

**BEFORE THE TENNESSEE PUBLIC UTILITY COMMISSION  
NASHVILLE, TENNESSEE**

**January 3, 2024**

**IN RE:**

**APPLICATION OF AMERICAN DARK  
FIBER, LLC FOR A CERTIFICATE TO  
RESELL TELECOMMUNICATIONS  
SERVICES IN TENNESSEE**

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**DOCKET NO.  
23-00038**

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**INITIAL ORDER GRANTING CERTIFICATE OF  
PUBLIC CONVENIENCE AND NECESSITY**

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This matter came before the Hearing Officer of the Tennessee Public Utility Commission (the “Commission” or “TPUC”) at a Hearing held on December 21, 2023 to consider the *Application of American Dark Fiber, LLC for Certificate to Resell Telecommunications Services in Tennessee* (the “*Application*”) filed by American Dark Fiber, LLC (“ADF,” “Applicant,” or “Company”) on June 2, 2023. In its *Application*, ADF seeks a Certificate of Public Convenience and Necessity (“CCN”) for authority to resell intrastate telecommunications services within the State of Tennessee.

**I. LEGAL STANDARD**

ADF’s *Application* was made pursuant to and considered in light of the criteria for granting a CCN as set forth in Tenn. Code Ann. § 65-4-201 which provides, in pertinent part:

(a) No public utility shall establish or begin the construction of, or operate any line, plant, or system, or route in or into a municipality or other territory already receiving a like service from another public utility, or establish service therein, without first having obtained from the commission, after written application and hearing, a certificate that the present or future public convenience and necessity require or will require such construction, establishment, and operation, and no person or corporation not at the time a public utility shall commence the construction of any plant, line, system, or route to be operated as a public utility, or the operation of which would constitute the same, or the owner or operator thereof, a public utility as defined by law, without having first obtained, in like manner, a similar certificate ....

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(c) (1) After notice to the incumbent local exchange telephone company and other interested parties and following a hearing, the commission shall grant a certificate of convenience and necessity to a competing telecommunications service provider if after examining the evidence presented, the authority finds:

(A) The applicant has demonstrated that it will adhere to all applicable commission policies, rules and orders; and

(B) The applicant possesses sufficient managerial, financial and technical abilities to provide the applied for services.

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Furthermore, pursuant to Tenn. Code Ann. § 65-5-112, a competing telecommunications provider is required to file with the Commission a small and minority-owned telecommunications business participation plan which provides the provider's plan for purchasing goods and services from small and minority-owned telecommunications businesses and information on programs that might provide technical assistance to such businesses.

Commission Rules prohibit providers of resold telecommunications services<sup>1</sup> from the provision of intrastate telecommunications services without a CCN. Further, the Commission is required to consider the present or future public convenience and necessity and may consider financial ability, character, proposed rates, and other factors the Commission deems relevant in determining whether to grant a CCN.<sup>2</sup>

## **II. HEARING ON THE MERITS**

Pursuant to Tenn. Code Ann. § 65-4-204, a public notice of the Hearing in this matter was issued by the Hearing Officer on December 12, 2023 setting the case for Hearing on December 21, 2023. No persons sought intervention prior to or during the Hearing. Mr. Michael Pendleton, Managing Member of ADF, appeared at the Hearing and provided testimony.<sup>3</sup>

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<sup>1</sup> During the Hearing, the Applicant orally requested that the *Application* be treated as a request for a CCN as a competing telecommunications service provider rather than a reseller of telecommunications services. The Hearing Officer granted the request and considered the Application accordingly.

<sup>2</sup> Tenn. Comp. R. & Regs. 1220-04-02-.57(2).

<sup>3</sup> Laura Garfinkel, a consultant on behalf of ADF was also present at the Hearing and provided clarifying information

Mr. Pendleton participated in the Hearing, adopting and summarizing his Pre-Filed Testimony. Mr. Pendleton's testimony was clarified to correct and update references to the Tennessee Regulatory Authority to the Tennessee Public Utility Commission. Mr. Pendleton's testimony also corrects information in the *Application* that Karen Wells will serve as the principal contact to the Commission for ADF rather than himself. Mr. Pendleton further testified that the Company will comply with all applicable laws, and TPUC rules, policies, and orders and stated that it is in the public interest to grant the *Application*. He also described the services that ADF proposes to provide and provided responses to the questions of the Hearing Officer. In response to questions from Commission Staff, counsel for ADF clarified that Applicant will provide services through both leased dark fiber and last-mile dark fiber connections which will be owned by the Company. As a result, counsel for ADF requested that while the *Application*, as filed, seeks authority as a reseller, based upon the Company's proposed use of owned and leased facilities, ADF is seeking a CCN as a competing local exchange carrier ("CLEC") rather than strictly a reseller.

The Hearing Officer opened the floor for public comment, but no member of the public came forward to comment. Upon conclusion of the presentation of its proof, the Hearing Officer granted ADF's *Application* based upon the findings of fact and conclusions of law stated herein.

### **III. FINDINGS AND CONCLUSIONS**

#### **A. ADF'S QUALIFICATIONS**

1. ADF is a Delaware limited liability company, authorized to transact business in the State of Tennessee on March 14, 2023.<sup>4</sup>

2. The Company's principal office is located at 11110 Ohio Avenue, Suite 111, Los Angeles, CA 90025. The Company's telephone number is (310) 353-4237.<sup>5</sup>

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regarding one of Mr. Pendleton's answer to a question of counsel.

<sup>4</sup> *Application*, p. 18 (June 2, 2023).

<sup>5</sup> *Id.* at 17.

3. The *Application* and information in the record indicate that ADF has the requisite technical and managerial ability to provide resold intrastate telecommunications services within the State of Tennessee. Specifically, ADF's management team possesses extensive business, technical, operational, and regulatory experience in the telecommunications industry.

4. ADF has the necessary capital and financial ability to provide the services it proposes to offer.

5. ADF has represented that it will adhere to all applicable statutes, policies, rules, and orders of the Commission.

#### **B. PROPOSED SERVICES**

ADF proposes to offer a range of telecommunications services through the use of its own facilities, resold facilities, and through a combination of these methods. ADF will not co-locate any equipment or other related electronic equipment in the central offices and/or end offices of any ILEC. Applicant's initial line of local services will be comparable to that currently offered by the ILECs. Initially, ADF will offer basic private line service, PBX and DID Services, Optional Calling Features, Directory Assistance and Operator Services, as well as those services required by Commission Rules.<sup>6</sup>

#### **C. PERMITTING COMPETITION TO SERVE THE PUBLIC CONVENIENCE AND NECESSITY**

ADF's *Application* and its proposed services would inure to the benefit of the present and future public convenience by permitting competition in the telecommunications services markets in the State and fostering the development of an efficient, technologically advanced statewide system of telecommunications services. The Company's proposed services would also assist in ensuring that persons are able to obtain competitive pricing, increased accountability through reliable and responsive customer service, and advanced technological innovation.

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<sup>6</sup> *Id.* at 20-21.

**D. SMALL AND MINORITY-OWNED TELECOMMUNICATIONS BUSINESS PARTICIPATION PLAN AND BUSINESS ASSISTANCE PROGRAM**

ADF has filed a satisfactory small and minority-owned telecommunications business participation plan, pursuant to Tenn. Code Ann. § 65-5-112 and the Commission's Rules.<sup>7</sup>

**IT IS THEREFORE ORDERED THAT:**

1. The *Application of American Dark Fiber, LLC for Certificate to Resell Telecommunications Services in Tennessee*, as amended orally during the Hearing on the *Application* to request granting of a Certificate of Public Convenience and Necessity as a competing telecommunications service provider rather than as a reseller of telecommunications services, filed by American Dark Fiber, LLC is approved.

2. Any party aggrieved by the Hearing Officer's decision in this matter may file a petition for reconsideration within fifteen (15) days from the date of this Order.

3. This Initial Order shall become a Final Order of the Tennessee Public Utility Commission, if no petition for reconsideration or appeal of this Order is filed prior to the expiration of the fifteen (15) day appeal period.

  
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Aaron J. Conklin, Hearing Officer

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<sup>7</sup> *Id.* at Exh. H.