**Mailed 9/7/2001**

Decision 01-09-018 September 6, 2001

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

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| Application of Metromedia Fiber Network Services, Inc. (U-6030-C) for Modification of its Certificate of Public Convenience and Necessity to Comply with the California Environmental Quality Act. | Application 00-02-039 (Filed February 25, 2000) |

# INTERIM OPINION

## 1. Summary

In this decision, we grant the unopposed Second Petition of Metromedia Fiber Network Services, Inc. (MFNS or Applicant) for Modification of Decision (D.) 00-09-039. In that decision, we approved MFNS' construction of a fiber optic telecommunications network in the San Francisco Bay Area and the Los Angeles Basin. In the first Petition for Modification, MFNS sought approval of 82 minor changes and customer connections to the fiber optic route, which we for the most part approved in D.01-05-056. Now, MFNS seeks an additional 90 changes, mostly intended to allow it to connect additional customers to the fiber optic network.

We have conducted an environmental review pursuant to the California Environmental Quality Act (CEQA) of these additional 90 changes, and find them to have less than significant environmental impact, so long as MFNS implements appropriate environmental mitigation. Therefore, in this decision, we certify an "Addendum" to the initial environmental review we conducted for D.00-09-039, and approve MFNS' Petition for Modification.

## 2. Background

In D.00-09-039, we granted MFNS authority to resume construction on its San Francisco/Los Angeles area fiber optic project (the Project). We had stopped the Project the previous year because MFNS had commenced it without review for environmental impacts pursuant to CEQA.[1] We conducted CEQA review and in D.00-09-039 certified a Mitigated Negative Declaration that analyzed and provided for mitigation of the environmental impacts of the Project.

After we issued D.00-09-029, MFNS filed its first Petition for Modification of the decision to allow for minor route changes and connections of the fiber optic route to specific customer premises. We approved all but two of MFNS' requested changes on May 15, 2001 in D.01-05-056.

On June 15, 2001, MFNS filed the second Petition for Modification, seeking an additional 90 "specific customer connections, minor route changes and route augmentations." MFNS described the 90 proposed changes in the "Second PEA Addendum to Support the Second Petition to Modify the Existing Mitigated Negative Declaration for [MFNS]" (Second PEA Addendum) it submitted with its Petition for Modification. We attach details of each proposed change listed in the Second PEA Addendum as Appendix A to this decision. The changes break down into two basic categories:

1. **Laterals.** Laterals are extensions of fiber conduit (duct) required to close existing gaps in the fiber optic network. They also radiate outward from the "backbone" network to facilitate the connection of groups of customers. Laterals can vary in length from a few hundred feet to several thousand feet.

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[1] Cal. Pub. Res. Code § 21000 *et seq.*

2. **Customer Connects.** Customers are linked to the fiber optic network through the construction of additional conduit segments from the backbone network (or a lateral from the backbone) to the customer premises. These extensions typically extend only for short distances, and are usually designed in a loop so that if the fiber is severed in one spot, telecommunications traffic can be rerouted in another direction.

The proposed laterals and customer connects are scattered in cities and towns throughout the San Francisco Bay Area and Los Angeles Basin, as follows:

*San Francisco Bay Area*: San Rafael, San Francisco, San Bruno, Burlingame, Redwood City, Palo Alto, Mountain View, Santa Clara, Sunnyvale, San Jose, Cupertino, Milpitas, Fremont, Union City, Hayward, Oakland, Danville, Dublin, and Pleasanton.

*Los Angeles Basin*: Pasadena, North Hollywood, West Los Angeles, Hollywood, Los Angeles, Gardena, Long Beach, Huntington Park, Buena Park, Burbank, Downey, Norwalk, Orange, Santa Ana, Anaheim and Santa Fe Springs.

## 3. Environmental Review

CEQA requires the Commission, as the designated lead agency, to assess the potential environmental impact of projects for which we have discretionary decision-making authority. The objective is to avoid or mitigate adverse effects and to preserve, restore or enhance environmental quality. Rule 17.1 of the Commission's Rules requires the proponent of any such project to submit with its application a Proponent's Environmental Assessment (PEA). The PEA is used by the Commission to focus on environmental impacts of the project.

MFNS' Second PEA Addendum concluded that none of the modifications would have an adverse impact on the environment. The Commission hired consultants to review the Project modifications and analyze the conclusions in

the Second PEA Addendum. The Commission's consultants agreed that the modifications, subject to the mitigation measures appended to D.00-09-039 and D.01-05-056,[2] with one modification, would not cause environmental harm. The Commission's Second Addendum, attached to this decision as Appendix B, concludes:

> Analysis of the project changes show[s] that, with the amendment of one existing mitigation measure [contained in the Mitigated Negative Declaration certified with D.00-09-039], there would be no new environmental impacts . . . . One mitigation measure, BIO-1g was amended to make it more protective of the resources. The biology mitigation measure BIO-1g was amended to apply throughout the project area. With the amendment of existing mitigation measure BIO-1g, the proposed project modifications will have no significant impact. No further analysis or documentation is required.
>
> Changed mitigation measures BIO-1g reads as follows:
>
> BIO-1g: Surveys for nesting tricolored blackbird and species protected by the [Migratory Bird Treaty Act (1918)] MBTA (e.g., cliff swallow) shall be conducted at all potential habitats between May and July by a qualified biologist no more than two weeks prior to the commencement of construction. If pre-nesting or nesting activity is identified, a determination shall be made in consultation with [the California Department of Fish and Game] CDFG as to whether construction would impact nests. If it is determined that construction within 500 feet of nesting locations would impact nests, either (a) construction shall be delayed until juvenile birds have fledged, or (b) nesting

[2] A complete summary of these mitigation requirements is affixed to this decision as Appendix D.

> locations shall be avoided by boring beneath habitat with an adequate disturbance exclusion zone.

Thus, this approval is conditioned upon MFNS' compliance with those mitigation measures.

The mitigation measures prescribe construction methods (e.g., installation in previously disturbed rights-of-way) and practices (e.g., environmental training of construction crews, implementation of a storm water pollution prevention plan) that will avoid or minimize the physical impacts of the Project. They also detail steps MFNS shall take to minimize environmental effects on wildlife, waterways, plants, air quality, traffic and Native American and paleontological resources.

The principal mitigation measures are as follows:

- Identification, staking and/or flagging of all sensitive biological resources (wildlife, plants, habitat, waterways) prior to construction. The Project crosses many streams, rivers, canals and other waterways, as well as sensitive wetlands; MFNS will either route the Project around them, time construction to a low-sensitivity time of year, bore under the resources or attach the fiber optic cable to overhead facilities such as bridges.

- Protection of cultural resources such as Native American burial sites, sites of paleontological or archaeological significance, and historic buildings over 45 years old. MFNS will use a Project archaeologist to identify such resources, and when they are found will test and evaluate the resources, and propose and implement avoidance measures designed to preserve them.

- Compliance with local plans, zoning and permitting requirements prior to construction.

- Design of Project facilities to be unobtrusive and not conflict with the character of the surrounding setting, and restoration of construction sites to pre-construction conditions.

Additional mitigation measures are designed to preserve air quality; ensure proper labeling, storage, handling and use of hazardous materials; abate noise; and minimize traffic disruptions.

In order to ensure that the mitigation measures are fulfilled, the Commission's agents will periodically review the Project and follow up with local jurisdictions. A formal complaint procedure has been established, and the Commission reserves its right to halt construction if environmental infractions occur.

## 4. Exhibits

We will receive as the official record in this proceeding the following:

Exhibit 9 – Applicant's Second PEA Addendum;

Exhibit 10 – Commission's Second Addendum, dated August 28, 2001.[3]

## 5. Withdrawal of Motion for Protective Order

On June 15, 2001, MFNS filed a motion seeking to keep confidential certain information about the location of Project modifications. By letter dated August 28, 2001 (Appendix C hereto), MFNS withdrew its motion. Thus, the unredacted version of the Second PEA Addendum, previously held in the Commission's files under seal, shall be unsealed and placed in the public file of this proceeding.

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[3] We received other materials in evidence as Exhibits 1-4 in D.00-09-039, and Exhibits 5-8 in D.01-05-056.

## 6. Comments on Draft Decision

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

## Findings of Fact

1. The Commission granted Applicant approval to construct the Project on September 7, 2000 in D.00-09-039, and prescribed mitigation MFNS was to perform to minimize environmental impacts.

2. The Commission granted MFNS approval to construct 80 Project modifications, and supplemented the mitigation measures applicable to the Project, on May 15, 2001 in D.01-05-056.

3. Applicant needs further approval and CEQA evaluation for 90 additional modifications to the Project. These modifications consist of laterals and customer connects.

4. No party opposed the Second Petition for Modification.

5. The Commission's environmental staff conducted a review of Applicant's proposed modifications and on August 28, 2001 issued a Second Addendum to the Mitigated Negative Declaration the Commission approved in D.00-09-039. The Second Addendum concluded that the 90 Project Modifications would not have an adverse impact on the environment as long as MFNS complied with the mitigation measures prescribed in connection with D.00-09-039 and D.01-05-056 in constructing the modifications with one modification to Mitigation Measure BIO-1g, which will now provide the following:

> BIO-1g: Surveys for nesting tricolored blackbird and species protected by the [Migratory Bird Treaty Act (1918)] MBTA (e.g., cliff swallow) shall be conducted at all potential habitats between May and July by a qualified biologist no more than

> two weeks prior to the commencement of construction. If pre-nesting or nesting activity is identified, a determination shall be made in consultation with [the California Department of Fish and Game] CDFG as to whether construction would impact nests. If it is determined that construction within 500 feet of nesting locations would impact nests, either (a) construction shall be delayed until juvenile birds have fledged, or (b) nesting locations shall be avoided by boring beneath habitat with an adequate disturbance exclusion zone.

6. The Commission's Second Addendum was prepared in accordance with CEQA Guidelines Section 15164.

## Conclusions of Law

1. The Petition should be granted, subject to the environmental requirements appended to D.00-09-039 and D.01-05-056, and amended Measure BIO-1g, and attached to this decision as Appendices B and D.

2. MFNS' Motion for a protective order is withdrawn. MFNS' Second PEA Addendum, previously filed under seal, should be unsealed and placed in the public record of this proceeding.

3. The Commission's Second Addendum is adequate for the Commission's decision-making purposes and no further CEQA review is required.

## INTERIM ORDER

**IT IS ORDERED** that:

1. The Second Petition of Metromedia Fiber Network Services, Inc. (U-6030-C) (MFNS or Applicant) for Modification of Decision (D.) 00-09-039 is granted to allow MFNS to construct 90 proposed modifications to its San Francisco Bay Area and Los Angeles Basin fiber optic project (Project).

2. The Commission adopts the Second Addendum to the Mitigated Negative Declaration identified in the formal record as Exhibit 10.

3. In constructing all Project modifications, Applicant shall fully implement the mitigation measures described in the Mitigated Negative Declaration approved in D.00-09-039, as amended by the May 2, 2001 Addendum thereto approved in D.01-05-056, and the August 28, 2001 Addendum's modification to Mitigation Measure BIO-1g. The mitigation measures and amendments thereto appear as Appendices B and D to this decision.

4. Applicant shall enter into a cost reimbursement agreement with the Commission for expenses accrued from implementing the mitigation and monitoring plan as described in Appendices B and D. Compliance with this agreement is a condition of approval of this decision.

5. The Environmental Projects Unit of the Energy Division shall supervise and oversee construction of the Project insofar as it relates to monitoring and enforcement of the mitigation measures described in Appendices B and D. The Energy Division may designate outside staff to perform on-site monitoring tasks. The Commission Project manager (Energy Division, Environmental Projects Unit) shall have the authority to issue a Stop Work Notice on the entire Project, or portions thereof, for the purpose of insuring compliance with the mitigation measures described in Appendices B and D. Construction may not resume without a Notice to Proceed issued by the Environmental Projects Unit of the Energy Division.

6. Applicant shall send a copy of this decision to concerned local permitting agencies not later than 30 days from the date of this order.

7. MFNS' motion for a protective order is withdrawn. The sealed version of MFNS' Second PEA Addendum, dated June 15, 2001, shall be unsealed and placed in the public files of this proceeding.

This order is effective today.

Dated September 6, 2001, at San Francisco, California.

LORETTA M. LYNCH
President
HENRY M. DUQUE
RICHARD A. BILAS
CARL W. WOOD
GEOFFREY F. BROWN
Commissioners

(See Formal Files for Appendix A.)

**APPENDIX B**
**Page 1**

**CEQA Second Addendum**
**CPUC - Energy Division**
**August 28, 2001**

## Summary

Pursuant to CEQA Guidelines Section 15164, the California Public Utilities Commission has prepared this Addendum to the Mitigated Negative Declaration (MND) published in August 2000 for the Metromedia Fiber Network Services (MFN) project and adopted in Decision (D.) 00-09-039 (*Metromedia Fiber Network Services, Inc. Final Initial Study and Mitigated Negative Declaration for the San Francisco Bay Area and Los Angeles Basin Networks* (D.00-09-039) (*Final IS/MND;* CPUC 2000).

As described below, the Applicant has applied for modifications to the MFN project that were the subject of an MND previously issued and adopted by the Commission. These modifications were reviewed by the agency and found not to result in either any new, previously undisclosed impacts or any previously disclosed impacts of greater severity. Therefore, the agency finds that the preparation of an Addendum pursuant to CEQA Guidelines Section 15164 is appropriate for the modifications to the MFN project.

This document identifies modifications to Metromedia Fiber Network Services' San Francisco Bay Area and Los Angeles Basin Networks and summarizes the documentation of the impacts and amended mitigation measures that reduce the impacts to less than significant.

## Project Description

The project consists of the installation of conduit for fiber optic cable at selected locations in the San Francisco Bay Area and Los Angeles Basin. This project was the subject of a Mitigated Negative Declaration (MND) in August 2000 (*Metromedia Fiber Network Services, Inc. Final Initial Study and Mitigated Negative Declaration for the San Francisco Bay Area and Los Angeles Basin Networks* (D.00-09-039) (*Final IS/MND;* CPUC 2000).

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Subsequent to the CPUC's approval in D.00-09-039 on September 7th, 2000 to construct the project, it has been determined that the proposed route as described in the approved MND requires modification to meet both current and new customer needs, including some project modifications to connect to the network in those areas where existing conduit has been found to be unavailable. In addition, small extensions are required to connect current and future customers to the backbone of the approved network.

These project changes and impacts relating thereto are detailed in the following documents:

1. PEA Addendum to Support the Petition to Modify the Existing Mitigated Negative Declaration for Metromedia Fiber Network Services, Inc., June 15, 2001.

2. Final Initial Study for the San Francisco Bay Area Network Portion of the PEA Addendum to Support the Second Petition to Modify the Existing Mitigated Negative Declaration;

3. Final Initial Study for the Los Angeles Basin Network Portion of the PEA Addendum to Support the Second Petition to Modify the Existing Mitigated Negative Declaration.

## Impacts of Project Modifications

Analysis of the project changes showed that, with the amendment of one existing mitigation measure, there would be no new environmental impacts.

## Changes to Mitigation Measures

One mitigation measure, BIO-1g (see Initial Studies listed as Items 2 and 3 above), was amended to make it more protective of the resources. The biology mitigation measure BIO-1g was amended to apply throughout the project area.

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## Recommendations

With the amendment of existing mitigation measure BIO-1g, the proposed project modifications will have no significant impact. No further analysis or documentation is required.

**(END OF APPENDIX B)**

**APPENDIX C**

August 28, 2001

**VIA E-MAIL AND U.S. MAIL**

Administrative Law Judge Sarah R.
Thomas
California Public Utilities Commission
505 Van Ness Avenue, Rm. 5012
San Francisco, CA 94102

Re: Second Petition of Metromedia Fiber Network Services, Inc. for Modification of Decision 00-09-039

Dear Judge Thomas:

On behalf of Metromedia Fiber Network Services, Inc. ("MFNS"), we respectfully withdraw the company's Motion for Leave to File Confidential Customer Specific Information Contained in its Second PEA Addendum Under Seal, filed June 15, 2001 in the above-referenced docket. It is our understanding that the withdrawal of this motion will facilitate the expedited issuance of a decision in this matter.

Your attention to this matter will be appreciated.

Very truly yours,

Davis Wright Tremaine LLP

/s/ EDWARD W. O'NEILL
Edward W. O'Neill

cc: President Loretta M. Lynch
Geoffrey Dryvynsyde
John Boccio
Pam Nataloni

**(END OF APPENDIX C)**

**(See Formal Files for Pages 1-27 of Appendix D)**

**APPENDIX D**
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# CEQA Addendum
# CPUC - Energy Division
# May 2, 2001

## Summary

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This document identifies modifications to Metromedia Fiber Network Services' San Francisco Bay Area and Los Angeles Basin Networks and summarizes the documentation of the impacts and amended mitigation measures that reduce the impacts to less than significant.

## Project Description

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Subsequent to CPUC's approval on September 7th, 2000 to construct the project, it has been determined that the proposed route as described in the approved MND requires modification to meet both current and new customer needs, including some project modifications to connect to the network in those areas where existing conduit has been found to be unavailable. In addition, small extensions are required to connect current and future customers to the backbone of the approved network.
These project changes and impacts relating thereto are detailed in the following documents:

1. PEA Addendum to Support the Petition to Modify the Existing Mitigated Negative Declaration for Metromedia Fiber Network Services, Inc., November 8, 2000.

2. Final Initial Study for the San Francisco Bay Area Network Portion of the PEA Addendum to Support the Petition to Modify the Existing Mitigated Negative Declaration;

3. Final Initial Study for the Los Angeles Basin Network Portion of the PEA Addendum to Support the Petition to Modify the Existing Mitigated Negative Declaration.

## Impacts of Project Modifications

Analysis of the project changes showed that, with the amendment of three existing mitigation measures, there would be no new environmental impacts.

## Changes to Mitigation Measures

Three mitigation measures, BIO-1e, BIO-1h and CR-1b (see Initial Studies listed as Items 2 and 3 above) were amended to make them more protective of the resources. The biology mitigation measures, BIO-1e and BIO-1h were amended to apply throughout the project area and CR-1b was modified to protect specific known cultural resources.

## Recommendations

With the amendment of existing mitigation measures BIO-1e, BIO-1h, and CR-1b the proposed project modifications will have no significant impact. No further analysis or documentation is required.

~~**(END OF APPENDIX B)**~~

**(END OF APPENDIX D)**