

# TENNESSEE PUBLIC UTILITY COMMISSION

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Laura Garfinkel  
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VIA EMAIL to: [Laura.Garfinkel@claconnect.com](mailto:Laura.Garfinkel@claconnect.com)

Re: *Application of American Dark Fiber, LLC for Certificate to Resell  
Telecommunications Services in Tennessee*, Docket No. 23-00038

Dear Ms. Garfinkel:

TPUC Utilities Division Utilities Consultant, Lisa Foust, has advised that you have requested a writing concerning the requirement that a telecommunications reseller application requires a Tennessee licensed attorney for its filing and representation. Please be advised that while there is currently no written document on the website that evidences this requirement, revisions to the application package and relevant notices have been under development for some time and should be updated soon. In the meantime, please allow this letter to serve as the written notice that you have requested concerning the local counsel requirement.

It is well settled Tennessee law that a corporation may not act *pro se* in contested legal matters, nor may it be represented by an officer or other non-lawyer agent. Tennessee courts have held that allowing a corporation, or an officer on behalf of a corporation, to sign pleadings would result in the unauthorized practice of law.<sup>1</sup> Preparation and filing of documents that initiate contested cases requires the professional judgment of an attorney and as such, is the practice of law.<sup>2</sup>

In administrative law matters under the Uniform Administrative Procedures Act, a corporate party may participate in a hearing by a duly authorized representative.<sup>3</sup> The Tennessee Court of Appeals differentiates between "informal, information gathering proceeding[s]" wherein a non-attorney may be a corporate party participant pursuant to Tenn. Code Ann. § 4-5-305(a),

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<sup>1</sup> *Old Hickory Eng'g & Mach. Co., Inc. v. Henry*, 937 S.W.2d 782, 785-786 (Tenn. 1996).

<sup>2</sup> *Id.*

<sup>3</sup> TENN. CODE ANN. § 4-5-305(a) (2023).

and “formal adversarial proceedings as in a contested case proceeding” in which a non-attorney may not represent a corporate party.<sup>4</sup>

The Tennessee Uniform Procedures Act, TENN. CODE ANN. § 4-5-101 *et seq.* defines a contested case as “a proceeding, including a declaratory proceeding, in which the legal rights, duties, or privileges, of a party are required by any statute or constitutional provision to be determined by an agency after an opportunity for a hearing. Such proceedings may include rate making; price fixing; *granting of certificates of convenience and necessity* ...” (emphasis added).<sup>5</sup> The telecommunications reseller application seeks the issuance of a certificate of convenience and necessity and requires a hearing to be adjudicated. It is clear that the telecommunications reseller application is a contested case and therefore, requires that a corporation or limited liability company be represented by counsel in the filing of the application and throughout proceedings in the matter.

The Tennessee Supreme Court has promulgated rules concerning the admission of practice pro hac vice in order for a lawyer not licensed to practice law in Tennessee to appear, file pleadings, “and to fully participate in a particular proceeding before a trial or appellate court of Tennessee, or in a contested case proceeding before any state department, commission, board, or agency ....”<sup>6</sup>

I hope that this explanation provides some clarity on the issue. Should you have questions, please feel free to contact me.

Sincerely,



Aaron J. Conklin  
Senior Counsel

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<sup>4</sup> *Tenn. Env'tl. Council v. Water Quality Control Bd.*, 254 S.W.3d 396, 407 (Tenn. Ct. App. 2007).

<sup>5</sup> Tenn. Code Ann. § 4-5-102(3) (2023).

<sup>6</sup> Tenn. S.Ct. R.19.