary hearing was set for December 17, 2014. However, on December 3, 2014, the parties filed a joint motion for approval of their settlement agreement, and the hearing was removed from calendar.

2. The Settlement

The settlement acknowledges that Dynalink was not served with Resolution T-17228 revoking its authority and that the Commission did not otherwise inform it of the revocation of its CPCN. Dynalink concedes that, because it was unaware of the revocation, it provided service to customers in California without proper operating authority from the Commission. Dynalink

concedes that its application did not disclose regulatory actions in other jurisdictions to the Commission, and as a result, that its application contained erroneous statements of fact. SED asks for, and Dynalink agrees to pay, a fine of \$12,652 for Dynalink's rules violations, to the State of California General Fund within 60 days of the date of the Commission's approval of the settlement. Dynalink also agreed to pay unpaid fees, surcharges and penalties that were the subject of Resolution T-17228.⁶

2.1. Settlement Standard of Review

The Commission will not approve settlements, whether contested or uncontested, unless the settlement satisfies Rule 12.1(d), is reasonable in light of the whole record, is consistent with the law, and is in the public interest. Rule 12.5 establishes that settlements, while binding on the parties if adopted by the Commission, are not precedent for future proceedings. As stated below, this settlement meets the three requirements.

2.2. The Settlement Meets the Standard of Review for Settlement

In order for the Commission to consider a proposed settlement in this proceeding as being in the public interest, the Commission must be convinced that the parties had a sound and thorough understanding of the application and all of the underlying assumptions and data included in the record. This level of understanding of the application and development of an adequate record is necessary to meet our requirements for considering any settlement.

⁶ As of September 30, 2015, Dynalink has paid \$18,388.39 in surcharges for the period November 2013 through July 2015 and \$1,185.12 in penalties/interest to bring its account current. These payments will be credited to the revoked account U7080C. Future payments will be applied to a new CPCN number which will be assigned upon the Commission's adoption of this Proposed Decision.

The record consists of the filed application with attached documents, the proposed settlement and the motion for its adoption. The settlement is the result of negotiation by parties who have a thorough understanding of the issues and can make informed decisions in the settlement process. It is reasonable in light of the whole record because it resolves the concerns that SED raised in its protest, addresses the issues within the scoping memorandum and provides sufficient information to permit the Commission to discharge its regulatory obligations. The settlement is consistent with the law because it requires Dynalink to comply with the financial requirements pertinent to telephone corporations under Decision (D.) 13-05-035. The settlement can be said to serve the public interest because SED's safety and enforcement responsibilities represent the interests of telecommunications customers. In addition, by resolving competing concerns in a collaborative and cooperative manner, the parties avoid the costs of further litigation.

2.3. Assessment of Penalties for Non-Compliance

The parties are to be commended for their ability to reach a reasonable settlement. As the settlement recites, unaware that its certification had been revoked in November 2009, Dynalink continued to file payments and reports as required, and the Commission had continued to accept them. This demonstrates a measure of good faith by Dynalink.

Nevertheless, we must emphasize that it is the responsibility of the regulated utility to identify and properly comply with all legal requirements. While the Commission tries to assist in compliance by identifying legal requirements and notifying the utility of them, it is up to the regulated entity to make sure that it is in compliance. Here, notwithstanding the fact that the Commission's revocation notice under Resolution T-17228 failed to reach

Dynalink, the fact remains that Dynalink was among the 97 carriers whom the Resolution addressed because it had failed to comply with the Commission's reimbursement account fee filing and reporting requirements under Code Sections 401 through 435.

The Commission's power to levy fines and penalties, or to utilize other means it deems necessary to assure compliance with its orders and the law, has been well established.⁷ Sections 2107 and 2108 of the Public Utilities Code provide that:

Section 2107. "Any public utility that violates or fails to comply with any provision of the Constitution of this state or of this part, or that fails or neglects to comply with any part or provision of any order, decision, decree, rule, direction, demand, or requirement of the commission, in a case in which a penalty has not otherwise been provided, is subject to a penalty of not less than five hundred dollars (\$500), nor more than fifty thousand dollars (\$50,000) for each offense."

Section 2108. "Every violation of the provisions of this part or of any part of any order, decision, decree, rule, direction, demand, or requirement of the commission, by any corporation or person is a separate and distinct offense, and in case of a continuing violation, each day's continuance thereof shall be a separate and distinct offense."

We agree that Dynalink operated without Commission authority (after revocation) although this was perhaps due to an inadvertent oversight. It is appropriate that the settlement includes provision for Dynalink to pay the

⁷ See D.98-12-075.

unpaid fees, surcharges and penalties it incurred that were the subject of Resolution T-17228. We decline to impose further penalty upon Dynalink for non-compliance, because we are convinced that, once Dynalink became aware of the revocation, it took steps to rectify it by filing this new application.

In addition, as will be discussed below, the public interest will be adequately protected and served by requiring Dynalink to post a performance bond and to comply with all financial requirements that the Commission implemented in the revisions to the certification process for telephone corporations,⁸ which are set forth below. This said, we admonish Dynalink that strict compliance with the terms of the settlement and Ordering Paragraphs of this decision is required, and failure to do so may result in future imposition of penalties.

3. CPCN Certification Requirements

3.1. Jurisdiction

Public Utilities Code Section 216(a) defines the term “Public utility” to include a “telephone corporation,” which in turn is defined in Public Utilities Code Section 234(a) as “every corporation or person owning, controlling, operating, or managing any telephone line for compensation within this state.” Dynalink is a telephone corporation and a public utility subject to our jurisdiction.

Dynalink does not propose to deploy its own network facilities but will use existing facilities. It intends to lease unbundled network elements and resold network services from underlying carriers in order to provide local exchange services within California territories served by Pacific Bell dba AT&T California

⁸ See D.13-05-035 in R.11-11-006.

(AT&T), Verizon California Inc. (Verizon), Citizens Telecommunications Company of California, dba Frontier Communications of California, Inc. (Citizens), and SureWest Communications (SureWest), and interexchange services statewide in California.⁹

3.2. California Environmental Quality Act (CEQA)

CEQA (Public Resources Code Sections 21000 et seq.) applies to discretionary projects to be carried out or approved by public agencies. A basic purpose of CEQA is to “inform governmental decision-makers and the public about the potential significant environmental effects of the proposed activities.” (Title 14 of the California Code of Regulations (hereafter CEQA Guidelines), Section 15002.)

CEQA requires the California Public Utilities Commission (Commission) to act as the designated lead agency to assess the potential environmental impact of a project so that adverse effects are avoided, alternatives are investigated, and environmental quality is restored or enhanced to the fullest extent possible. In Commission Rules of Practice and Procedure Rule 2.4(b), the Commission recognizes that certain classes of projects are exempt from CEQA. In cases where such exemptions apply, we are not required to issue an Environmental Impact Report or Negative Declaration.

⁹ Application, paragraph 3 “Description of Services to be Provided” Dynalink’s application refers to “Pacific Bell” which is now AT&T California and to Roseville Telephone (which is now SureWest Communications).

Dynalink seeks an exemption from CEQA requirements¹⁰ because it does not now, nor in the future, propose to deploy its own network facilities. Rather, Dynalink indicates that it will provide resold services and will route services solely over facilities owned by other certified incumbent carriers.

Since Dynalink states that it will not be constructing any facilities for the purpose of providing services under this CPCN, it can be said with certainty that there is little likelihood that granting this application will have an adverse impact upon the environment. CEQA review is not required for this type of non-facilities-based project. However, Dynalink is advised that should it desire to construct facilities within the State of California in the future, it must file for additional authority, and undergo the requisite environmental (CEQA) review before commencing any construction.

3.3. Financial Requirements

To be granted a CPCN, an applicant for authority to provide resold local exchange services must demonstrate that it has a minimum of \$25,000 cash or cash equivalent to meet the firm's start-up expenses.¹¹ An applicant must also demonstrate that it has sufficient additional resources to cover all deposits required by local exchange carriers and/or interexchange carriers in order to provide the proposed service.¹² Dynalink attaches a balance sheet and income

¹⁰ Application, paragraph 6 "CEQA Compliance."

¹¹ 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.

¹² 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.

statement in Exhibit 5 to its application. However, the statement is unaudited. The statement is not sufficient to demonstrate that Dynalink has sufficient funds to meet its start-up expenses. An applicant for a CPCN, may demonstrate that it meets the minimum financial requirement by submitting an audited balance sheet and income statement demonstrating sufficient cash flow, or other documentation as authorized in D.91-10-041 and D.95-12-056.¹³

Because Dynalink has not provided the documentation required under the above Decision, and in light of the prior failures to comply that Dynalink has demonstrated before this Commission and other tribunals, we are requiring Dynalink to submit an enhanced performance bond covering its first year of operation, in the amount of \$50,000, payable to the Commission, within five days

¹³ D.95-12-056 at Appendix C and D.91-10-041, at 13 both list the following financial instruments that will adequately support the financial requirements for a CPCN: a) Cash or cash equivalent, including cashier's check, sight draft, performance bond proceeds, or traveler's checks; b) Certificate of deposit or other liquid deposit, with a reputable bank or other financial institution; c) Preferred stock proceeds or other corporate shareholder equity, provided that use is restricted to maintenance or working capital for a period of at least 12 months beyond certification of the applicant by the Commission; d) letter of credit, issued by a reputable bank or other financial institution, irrevocable for a period of at least 12 months beyond certification of the application by the Commission; e) Line of credit or other loan, issued by a reputable bank or other financial institution, irrevocable for a period of at least 12 months beyond certification of the applicant by the Commission, and payable on an interest only basis for the same period; f) Loan, issued by a qualified subsidiary, affiliate of applicant, or a qualified corporation holding controlling interest in the applicant, irrevocable for a period of at least 12 months beyond certification of the applicant by the Commission, and payable on an interest-only basis for the same period; g) Guarantee, issued by a corporation, copartnership, or other person or association or association, irrevocable for a period of at least 12 months beyond certification of applicant by the Commission, and h) Guarantee, issued by a qualified subsidiary, affiliate of applicant, or a qualified corporation holding controlling interest in the applicant, irrevocable for a period of at least 12 months beyond certification of the applicant by the Commission.

of written acceptance of CPCN authority. The \$50,000 bond shall remain in effect for a period of 12 full months. Thereafter, it shall be reduced to \$25,000 and remain in effect throughout the duration of Dynalink's operation within the State of California, as required under D.13-05-035.

We find that requiring Dynalink to post and keep a performance bond of \$50,000 in effect during its first year of operation, and thereafter keep a bond of \$25,000 in effect throughout the duration of its operation in California, is adequate to satisfy the financial requirements for issuance of a CPCN.

3.4. Technical and Managerial Competence

To be granted a CPCN for authority to provide local exchange and interexchange services, an applicant must make a reasonable showing of managerial and technical expertise in telecommunications or a related business.¹⁴ Dynalink supplied the resume and biographical information on its Chief Executive Officer, Solomon Birnbaum and the resume of its Vice President, Mendel Birnbaum in Exhibit 6 to its application. Exhibit 6 demonstrates that Dynalink's managers have sufficient expertise and training to operate a telecommunications provider, therefore, Dynalink has met this requirement.

The application includes a sworn affidavit dated February 18, 2014, by Dynalink's President stating that no one involved with Dynalink as an affiliate, officer, director, partner, or owner of more than 10% of Dynalink, was previously associated with a telecommunications carrier that filed for bankruptcy, or was (a) found personally liable for fraud, dishonesty, failure to disclose, or misrepresentations to consumers or others, (b) been convicted of a felony, (c) been the subject of sanction by the Federal Communications Commission

(FCC) or any state regulatory agency, or the subject of criminal referral by a judge or public agency for failure to comply with any regulatory statute, rule, or order, (d) has had a telecommunications license or operating authority denied, suspended, revoked or limited in any jurisdiction, (e) has been found either civilly or criminally liable by a court of appropriate jurisdiction for a violation of § 17000, et seq. of the California Business and Professions Code, or (f) has entered into settlement of criminal or civil claims or has made voluntary payments or agreed to any other type of monetary forfeitures in resolution of any action by any regulatory body, agency or attorney general.

On June 3, 2014, Gity Birnbaum, Secretary/Treasurer of Dynalink, signed an additional affidavit under penalty of perjury setting forth clarification necessary to correct errors and omissions in the application.¹⁵ With the clarification obtained in the June 3, 2014 affidavit, we find that Dynalink is in compliance with the requirements of D.95-12-056 and D.13-05-035.

3.5. Detariffed Status

Dynalink intends to offer its service at rates that are competitive with the services of other providers. Dynalink desires to operate on a detariffed basis and requests exemption from tariffing requirements pursuant to D.98-08-031, because it does not intend to offer local residential services.¹⁶ Dynalink acknowledges

¹⁴ D.95-12-056 at Appendix C, Rule 4.A.

¹⁵ See Attachment A to Dynalink's Reply to the Protest of the Safety and Enforcement Division, filed June 9, 2014. The omissions that were the subject of protest by SED, were satisfactorily addressed in the June 3, 2014 affidavit and other discovery provided by Dynalink to SED. As a result, SED and Dynalink ultimately reached the settlement that is the subject of this Decision.

¹⁶ Application, paragraph 18 "Tariffs."

that it must comply with the requirements and consumer protection rules set forth in D.98-08-031, as such rules may be modified from time to time. Dynalink also acknowledges that it must post all detariffed rates, charges, terms and conditions of its service on its internet site, pursuant to Rule 5.2 of the Telecommunications Industry Rules in General Order 96B.¹⁷ It must, at least 30 days before a change will occur, notify affected customers about higher rates or charges, about more restrictive terms or conditions, or about withdrawal of service, transfer of ownership or customer base pursuant to Rule 5.3.

3.6. Request for Treatment as a Non-Dominant Interexchange Carrier

Dynalink requests treatment as a non-dominant interexchange carrier, which would include exemption from the requirements of Pub. Util. Code §§ 816-830 concerning stocks and security and § 851 concerning the encumbrance transfer of utility property.¹⁸ 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. We grant Dynalink's request for non-dominant interexchange carrier status (NDIEC), provided that it follows all rules detailed in the above referenced decisions.¹⁹

3.7. Safety Considerations

With the adoption of the *Safety Policy Statement of the California Public Utilities Commission* on July 10, 2014, the Commission has, among other things, heightened its focus on the potential safety implications of every proceeding. We

¹⁷ Application, paragraph 13 "Proposed Rates."

¹⁸ Application, paragraph 17 "Request for Exemptions."

have considered the potential safety implications here. At this point, Dynalink is authorized only to be a reseller of competitive local exchange and interexchange services and will not be constructing its own facilities.²⁰ We feel satisfied that Dynalink will meet the Commission's minimum safety goals and expectations of CLECs because: (1) Dynalink meets the financial requirements as set forth in this decision for a non-facilities based CLEC, and (2) Dynalink is a public utility that is required pursuant to Pub. Util. Code § 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." Should Dynalink seek to construct its own facilities, we will revisit the safety considerations applicable to facilities based carriers.

3.8. Map of Service Territory

To be granted a CPCN for authority to provide local exchange service, an applicant must provide a map of the service territories it proposes to serve.²¹ Dynalink provided a map of its proposed service area, in Exhibit 4 to its application, in compliance with this requirement.

3.9. General Order (GO) 104-A Statement

Rule 3.1(i) requires that a utility filing an application under Pub. Util. Code § 1001, must provide a statement regarding General Order 104-A. Dynalink states that, as a privately held company not owned by any other entity, it has

¹⁹ While the Commission has granted exemption from §§ 816-830 to others, exemption from § 851 has not been granted previously and is not granted here.

²⁰ Application, paragraph 11 "Estimated Cost of Construction, Annual Fixed and Operating Costs and Economic Feasibility"

²¹ D.95-12-056 at Appendix C, Rule 4.E.

nothing to report under this rule.²² On a going forward basis, however, Dynalink must file all reports required of a public utility under Commission jurisdiction.

3.10. Affidavit of Bond Amount

In D.13-05-035 in Rulemaking 11-11-006, the Commission adopted revisions to the certification process for telephone corporations, and established a minimum performance bond requirement of \$25,000 for all entities applying for a CPCN for the first time, which have not previously reported revenues or submitted surcharges to the Commission. As described in Section C.3 above, Dynalink must obtain and maintain a bond of \$50,000 payable to the Commission, during its first year of operation within the state. Thereafter, the bond may be reduced to \$25,000 and be maintained for the duration of Dynalink's operation in California. By satisfying these requirements, Dynalink will meet both the minimum performance bond requirement and the overall financial requirements for issuance of a CPCN.

3.11. Expected Customer Base

Dynalink provided its estimated customer base for the first and fifth years of operation in paragraph 15 of the application. Therefore Dynalink has complied with this requirement.

3.12. Conclusion

We conclude that the application conforms to our rules for certification as an interexchange and local exchange carrier. Accordingly, we grant Dynalink a CPCN to provide non-facilities-based and resold local exchange telecommunications service in the service territories of Pacific Bell dba AT&T California (AT&T), Verizon California Inc. (Verizon), Citizens

²² Application, paragraph 14 "General Order 104-A Statement."

Telecommunications Company of California, dba Frontier Communications of California, Inc. (Citizens), and SureWest Communications (SureWest) and non-dominant interexchange service statewide, subject to compliance with the terms and conditions set forth in the Ordering Paragraphs (OPs) of this decision.

The CPCN granted by this decision provides benefits to Dynalink and corresponding obligations. Dynalink benefits by receiving authority to operate in the prescribed service territory, and by having the ability to request interconnection with other telecommunications carriers in accordance with Section 251 of the Federal Communications Act (47 U.S.C. 251). In return, Dynalink is obligated to comply with all applicable Public Utilities Codes and Commission Rules, GOs, and decisions applicable to telecommunications carriers providing approved services. The applicable Codes, Rules, etc. include, but are not limited to, consumer protection rules, tariffing, and reporting requirements. Dynalink is also obligated to pay all Commission prescribed user fees and public purpose program surcharges as set forth in Attachment B of this decision, to comply with CEQA (when and if applicable), and to adhere to Pub. Util. Code § 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.”

4. Request to File Under Seal

Pursuant to Rule 11.4 of the Commission’s Rules of Practice and Procedure, Dynalink filed a motion for leave to file Exhibit 5 (Balance Sheet and Income Statement) to the application as confidential material under seal. Dynalink represents that the information is sensitive, and the disclosure could

place Dynalink at an unfair business disadvantage. We have granted similar requests in the past regarding financial information, accordingly Exhibit 5 is deemed confidential.

5. Categorization and Need for Hearing

In Resolution ALJ 176-3333, dated March 27, 2014, the Commission preliminarily categorized this application as ratesetting, and preliminarily determined that hearings were not necessary. The only protest received has been resolved via settlement. There is no apparent reason why the application should not be granted. Although a prehearing conference was held, there is no need for an evidentiary hearing. Accordingly, it is not necessary to disturb the preliminary determinations.

6. Waiver of Comment Period

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

7. Assignment of Proceeding

Carla J. Peterman is the assigned Commissioner and Patricia B. Miles is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. Dynalink is a telephone corporation and a public utility as defined in Pub. Util. Code Sections 234(a) and 216(a), and is subject to Commission jurisdiction.
2. Dynalink filed A.14-03-006 on March 14, 2014 for a CPCN granting authority to operate as a competitive local exchange and interexchange carrier within California.
3. SED filed a protest to the application on April 18, 2014.

4. On December 3, 2014, Dynalink and SED filed a joint motion for approval of a settlement agreement which resolves the issues raised within the protest, and which includes provision for payment of a penalty of \$12,652 as well as fees, surcharges and penalties that Dynalink incurred from November 2013 through the date of settlement.

5. The record for approval of the settlement agreement is comprised of the application, documents attached to the application, Dynalink's reply dated June 9, 2014 and its attachments, and the settlement agreement and its attachments.

6. The parties to the settlement have a sound and thorough understanding of the issues and therefore make informed decisions in the settlement process.

7. The proposed settlement is reasonable in light of the record, consistent with applicable law, commission precedent and in the public interest.

8. Dynalink proposes no construction activity.

9. Granting Dynalink authority to provide resold local exchange and interexchange telecommunications services will not have a significant adverse effect upon the environment.

10. Dynalink did not submit an audited financial statement or any of the eight financial instruments enumerated in D.95-12-056 or D.91-10-041, accordingly, Dynalink must post a performance bond of \$50,000 which shall remain in effect during its first year of operation, in order to satisfy the minimum financial requirement, in lieu of the required financial instruments.

11. Dynalink management possesses sufficient experience, knowledge, and technical expertise to provide resold local exchange services and interexchange telecommunication services to the public.

12. No one associated with or employed by Dynalink as an affiliate, officer, director, partner, or owner of more than 10% of Dynalink was: previously associated with a telecommunications carrier that filed for bankruptcy; was sanctioned by the FCC or any state regulatory agency for failure to comply with any regulatory statute, rule, or order; or was previously associated with any telecommunication carrier that has been found either civilly or criminally liable by a court of appropriate jurisdiction for a violation of § 17000, et seq. of the California Business and Professions Code, or for any actions which involved misrepresentations to consumers, nor is currently under investigation for similar violations.

13. Dynalink does not intend to offer local residential service, has agreed to abide by the consumer protection rules adopted in D.98-08-031 and otherwise meets the qualifications for exemption from tariffing requirements.

14. Dynalink will not be constructing facilities.

15. Dynalink requests treatment as a NDIEC.

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

17. Dynalink provided an estimate of its customer base for the first and fifth year of operation in its application.

18. Pursuant to Rule 11.4, Dynalink filed a motion for leave to file Exhibit 5 as confidential material under seal.

Conclusions of Law

1. The December 3, 2014 motion filed by Dynalink and SED to adopt their settlement agreement should be granted.

2. Dynalink should be granted a CPCN to provide resold local exchange telecommunications services within the service territories of AT&T, Verizon, Citizens, SureWest, and resold interexchange services statewide in California,

subject to the terms and conditions set forth in the OPs, including the condition that it maintain a \$50,000 performance bond, during the first year of operation within the state.

3. Dynalink, once granted a CPCN, will be subject to the applicable Commission rules, decisions, GOs, and statutes that pertain to California Public Utilities.

4. Dynalink's motion to file under seal Exhibit 5 to its application should be granted for three years.

5. Dynalink should be granted NDIEC status, subject to Commission rules and regulations applicable to NDIECs as detailed in D.85-01-008, D.85-07-081, D.85-11-044 and D.10-09-017.

6. Application 14-03-006 should be closed.

O R D E R

IT IS ORDERED that:

1. The Joint Motion for Approval of Settlement Agreement by Dynalink Communications, Inc. and the Commission's Safety and Enforcement Division, filed on December 3, 2014 is granted, and the Settlement Agreement, attached to this decision as Attachment A, is approved.

2. As provided in the Settlement Agreement, within 60 calendar days of the date of the Commission's approval of the Settlement Agreement, Dynalink Communications, Inc. must pay a fine of \$12,652, by check or money order, payable to the California Public Utilities Commission and mailed or delivered to the Commission's Fiscal Office at 505 Van Ness Avenue, Room 3000, San Francisco, CA 94102. Dynalink shall write on the face of the check or money

order "For deposit to the State of California General Fund per Decision ##-##-##."

3. Dynalink Communications, Inc. shall timely pay remaining surcharges associated with the revoked account bearing corporate identification number U7080C, for each month October through December 2015, as follows:

- a) surcharges for October 2015, no later than December 10, 2015;
- b) surcharges for November 2015, no later than January 9, 2016; and
- c) surcharges for December 2015, no later than February 9, 2016.

4. Dynalink Communications, Inc. shall timely pay user fees associated with the revoked account bearing corporate identification number U7080C, for January 2015 through December 2015, no later than January 15, 2016.

5. Following payment of amounts owed in Ordering Paragraphs 3 and 1 above, a new certificate of public convenience and necessity is granted to Dynalink Communications, Inc. to provide resold local exchange telecommunications services within the service territories of AT&T California, Verizon California Inc., Citizens Telecommunications Company of California, Inc., and SureWest Communications, and resold interexchange services statewide in California, subject to the terms and conditions set forth below.

6. The new corporate identification number assigned to Dynalink Communications, Inc., (U7288C), must be included in the caption of all future original filings with the California Public Utilities Commission.

7. The license granted and the authority to render service under the rates, charges, and rules authorized will expire if not exercised within 12 months after the effective date of this order.

8. Dynalink Communications, Inc. must timely submit surcharges associated with the new corporate identification number U-7288-C, for each month

beginning January 2016 by check, money order, or through the Commission's Administrative Services – Fiscal Section, via the Communication Division's TUFFS payment system.

9. Dynalink Communications, Inc. must pay user fees associated with the new corporate identification number U7288C, for January 2016 through December 2016, no later than January 15, 2017. Payment shall be made payable to the California Public Utilities Commission and mailed or delivered to the Commission's Fiscal Office at 505 Van Ness Avenue, Room 3000, San Francisco, CA 94102.

10. Dynalink Communications, Inc. must obtain a performance bond in the amount of \$50,000, issued by a corporate surety company authorized to transact surety business in California, and the California Public Utilities Commission must be listed as the obligee on the bond. The \$50,000 bond must remain in effect for a period of 12 full months.

11. Within five days before expiration of the 12-month period, Dynalink Communications, Inc. must provide evidence that it has obtained a performance bond of \$25,000 in accordance with Decision 13-05-035. The \$25,000 performance bond must be a continuous bond (i.e., there will be no termination date on the bond) issued by a corporate surety company authorized to transact surety business in California, and the California Public Utilities Commission must be listed as the obligee on the bond.

12. Dynalink Communications, Inc. 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 Director of 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. In addition to all the requirements applicable to interexchange carriers included in Attachments B, C, and D to this decision, Dynalink Communications, Inc. is subject to the Consumer Protection Rules contained in General Order (GO) 168, and all applicable Commission rules, decisions, GOs, and statutes that pertain to California public utilities.

13. Dynalink Communications, Inc. must file, in this docket, a written acceptance of the certificate granted in this proceeding within 30 days of the effective date of this order.

14. Dynalink Communications, Inc. must annually pay the user fee and public purpose surcharges specified in Attachment B. Per the instructions in Exhibit E to Decision 00-10-028, the Combined California Public Utilities Commission Telephone Surcharge Transmittal Form must be submitted even if the amount due is \$0. Under Public Utilities Code § 405, carriers that are in default of reporting and submitting user fees for a period of 30 days or more will be subject to penalties including suspension or revocation of their authority to operate in California. Therefore, carriers should report user fees even if the amount due is \$0.

15. Prior to initiating service, Dynalink Communications, Inc. must provide the California Public Utilities Commission's Consumer Affairs Branch, with the name and address of its designated contact person(s) for purposes of resolving consumer complaints. This information must be updated if the name or telephone number changes, or at least annually.

16. Prior to initiating service, Dynalink Communications, Inc. must provide the Commission's Communications Division with the name and address of its designated regulatory/official contact person(s). This information must be

provided electronically, using the "Regulatory/Official Contact Information Update Request" found at <http://www.cpuc.ca.gov/PUC/telco/>

This information must be updated if the name or telephone number changes, or at least annually.

17. Dynalink Communications, Inc. must post all detariffed rates, terms and conditions of service on an internet site pursuant to Rule 5.2 of the Telecommunications Industry Rules in General Order 96-B.

18. No later than five days after service first begins, Dynalink Communications, Inc. must notify the Director of the Communications Division in writing of the date that local exchange and non-dominant interexchange service is first rendered pursuant to the certificate granted in this proceeding.

19. Dynalink Communications, Inc. must file an affiliate transaction report with the Director of the Communications Division, in compliance with Decision 93-02-019, on a calendar-year basis using the form contained in Attachment D.

20. Dynalink Communications, Inc. must file an annual report with the Director of the Communications Division, in compliance with General Order 104-A, on a calendar-year basis with the information contained in Attachment C to this decision.

21. Dynalink Communications, Inc.'s motion to file under seal its Exhibit 5 is granted for a period of two years after the date of this order. During this two-year period, this information shall not be publicly disclosed except on further California Public Utilities Commission order or Administrative Law Judge ruling. If Dynalink Communications, Inc. believes that it is necessary for this information to remain under seal for longer than two years, Dynalink

Communications, Inc. may file a new motion showing good cause for extending this order by no later than 30 days before the expiration of this order.

22. Application 14-03-006 is closed.

This order is effective today.

Dated _____, at San Francisco, California

ATTACHMENT A

(This page 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,¹ a written acceptance of the certificate granted in this proceeding within 30 days of the effective date of this order.

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

- a. The Universal Lifeline Telephone Service Trust Administrative Committee Fund (Pub. Util. Code § 879);
- 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 § 739.3; D.96-10-066, at 3-4, App. B, Rule 1.C);
- d. The California High Cost Fund-B (D.96-10-066, at 191, App. B, Rule 6.F.; D.07-12-054);
- e. The California Advanced Services Fund (D.07-12-054);
- f. The California Teleconnect Fund (D.96-10-066, at 88, App. B, Rule 8.G).
- g. The User Fee provided in Pub. Util. Code §§ 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

¹ Written acceptance filed in this docket does not reopen the proceeding

Telephone Company (dba AT&T California) and apply the current surcharge and fee amounts in that joint tariff on end-user bills until further revised. Current and historical surcharge rates can be found at <http://www.cpuc.ca.gov/PUC/Telco/Consumer+Information/surcharges.htm>.

- Carriers must report and remit CPUC telephone program surcharges online using the CPUC Telecommunications and User Fees Filing System (TUFFS). Information and instructions for online reporting and payment of surcharges are available at <http://www.cpuc.ca.gov/PUC/Telco/Information+for+providing+service/Surcharge+Remittance.htm>. To request a user ID and password for TUFFS online filing and for questions, please e-mail Telco_surcharges@cpuc.ca.gov.
- Carriers must file and pay the PUC User Fee (see above item 2g) upon receiving the User Fee statement sent by the Commission. User Fees cannot be reported or paid online. Instructions for reporting filing are available at <http://www.cpuc.ca.gov/PUC/Telco/Information+for+providing+service/userfee.htm>. Please call (415) 703-2470 for questions regarding User Fee reporting and payment.

3. Applicant is a competitive local exchange carrier (CLC). The effectiveness of its future tariffs is subject to the requirements of General Order 96-B and the Telecommunications Industry Rules (D.07-09-019).

4. Applicant is a non-dominant interexchange carrier (NDIEC). The effectiveness of its future NDIEC tariffs is subject to the requirement of General Order 96-B and the Telecommunications Industry Rules (D.07-09-019).

5. Tariff filings must reflect all fees and surcharges to which Applicant is subject, as reflected in #2 above.

6. Applicant must file a service area map as part of its initial tariff.

7. Prior to initiating service, Applicant must provide the Commission's Consumer Affairs Branch with the name and address of its designated contact person(s) for purposes of resolving consumer complaints.

8. In addition, Applicant must provide the Commission's Communications Division with the name and address of its designated regulatory/official contact persons(s). This information must be provided electronically, using the "Regulatory/Official Contact Information Update Request" found at <http://www.cpuc.ca.gov/PUC/telco/>

This information must be updated if the name or telephone number changes, or at least annually.

9. The license granted and the authority to render service under the rates, charges, and rules authorized will expire if not exercised within 12 months after the effective date of this order.

10. Applicant must notify the Director of the Communications Division in writing of the date that local exchange service is first rendered to the public, no later than five days after service first begins.

11. Applicant must notify the Director of the Communications Division in writing of the date local service is first rendered to the public within five days after service begins.

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

13. 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.

14. Applicant must file an annual report with the Director of the Communications Division, in compliance with GO 104-A, on a calendar-year basis with the information contained in Attachment C to this decision.

15. Applicant must file an affiliate transaction report with the Director of the Communications Division, in compliance with D.93-02-019, on a calendar-year basis using the form contained in Attachment D.

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

17. Within 60 days of the effective date of this order, Applicant must comply with Pub. Util. Code § 708, Employee Identification Cards, and notify the Director of the Communications Division in writing of its compliance.

18. If Applicant is 90 days or more late in filing an annual report, or in remitting the surcharges and fee listed in #2 above, and has not received written permission from the Communications Division to file or remit late, the Communications Division must prepare for Commission consideration a resolution that revokes Applicant's CPCN.

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

20. Applicant is exempt from Pub. Util. Code §§ 816-830.

21. Applicant is exempt from the requirements of Pub. Util. Code § 851 for the transfer or encumbrance of property whenever such transfer or encumbrance serves to secure debt.

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

ANNUAL REPORT

An original and a machine readable, copy using Microsoft Word or compatible format must be filed with the California Public Utilities Commission, State Office Building, 505 Van Ness Avenue, Room 3107, San Francisco, CA 94102-3298, no later than March 31st of the year following the calendar year for which the annual report is submitted.

Failure to file this information on time may result in a penalty as provided for in Pub. Util. Code §§ 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.

For answers to any questions concerning this report, call (415) 703-2883.

(END OF ATTACHMENT C)

ATTACHMENT D

CALENDAR YEAR AFFILIATE TRANSACTION REPORT

An original and a machine readable, copy using Microsoft Word and Excel, or compatible format must be filed with the California Public Utilities Commission, State Office Building, 505 Van Ness Avenue, Room 3107, San Francisco, CA 94102-3298, no later than May 1st of the year following the calendar year for which the annual report is submitted.

1. Each utility must list and provide the following information for each affiliated entity and regulated subsidiary that the utility had during the period covered by the Annual Affiliate Transaction Report.

- 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); and
- 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 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 file, 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.

(END OF ATTACHMENT D)