

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of American Dark Fiber, LLC for a Certificate of Public Convenience and Necessity to Provide Resold and Full Facilities-Based Local Exchange Telecommunications Services within California.

Application 17-12-020

DECISION GRANTING AMERICAN DARK FIBER, LLC A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY IN ORDER TO PROVIDE RESOLD AND FULL FACILITIES-BASED LOCAL EXCHANGE SERVICES

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DECISION GRANTING AMERICAN DARK FIBER, LLC A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY IN ORDER TO PROVIDE RESOLD AND FULL FACILITIES-BASED LOCAL EXCHANGE SERVICES**Summary**

Pursuant to Public Utilities Code § 1001, we grant American Dark Fiber, LLC a certificate of public convenience and necessity to provide resold and full facilities-based local exchange telecommunications services in California, subject to the terms and conditions set forth in the Ordering Paragraphs.

This proceeding is closed.

1. Background

On December 29, 2017, American Dark Fiber, LLC (American Dark Fiber or Applicant), a limited liability corporation in California, filed an application requesting a certificate of public convenience and necessity (CPCN) to provide limited facilities-based local exchange telecommunications services in the service territories of Pacific Bell Telephone Company d/b/a AT&T California (AT&T California), Verizon California, Inc. (Verizon), SureWest Telephone (SureWest), and Citizens Telephone Company of California, Inc. d/b/a Frontier Communications of California (Frontier). The application was not protested.

American Dark Fiber proposes to provide resold competitive local exchange services to business customers via dark fiber services by interconnecting locations by way of either “point to point” or “diverse” dark fiber connectivity. The Applicant will be leveraging existing fiber optic networks that do not have necessary lateral connections to reach a target location. The Applicant will be requiring a new network to be extended from existing plants in the public rights-of-way to user building towers and other requested facilities.

Applicant’s principal place of business is located at 11110 Ohio Avenue, Suite 111, Los Angeles, California 90025.

On February 16, 2018, the assigned Administrative Law Judge (ALJ) issued a ruling requesting additional information from the Applicant. On March 1, 2018, the Applicant submitted supplemental information. On May 9, 2018, a prehearing conference (PHC) was held to discuss the scope of issues, the schedule for the proceeding, and other procedural matters.

On June 11, 2018, the Applicant filed a motion to revise the caption of its application as an Application for a CPCN to Provide Resold and Full-Facilities Based Local Exchange Telecommunications Services and the motion was granted on June 19, 2018. The ALJ requested further information on July 19, 2018 and the Applicant submitted a supplemental response on July 23, 2018.

The assigned Commissioner issued a Scoping Memo and Ruling (Scoping Memo) on March 1, 2019. The Applicant filed and served responses to the Scoping Memo on March 8, 2019. In particular, in response to the Commissioner's question as to what plans the Applicant has to allow other service providers to interconnect with its facilities on a competitive basis, the Applicant responds that it plans to "allow for the 'Open Access' of connectivity so that others...can interconnect with the network that Applicant develops in the public right of way."¹

This proceeding was submitted on March 8, 2019.

2. Jurisdiction

Public Utilities Code (Pub. Util. Code) § 216(a) defines the term "Public utility" to include a "telephone corporation," which in turn is defined in Pub. Util. Code § 234(a) as "every corporation or person owning, controlling, operating, or managing any telephone line for compensation within this state."

¹ Applicant's Response to Scoping Memo at 1.

American Dark Fiber proposes to provide resold and full facilities-based local exchange services to business customers within California via dark fiber services. Accordingly, American Dark Fiber is a telephone corporation and public utility subject to our jurisdiction.

3. California Environmental Quality Act

Pursuant to the California Environmental Quality Act (CEQA)² and Rule 2.4 of the California Public Utilities Commission's (Commission) Rules of Practice and Procedure (Rules), the Commission examines projects to determine any potential environmental impacts such that adverse effects are avoided and environmental quality is restored or enhanced to the fullest extent possible under CEQA.

In the Proponent's Environmental Assessment and Response, and Supplemental Responses, American Dark Fiber states that its proposed construction activities will generally include the installation of underground conduits to create necessary physical connections and minor trenching. These proposed activities fall within the following classes of projects that are exempt from CEQA and for which neither an Environmental Impact Report nor a Negative Declaration is required.

- Class 1 Exemption: operation, repair, maintenance, leasing or minor alteration of existing public or private structures and facilities, with negligible or no expansion of an existing use. This includes existing facilities used to provide public utility services. 14 California Code of Regulations (CCR) § 15301.
- Class 3 Exemption: construction including water main, sewage, electrical, gas and other utility extensions of reasonable length to serve such construction. This includes

² Public Resources Code § 21000 *et seq.*

the construction of limited numbers of new small facilities or utility extensions. (14 CCR § 15303.)

- Class 4 Exemption: “consists of minor public or private alterations in the condition of land, water, and/or vegetation which do not involve removal of healthy, mature, scenic trees except for forestry and agricultural purposes. Examples include but are not limited to: ...
(c) Filling of earth into previously excavated land with material compatible with the natural features of the site...
(f) Minor trenching and backfilling where the surface is restored.” 14 CCR § 15304.

American Dark Fiber’s proposed activities, as described, involve construction of reasonably short utility extensions (Class 3), and minor trenching and backfilling (Class 4). In order to provide its service, American Dark Fiber will create fiber optic lateral extensions to a building’s existing carrier fiber, use existing conduit and utility poles in rights-of-way (ROW) to interconnect to carrier access points, and construct a new fiber plant using existing conduit that interconnects the fiber system to existing fiber nodes. The fiber equipment will be placed in various locations, including a high school in East Los Angeles, a quasi-rural area of northern Los Angeles County, and a small town in Western Los Angeles county.

Exemption of these activities is consistent with Commission precedent. American Dark Fiber’s proposed new construction activities are similar to those undertaken by other carriers that we have decided are categorically exempt from CEQA.³

American Dark Fiber requests approval to utilize a procedure for expedited review of its projects once it is aware of the specific site(s) in which it

³ See, e.g., Decision (D.) 06-04-063 (*ClearLinx Network Corporation*); D.06-04-067 (*CA CLEC LLC*).

plans construction. The proposed procedure tracks the expedited review procedure that we have approved for other carriers. Such a process will expedite CEQA review and is appropriate for the type of construction outlined here, which will be categorically exempt. By establishing this expedited review process, we are able to review the information on a specific project to confirm that it is categorically exempt from CEQA or to explain why further environmental review is required. At the same time, the proposed CEQA review process will enable American Dark Fiber to undertake construction of its projects in an efficient manner without experiencing delays caused by an unnecessarily protracted CEQA review.

Similar to the procedure approved for other carriers, the following procedure will be used to obtain Commission approval of American Dark Fiber's claimed CEQA exemptions for proposed construction projects.

- American Dark Fiber will provide the Commission's Energy Division with:
 - A detailed description of the proposed project, including:
 - Customer(s) to be served;
 - The precise location of the proposed construction project; and
 - Regional and local site maps.
 - A description of the environmental setting, to include at a minimum:
 - Cultural, historical, and paleontological resources;
 - Biological resources; and
 - Current land use and zoning.
 - A construction workplan, to include:
 - Commission Preconstruction Survey Checklist-Archaeological Resources;

- Commission Preconstruction Survey Checklist-Biological Resources;
- A detailed schedule of construction activities, including site restoration activities;
- A description of construction/installation techniques;
- A list of other agencies contacted with respect to siting, land use planning, and environmental resource issues, including contact information; and
- A list of permits required for the proposed project.
- A statement of the CEQA exemption(s) applicable to the proposed project; and
- Documentation and factual evidence sufficient to support a finding that the claimed exemption(s) is (are) applicable.
- The Energy Division will review American Dark Fiber's submission for the proposed project to confirm that the claimed exemption(s) from CEQA are applicable.
- Within 21 days from the date of American Dark Fiber's submittal, the Energy Division will issue either:
 - A Notice to Proceed (NTP) and file a Notice of Exemption with the State Clearinghouse, Office of Planning and Research, or
 - A letter of denial stating the specific reasons why the claimed exemption(s) are not applicable to the proposed project.

We have reviewed the application and Supplemental Responses and find that:

- American Dark Fiber's proposed facilities-based project activities are very limited;
- These activities would in almost all circumstances be very likely to qualify for an exemption from CEQA; and
- The proposed process for reviewing the applicability of CEQA exemptions to American Dark Fiber's facilities-based

projects is not only adequate for the Commission's purposes as CEQA Lead Agency, but is also in the public interest because it enables American Dark Fiber to respond in a timely manner to requests for service without the delay or burden of a full CEQA review when such review is unnecessary.

We therefore approve American Dark Fiber's proposed process for Commission review of claimed CEQA exemptions for construction projects undertaken pursuant to American Dark Fiber's full facilities-based authority, based on the specific facts of this case with the following modifications related to the Commission's Energy Division review and approval or disapproval of the proposed exemptions.

If the Energy Division disapproves American Dark Fiber's claimed CEQA exemption(s) and issues a letter of denial to American Dark Fiber, American Dark Fiber 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.

American Dark Fiber shall not perform any full facilities-based construction activities without first obtaining an NTP from the Energy Division or authorization by the Commission after the requisite environmental review.

We have previously determined that the public convenience and necessity require that competition be allowed in the provision of competitive local exchange 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.

4. Financial Qualifications

To be granted a CPCN, an applicant for authority to provide resold and full facilities-based local exchange services must demonstrate that it has a minimum of \$100,000 cash or cash equivalent, reasonably liquid and readily available to meet the firm's start-up expenses. 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.

In the application, American Dark Fiber provided supporting documentation that \$100,000 would be available to American Dark Fiber for one year following certification. Since American Dark Fiber has 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. The Applicant's financial documentation will be subject to verification and review by the Commission for one year to ensure that such funds are available.

American Dark Fiber has stated that no deposit is required by AT&T California, Verizon, SureWest, and Frontier. Therefore, no additional resources are required at this time to cover deposits.

5. Technical Qualifications

To be granted a CPCN for authority to provide competitive local exchange and interexchange service, an applicant must make a reasonable showing of managerial and technical expertise in telecommunications or a related business. The Applicant supplied biographical information on its management in Exhibit 3 to its application that demonstrates it has sufficient expertise and training to operate as a telecommunications provider.

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

(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; (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 §§ 17000 *et seq.*, §§ 17200 *et seq.*, or §§ 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.⁴

However, subsection (e), as set forth in D.13-05-035, requests whether the applicant or any of its affiliates “had a telecommunications license or operating authority denied, suspended, revoked, or limited in any jurisdiction.” In response to this request, the Applicant submits that David Daigle, managing member of American Dark Fiber, was the former Chief Executive Officer and Founder of Freedom Telecommunications, Inc. (FTI). FTI, a facilities-based carrier in California, had its CPCN revoked on December 16, 2010 for failure to

⁴ These certifications are required by D.13-05-035, Ordering Paragraph 14.

submit its User Fee report in a timely manner, per Resolution T-17324. FTI's CPCN was reinstated by the Commission on June 21, 2011 following the submission of its User Fee report.

Lastly, to the best of American Dark Fiber's knowledge, neither American Dark Fiber, or any affiliate, officer, director, partner, nor owner of more than 10% of American Dark Fiber, or any person acting in such capacity whether or not formally appointed, is being, or has been investigated by the Federal Communications Commission or any law enforcement or regulatory agency for failure to comply with any law, rule or order.⁵

In consideration of the application, the Commission finds that Mr. Daigle's former company, FTI, promptly resolved the deficiency that led to the CPCN revocation and that the Commission reinstated FTI's CPCN. The Commission concludes that the revocation does not raise any issues as to the present application and therefore, American Dark Fiber is in compliance with the requirements of D.13-05-035.

6. Tariffs

Commission staff reviewed American Dark Fiber's draft tariffs for compliance with Commission rules and regulations. The deficiencies are noted in Attachment A to this decision. In its compliance tariff filing, American Dark Fiber shall correct these deficiencies as a condition of our approval of its application.

7. 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

⁵ *Id.*

serve.⁶ In its application, American Dark Fiber provided a map of the location of its proposed service territory, in compliance with this requirement.

8. Rule 3.1(i) Statement

Rule 3.1(i) sets forth the requirement that a utility filing an application under Pub. Util. Code § 1001, provide a statement regarding General Order (GO) 104-A, Section 2. American Dark Fiber stated that it does not have any operating revenue in California and therefore, does not have any reportable matters pursuant to GO 104-A, Section 2. On a going forward basis, however, American Dark Fiber must file all reports required of a public utility under Commission jurisdiction.

⁶ D.95-12-056 at Appendix C, Rule 4.E.

9. Expected Customer Base

American Dark Fiber provided its estimated customer base for the first and fifth years of operation as 100 customers and 500 customers, respectively. Therefore, American Dark Fiber has complied with this requirement.

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

11. Conclusion

We conclude that the application conforms to our rules for certification as a competitive local exchange and interexchange carrier. Accordingly, we grant American Dark Fiber a CPCN to provide full facilities-based and resold competitive local exchange telecommunications services in the service territories of AT&T California, Verizon, SureWest, and Frontier, subject to compliance with the terms and conditions set forth in the Ordering Paragraphs.

The CPCN granted by this decision provides benefits to American Dark Fiber and corresponding obligations. American Dark Fiber receives authority to

operate in the prescribed service territories, and this authority enables American Dark Fiber, pursuant to Section 251 of the 1934 Communications Act, as amended by the 1996 Telecommunications Act (47 U.S.C. § 251), to interconnect with telecommunications carriers.⁷ This authority also enables American Dark Fiber to obtain access to public rights-of-way in California as set forth in D.98-10-058, subject to the CEQA requirements set forth in this decision.

In return, American Dark Fiber is obligated to comply with all Public Utilities Code provisions, Commission rules, General Orders (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, American Dark Fiber is obligated to pay all Commission prescribed user fees and public purpose program surcharges as set forth in the Attachment B of this decision, to comply with CEQA, 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 § 54.1 of the Civil Code, as are necessary to promote the safety, health, comfort, and convenience of its patrons, employees, and the public."

⁷ The California Public Utilities Code uses the term "telephone corporation." Its counterpart in federal law is a "telecommunications carrier."

12. Request to File Under Seal

Pursuant to Rule 11.4 of the Commission's Rules of Practice and Procedure, American Dark Fiber filed a motion for leave to file Exhibit 6 to its application as confidential material under seal. American Dark Fiber represents that the information is sensitive, and disclosure could place American Dark Fiber at an unfair business disadvantage. We have granted similar requests in the past and do so here.

13. Waiver of Comment Period

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to § 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.

14. Assignment of Proceeding

Martha Guzman Aceves is the assigned Commissioner and Debbie Chiv is the assigned ALJ in this proceeding.

Findings of Fact

1. American Dark Fiber is a telephone corporation and a public utility as defined in Pub. Util. Code § 234(a) and § 216(a).
2. American Dark Fiber's proposed construction activities appear to fall within one or more CEQA categorical exemptions.
3. American Dark Fiber 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. American Dark Fiber's management possesses sufficient experience, knowledge, and technical expertise to provide local exchange services to the public.
5. No one associated with or employed by American Dark Fiber as an affiliate, officer, director, partner, agent, or owner (directly or indirectly) of more

than 10 percent of American Dark Fiber, or anyone acting in a management capacity for American Dark Fiber: (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; (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 §§ 17000 *et seq.*, §§ 17200 *et seq.*, or §§ 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.

6. An officer of Applicant was the former Chief Executive Officer of a company whose CPCN was revoked for failure to submit a requisite filing. However, the deficiency that led to the revocation was promptly resolved and the CPCN was reinstated.

7. To the best of American Dark Fiber's knowledge, neither American Dark Fiber, or any affiliate, officer, director, partner, nor owner of more than 10% of American Dark Fiber, or any person acting in such capacity whether or not formally appointed, is being, or has been investigated by the Federal Communications Commission or any law enforcement or regulatory agency for failure to comply with any law, rule or order.

8. Except for the deficiencies identified in Attachment A to this decision, American Dark Fiber's draft tariffs comply with the Commission's requirements.

9. American Dark Fiber provided a map of the location of its proposed service territories.

10. American Dark Fiber has no information to report under Rule 3.1(i), which requires that a utility filing an application under Pub. Util. Code §1001, provide a statement regarding compliance with GO 104-A, Section 2.

11. American Dark Fiber provided an estimate of its customer base for the first and fifth year of operation.

12. American Dark Fiber plans to allow other service providers to interconnect with its network on an open access basis.

13. Pursuant to Rule 11.4, American Dark Fiber filed a motion for leave to file Exhibit 6 as confidential material under seal.

Conclusions of Law

1. American Dark Fiber should be granted a CPCN to provide resold and full facilities-based local exchange telecommunications service in the service territories of AT&T California, Verizon, SureWest and Frontier, subject to the terms and conditions set forth in the Ordering Paragraphs.

2. American Dark Fiber should be allowed to use the Energy Division's 21-day CEQA exemption process.

3. American Dark Fiber, once granted a CPCN, should be subject to the applicable Commission rules, decisions, General Orders, and statutes that pertain to California public utilities.

4. American Dark Fiber's initial tariff filing should correct the tariff deficiencies shown in Attachment A to this decision.

5. American Dark Fiber's motion to file under seal its Exhibit 6 to the application should be granted for three years.

O R D E R**IT IS ORDERED** that:

1. A certificate of public convenience and necessity is granted to American Dark Fiber, LLC to provide resold and full facilities-based local exchange telecommunications services in the service territories of Pacific Bell Telephone Company d/b/a AT&T California, Verizon California, Inc., SureWest Telephone, and Citizens Telecommunications Company of California, Inc. d/b/a/ Frontier Communications of California, subject to the terms and conditions set forth below.
2. American Dark Fiber, LLC may not offer competitive local exchange services until tariffs are filed with and authorized by this Commission, in accordance with General Order 96-B and as corrected for deficiencies set forth in Attachment A.
3. The corporate identification number assigned to American Dark Fiber, LLC, U7342C, must be included in the caption of all original filings with this Commission, and in the titles of other pleadings filed in existing cases.
4. American Dark Fiber, LLC must file, in this docket, a written acceptance of the certificate granted in this proceeding within 30 days of the effective date of this decision. Written acceptance filed in this docket does not reopen the proceeding.
5. The certificate granted by this decision will expire if not exercised within 12 months of the effective date of this decision.
6. American Dark Fiber, LLC must notify the Director of the Communications Division of the date that local exchange service is first rendered to the public, no later than five days after service first begins, by e-mail to cdcompliance@cpuc.ca.gov.

7. American Dark Fiber, LLC must submit a tariff to the Communications Division by filing a Tier-1 advice letter within 12 months of the effective date of this decision, or its certificate will be cancelled.

8. American Dark Fiber, LLC must obtain a performance bond of at least \$25,000 in accordance with Decision 13-05-035. The performance bond must be a continuous bond (i.e., there is no termination date on the bond) issued by a corporate surety company authorized to transact surety business in California, and the Commission must be listed as the obligee on the bond. Within five days of acceptance of its certificate of public convenience and necessity authority, American Dark Fiber, LLC must submit a Tier-1 advice letter to the Communications Division, containing a copy of the license holder's executed bond, and submit a Tier-1 advice letter annually, but not later than March 31, with a copy of the executed bond.

9. American Dark Fiber, LLC must not allow its performance bond to lapse during any period of its operation. Pursuant to Decision 13-05-035, the Commission may revoke a certificate of public convenience and necessity if a carrier is more than 120 days late in providing the Communications Division a copy of its executed performance bond and the carrier has not been granted an extension of time by the Communications Division.

10. In addition to all the requirements applicable to competitive local exchange carriers and interexchange carriers included in Attachments B, C, and D to this decision, American Dark Fiber, LLC is subject to the Consumer Protection Rules contained in General Order 168, and all applicable Commission rules, decisions, General Orders, and statutes that pertain to California public utilities.

11. American Dark Fiber, LLC must pay the public purpose surcharges specified in Attachment B, and the Combined California Public Utilities

Commission Telephone Surcharge Transmittal Form must be submitted even if the amount due is \$0.

12. American Dark Fiber, LLC must pay an annual minimum user fee of \$100 or 0.30 percent of gross intrastate revenue, whichever is greater. 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.

13. Prior to initiating service, American Dark Fiber, LLC must provide the Commission's Consumer Affairs Branch with the name(s), address(es), and telephone number(s) of its designated contact person(s) for purposes of resolving consumer complaints. This information must be updated if the name(s), address(es), or telephone number(s) change, or at least annually.

14. Prior to initiating service, American Dark Fiber, LLC must provide the Commission's Communications Division with the name(s), address(es), and telephone number(s) 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/communications>. This information must be updated if the name or telephone number changes, or at least annually.

15. American Dark Fiber, LLC must submit an affiliate transaction report to the Director of the Communications Division, by e-mail to cdcompliance@cpuc.ca.gov, in compliance with Decision 93-02-019, on a calendar year basis using the form contained in Attachment D.

16. American Dark Fiber, LLC must submit an annual report to the Director of the Communications Division, by e-mail to cdcompliance@cpuc.ca.gov, in compliance with General Order 104-A, on a calendar-year basis with the information contained in Attachment C to this decision.

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

18. If American Dark Fiber, LLC (American Dark Fiber) wishes to engage in full facilities-based construction activities and believes that these activities are exempt from California Environmental Quality Act, American Dark Fiber shall first apply to the Commission's Energy Division staff for a determination of exemption from California Environmental Quality Act by providing the Commission's Energy Division (Energy Division) with:

- a. A detailed description of the proposed project, including:
 - i. Customer(s) to be served;
 - ii. The precise location of the proposed construction project; and
 - iii. Regional and local site maps.
- b. A description of the environmental setting, including at a minimum:
 - i. Cultural, historical, and paleontological resources;
 - ii. Biological resources; and
 - iii. Current land use and zoning.
- c. A construction workplan, including:
 - i. Commission Preconstruction Survey Checklist-Archaeological Resources;
 - ii. Commission Preconstruction Survey Checklist-Biological Resources;
 - iii. A detailed schedule of construction activities, including site restoration activities;
 - iv. A description of construction/installation techniques;

- v. A list of other agencies contacted with respect to siting, land use planning, and environmental resource issues, including contact information; and
- vi. A list of permits required for the proposed project.
- d. A statement of the California Environmental Quality Act exemption(s) claimed to apply to the proposed project; and
- e. Documentation supporting the finding of exemption from California Environmental Quality Act.
- f. The Energy Division will then review the submittal and notify American Dark Fiber of either its approval or its denial of American Dark Fiber's claim for exemption from California Environmental Quality Act review within 21 days from the time that American Dark Fiber's submittal is complete.

19. If the Energy Division approves American Dark Fiber, LLC's (American Dark Fiber) 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 American Dark Fiber's claimed California Environmental Quality Act exemptions, the staff shall issue to American Dark Fiber a letter which states the specific reasons that the claimed California Environmental Quality Act exemptions do not apply to the proposed project.

20. If the Energy Division disapproves American Dark Fiber, LLC's (American Dark Fiber) claimed California Environmental Quality Act exemption(s), American Dark Fiber shall either re-design the specific project and facilities and then reapply for a finding of exemption from California Environmental Quality Act, or file a formal application with the Commission seeking the requisite approval and full California Environmental Quality Act review, before commencing any full facilities-based construction activities.

21. American Dark Fiber, LLC's motion to file under seal its Exhibit 6 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 American Dark Fiber, LLC believes that it is necessary for this information to remain under seal for longer than three years, American Dark Fiber, 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.

22. Application 17-12-020 is closed.

This decision is effective today.

Dated _____, 2019, at San Francisco, California.

**ATTACHMENT A
TARIFF DEFICIENCIES**

List of deficiencies in the tariff filed by American Dark Fiber (U-7342-C) in A.17-12-020 to be corrected in its tariff compliance filing.

1. General Order 96-B Section 8.4 requires that the tariff follow specific format and consecutive numbering requirements. Revise the tariff to delete "Application No." from the tariff footer and replace with "Advice Letter No." Also revise the tariff to include "Continued" on the bottom and top of sheets of rate schedules or tariff rules carried forward from one tariff sheet to another.
2. General Order 96-B Section 8.5.1 requires that the tariff's title page include the Commission-assigned identifying "U" number shown on the utility's Certificate of Public Convenience and Necessity. Revise the tariff to include U-7342-C.
3. General Order 96-B Section 8.5.3 requires that the tariff contain a preliminary statement and explanation of symbols. Revise the preliminary statement and explanation of symbols to include (P) to signify material subject to change under a pending application or advice letter.
4. General Order 96-B Section 8.5.5 requires that the tariff contain rate schedules. Revise the tariff to include rates for services listed in the carrier's application.
5. General Order 96-B Section 8.5.6 requires that the tariff include a list of contracts and other deviations. Revise the tariff to include a list of contracts and other deviations. If there are none, indicate so.
6. General Order 96-B Section 8.5.7 requires that each tariff rule have a number and separate sheet number. Revise the tariff so that each tariff rule has a separate sheet number.
7. General Order 96-B Section 8.5.7 Item 12 requires that the tariff include information about services and promotional offerings. Include language that complies with General Order 96-B Section 8.5.7 Item 12.
8. General Order 96-B Section 8.5.7 Item 13 requires that the tariff include information about temporary services. Revise the tariff to include

information about conditions to provide temporary service or service to speculative projects.

9. General Order 96-B Section 8.5.7 Item 15 requires that the tariff include information regarding the extension of lines or mains. Revise the tariff to include language that complies with General Order 96-B Section 8.5.7 Item 15.
10. General Order 96-B Section 8.5.7 Item 16 requires that the tariff include information regarding facilities on customers' premises and service connections. Revise the tariff to include language that complies with General Order 96-B Section 8.5.7 Item 16.
11. Decision 95-07-054 Appendix B Rule 1 requires that the tariff include information about the carrier. Revise the tariff to include language compliant with Decision 95-07-054 Appendix B Rule 1.
12. Decision 95-07-054 Appendix B Rule 2 requires that the tariff include language regarding the initiation of service. Revise the tariff to include language compliant with Decision 95-07-054 Appendix B Rule 2.
13. Decision 95-07-054 Appendix B Rule 10.A requires that the tariff include language regarding nonpayment. Revise the tariff to include language compliant with Decision 95-07-054 Appendix B Rule 10.A.2 and Rule 6.B.2.
14. Decision 95-07-054 Appendix B Rule 12 requires that the tariff include language regarding failure to establish credit or pay deposit and also include language regarding refusal of service. Revise the tariff to include language regarding refusal of service compliant with Decision 95-07-054 Appendix B Rule 12.
15. Decision 95-07-054 Appendix B Rule 13 requires that the tariff include language regarding the liability of the carrier. Revise the tariff to include language compliant with Decision 95-07-054 Appendix B Rule 13.
16. General Order 153 Appendix A Item 12i requires that the tariff include language regarding telephone directories. Revise the tariff to include language compliant with General Order 153 Appendix A Item 12i.

17. Decision 96-02-072 Appendix E 8.J.(2) requires that the tariff include language regarding non-published service. Revise the tariff to comply with D.96-02-072 Appendix E 8.J.(2).
18. General Order 153 Section 3.3, Decision 95-07-054 Appendix A Section E.7, and Public Utilities Code Section 876 require that the tariff include language regarding ULTS offerings. Revise the tariff to include language compliant with General Order 153 Section 3.3, Section E.7, and Public Utilities Code Section 876.

(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,⁸ a written acceptance of the certificate granted in this proceeding within 30 days of the effective date of this order.
2. The certificate granted and the authority to render service under the rates, charges, and rules authorized will expire if not exercised within 12 months of the date of this decision.
3. Applicant is subject to the following fees and surcharges that must be regularly remitted. Per the instructions in Exhibit E to Decision (D.) 00-10-028, 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);

⁸ Written acceptance filed in this docket does not reopen the proceeding.

- 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 Telephone Company (d/b/a AT&T California) and apply the current surcharge and fee amounts in that joint tariff on end-user bills until further revised. Current and historical surcharge rates can be found at <http://www.cpuc.ca.gov/General.aspx?id=1124>.

- i. 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/General.aspx?id=1010>. To request a user ID and password for TUFFS online filing and for questions, please e-mail Telco_surcharges@cpuc.ca.gov.
- ii. Carriers must submit and pay the PUC User Fee (see Item 3.g above) upon receiving the User Fee statement sent by the Commission Instructions for reporting and filing are available at <http://www.cpuc.ca.gov/General.aspx?id=1009>. Please send an e-mail to cdcompliance@cpuc.ca.gov for additional questions regarding User Fee reporting and payment.

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

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

6. Tariff filings must reflect all fees and surcharges to which Applicant is subject, as reflected in Item 3 above.

7. Applicant must obtain a performance bond of at least \$25,000 in accordance with Decision 13-05-035. The performance bond must be a continuous bond (i.e., there is no termination date on the bond) issued by a corporate surety company authorized to transact surety business in California, and the Commission must be listed as the obligee on the bond. Within five days of acceptance of its certificate of public convenience and necessity authority, Applicant must submit a Tier-1 Advice Letter to the Communications Division, containing a copy of the license holder's executed bond, and submit a Tier-1 advice letter annually, but not later than March 31, with a copy of the executed bond.

8. Applicant must not allow its performance bond to lapse during any period of its operation. Pursuant to Decision 13-05-035, the Commission may revoke a certificate of public convenience and necessity if a carrier is more than 120 days late in providing the Communications Division a copy of its executed performance bond and the carrier has not been granted an extension of time by the Communications Division.

9. Applicants providing local exchange service must submit a service area map as part of their initial tariff to the Communications Division.

10. Prior to initiating service, Applicant must provide the Commission's Consumer Affairs Branch with the name(s), address(es), and telephone

number(s) of its designated contact person(s) for purposes of resolving consumer complaints. This information must be updated if the name(s), address(es), and telephone number(s) change, or at least annually.

11. In addition, Applicant must provide the Commission's Communications Division with the name(s), address(es), and telephone number(s) of its designated regulatory/official contact persons(s). This information must be provided electronically, using the "Regulatory/Official Contact Information Update Request" found at <http://www.cpuc.ca.gov/communications>. This information must be updated if the name(s), address(es), and telephone number(s) change, or at least annually.

12. Applicant must notify the Director of the Communications Division, in writing submitted by e-mail to cdcompliance@cpuc.ca.gov, no later than five days after service first begins, of the date that local exchange service is first rendered to the public.

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

14. In the event Applicant's books and records are required for inspection by the Commission or its staff, it must either produce such records at the Commission's offices or reimburse the Commission for the reasonable costs incurred in having Commission staff travel to its office.

15. Applicant must submit an annual report to the Director of the Communications Division at cdcompliance@cpuc.ca.gov, in compliance with GO 104-A, on a calendar-year basis with the information contained in Attachment C to this decision.

16. Applicant must submit an affiliate transaction report to the Director of the Communications Division at cdcompliance@cpuc.ca.gov, in compliance with D.93-02-019, on a calendar-year basis using the form contained in Attachment D.

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

18. 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 of its compliance in writing, by e-mail to cdcompliance@cpuc.ca.gov.

19. If Applicant is 90 days or more late in submitting an annual report, or in remitting the surcharges and fee listed in #3 above, and has not received written permission from the Communications Division to file or remit late, the Communications Division must prepare for Commission consideration a resolution that revokes Applicant's CPCN.

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

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

22. If Applicant decides to discontinue service or file for bankruptcy, it must immediately notify the Communications Division's Bankruptcy Coordinator.

23. Applicant must send a copy of this decision to concerned local permitting agencies no later than 30 days from the date of this order.

(END OF ATTACHMENT B)

ATTACHMENT C
ANNUAL REPORT

An original and a machine readable, copy using Microsoft Word or compatible format must be submitted to the California Public Utilities Commission, Communications Division, 505 Van Ness Avenue, San Francisco, CA 94102-3298, no later than March 31st of the year following the calendar year for which the annual report is submitted. In addition, an electronic copy of the report must be e-mailed to cdcompliance@cpuc.ca.gov.

Failure to submit 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 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 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 submitted to the California Public Utilities Commission, Communications Division, 505 Van Ness Avenue, San Francisco, CA 94102-3298, no later than May 1st of the year following the calendar year for which the annual report is submitted. In addition, an electronic copy of the report must be e-mailed to cdcompliance@cpuc.ca.gov.

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

- Form of organization (e.g., corporation, partnership, joint venture, strategic alliance, etc.);
- Brief description of business activities engaged in;
- Relationship to the utility (e.g., controlling corporation, subsidiary, regulated subsidiary, affiliate);
- Ownership of the utility (including type and percent ownership)
- Voting rights held by the utility and percent; and
- Corporate officers.

2. The utility must prepare and submit a corporate organization chart showing any and all corporate relationships between the utility and its affiliated entities and regulated subsidiaries in #1 above. The chart must have the controlling corporation (if any) at the top of the chart, the utility and any subsidiaries and/or affiliates of the controlling corporation in the middle levels of the chart, and all secondary subsidiaries and affiliates (e.g., a subsidiary that in turn is owned by another subsidiary and/or affiliate) in the lower levels. Any regulated subsidiary must be clearly noted.

3. For a utility that has individuals who are classified as “controlling corporations” of the competitive utility, the utility must only report under the

requirements of #1 and #2 above any affiliated entity that either (a) is a public utility or (b) transacts any business with the utility filing the annual report excluding the provision of tariff services.

4. Each annual report must be signed by a corporate officer of the utility stating under penalty of perjury under the laws of the State of California (CCP 2015.5) that the annual report is complete and accurate with no material omissions.

5. Any required material that a utility is unable to provide must be reasonably described and the reasons the data cannot be obtained, as well as the efforts expended to obtain the information, must be set forth in the utility's Annual Affiliate Transaction Report and verified in accordance with Section I-F of Decision 93-02-019.

6. Utilities that do not have affiliated entities must submit, in lieu of the annual transaction report, an annual statement to the Commission stating that the utility had no affiliated entities during the report period. This statement must be signed by a corporate officer of the utility, stating under penalty of perjury under the laws of the State of California (CCP 2015.5) that the annual report is complete and accurate with no material omissions.

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)