

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of ATC Outdoor DAS, LLC for a Certificate of Public Convenience and Necessity in Order to Provide Limited Facilities - Based, Full Facilities - Based and Resold Competitive Local Exchange, Access, and Interexchange Service in the State of California.

Application 13-03-019
(Filed March 26, 2013)

DECISION GRANTING ATC OUTDOOR DAS, LLC A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY IN ORDER TO PROVIDE LIMITED FACILITIES-BASED, FULL FACILITIES-BASED, AND RESOLD LOCAL EXCHANGE AND INTEREXCHANGE SERVICE

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DECISION GRANTING ATC OUTDOOR DAS, LLC A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY IN ORDER TO PROVIDE LIMITED FACILITIES-BASED, FULL FACILITIES-BASED, AND RESOLD LOCAL EXCHANGE AND INTEREXCHANGE SERVICE

Summary

Pursuant to Pub. Util. Code § 1001, we grant ATC Outdoor DAS, LLC a Certificate of Public Convenience and Necessity to provide limited facilities-based, full facilities-based, and resold local exchange and non-dominant interexchange services, subject to the terms and conditions set forth in the Ordering Paragraphs. This proceeding is closed.

1. Background

On March 26, 2013, ATC Outdoor DAS, LLC (ATC), a California limited liability corporation, filed an application for a Certificate of Public Convenience and Necessity (CPCN) authorizing the company to provide limited facilities-based, full facilities-based and resold local exchange telecommunications services in the service territories of Pacific Bell Telephone dba AT&T California (AT&T), Verizon California Inc. (Verizon), Citizens Telecommunications Company of California, Inc. dba Frontier Communications of California (Citizens), Frontier Communications of the Southwest, Inc. (Frontier), and SureWest Communications¹ (SureWest), and non-dominant interexchange services statewide in California. Previously, ATC was granted a CPCN in Decision (D.) 08-12-027. But since ATC did not exercise that authority within 12 months after the effective date of the decision due to the absence of business prospects, the authority expired. ATC now contends that the

¹ SureWest was formerly known as Roseville Telephone Company.

business climate has changed so that it will be able to attract large wireless carriers as customers.

ATC's principal place of business is located at 116 Huntington Avenue, 11th Floor, Boston, Massachusetts.

No protests to the application were filed.

2. Jurisdiction

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."

ATC proposes to provide limited facilities-based, full facilities-based, and resold local exchanged and interexchange service. ATC is a telephone corporation and a public utility subject to our jurisdiction.

ATC proposes to design and build Distributed Antenna Systems which ATC contends can include send/receive antennae, various attachment equipment, poles, and short fiber runs to support short haul transport services for wireless carriers, as well as provide radio frequency or optical transport and backhaul services for voice and data service providers. ATC will provide its service using transport and backhaul by fiber optic cables or wireless radio frequency systems with conversion equipment attached to poles and other structures. The application states that ATC is a "carrier's carrier" for wireless providers.

3. California Environmental Quality Act (CEQA)

Normally, an applicant seeks either limited facilities-based authority or full facilities-based authority. But there are instances where an applicant seeks both, and this Commission has granted such a dual request. (See Decision 13-07-039.)

As such, we evaluate the potential CEQA implications arising from both limited and full facilities-based authority.

3.1. Limited Facilities-Based

The CEQA requires the Commission act as the designated lead agency to assess the potential environmental impact of a project in order that adverse effects are avoided, alternatives are investigated, and environmental quality is restored or enhanced to the fullest extent possible. Since ATC states that it does not intend to construct any facilities other than equipment to be installed in existing buildings or structures, it can be seen with certainty that there is no possibility that granting this application will have an adverse impact upon the environment. Before it can construct facilities other than equipment to be installed in existing buildings or structures, ATC must file for additional authority, and submit to any necessary CEQA review.

3.2. Full Facilities-Based

Pursuant to CEQA and Rule 24 of the Commission's Rules of Practice and Procedure, the Commission examines projects to determine any potential environmental impacts in order that adverse effects are avoided and environmental quality is restored or enhanced to the fullest extent possible under CEQA.

Based on our review of the application and ATC's Environment Assessment,² ATC's Construction activities involve installation of fiber and/or related equipment in or on existing poles, towers, buildings, fiber, conduits, ducts, rights-of-way, trenches and other facilities and structures of other entities.

² Exhibit B to ATC's Application.

The specific class exemptions that the project's full facilities-based construction activities which are exempt from CEQA and for which neither an Environmental Impact Report nor a Negative Declaration are required as follows:

- Class 3 Exemption: Construction including water mains, sewage, electrical, gas and other utility extensions of reasonable length to serve such construction. This exemption includes the construction of limited numbers of new small facilities or utility extensions. (14 CCR §15303).
- Class 4 Exemption: Class 4 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:
 - a) Grading on land with a slope of less than 10 percent, with certain exceptions,³
 - b) Filling of earth into previously excavated land with material compatible with the natural features of the site,
 - c) Minor trenching and backfilling where the surface is restored.
- Class 32 ("In-fill" Exemption): Class 32 consists of projects characterized as in-fill development meeting certain conditions, as follows: (a) The project is consistent with the applicable general plan designation and all applicable general plan policies as well as with applicable zoning designation and regulations; (b) The proposed development occurs within city limits on a project site of no more than five acres substantially surrounded by urban uses; (c) The project site has no value as habitat for endangered, rare or threatened species; (d) Approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality; (e) The site can

³ Grading is not exempt from CEQA under a Class 4 exemption in a waterway, in any wetland, in an officially designated (by federal, state, or local government action) scenic area, or in officially mapped areas of severe geologic hazard such as an Alquist-Priolo Earthquake Fault Zone or within an official Seismic Hazard Zone, as delineated by the State Geologist.

be adequately served by all required utilities and public services.

ATC's proposed activities involve construction of reasonably short utility extensions (Class 3); the primary ground-breaking activity will be limited to minor trenching and backfilling (Class 4); and will occur in developed urban and suburban areas that meet the criteria for urban in-fill (Class 32). These activities are similar to those undertaken by other carriers that we have decided are categorically exempt from CEQA. (*See, e.g., Opinion Granting Modification of Certificate of Public Convenience and Necessity* [Clearlinx], Decision (D.) 06-04-063; and *Opinion Granting Modification of Certificate of Public Convenience and Necessity* [CA-CLEC LLC], Decision (D.) 06-04-067.)

ATC does not know at this time all of the specific areas where it may have to undertake construction. ATC requests approval to utilize a procedure for expedited review of its projects once it is aware of a specific site(s) in which it plans construction. As such, 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 ATC 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 ATC's claimed CEQA exemptions for proposed construction projects:

- ATC 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 ATC's submission for the proposed project to confirm that the claimed exemption(s) from CEQA are applicable.

- Within 21 days from the date of ATC'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 Supplement and find that:

- ATC'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 ATC'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 ATC 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 ATC's proposed process for Commission review of claimed CEQA exemptions for construction projects undertaken pursuant to ATC'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 ATC's claimed CEQA exemption(s) and issues a letter of denial to ATC, ATC 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.

ATC 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 in Rulemaking 95-04-043/Investigation 95-04-044 that the public convenience and necessity require that competition be allowed in the provision of competitive local exchange service. Granting this application will benefit the public interest by expanding the availability of technologically advanced telecommunications services within the state.

4. Financial Requirements

To be granted a CPCN, an applicant for authority to provide full facilities-based, limited-facilities based, and resold local exchange and interexchange services must demonstrate that it has a minimum of \$100,000 cash or cash equivalent to meet the firm's start-up expenses.⁴ 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.⁵ In its application, ATC provided a guaranty letter from American Tower Corporation, ATC's ultimate parent entity, confirming

⁴ The financial requirement for Competitive Local Exchange Carriers (LECs) is contained in Decision (D.) 95-12-056, Appendix C. The financial requirement for Non-dominant Interexchange Carriers (NDIEGs) is contained in Decision (D.) 91-10-041.

⁵ The requirement for Competitive Local Carrier applicants to demonstrate that they have additional financial resources to meet any deposits required by underlying LECs and/or Interexchange Carriers is set forth in Decision (D.) 95-12-056, Appendix C. For NDIEGs the requirement is found in Decision (D.) 93-05-010.

that ATC possesses a minimum of \$100,000 that is reasonably liquid and available.⁶

ATC asserts that it does not, at present, contemplate utilizing “UNEs or other functionalities or services purchased from other telecommunications carriers for which deposits are required.”⁷ As such, and at this time, ATC is not required to submit an amount equal to any deposits required by other carriers in order for ATC to operate. If circumstances change in the future, ATC is required to notify the Commission and comply with any additional depositing requirements.

Accordingly, we conclude that ATC meets the financial qualifications set forth in the *Initial Rules for Competitive Local Exchange Carriers* that this Commission issued in Decision (D.) 95-07-054,⁸ Decision (D.) 96-02-072,⁹ and Rule 3.1(g) of the Commission’s Rules of Practice and Procedure. In addition, ATC has provided sufficient documentation to show that it meets the Commission’s financial requirements for the issuance of a CPCN authorizing the provision of full facilities-based, limited facilities-based and resold local and interexchange services.

⁶ Confidential Exhibit E to ATC’s Application. Additional information attesting to ATC’s financial qualifications can be found in Exhibit D to the Application, which is a copy of the 2011 audited balance sheet for ATC’s parent entity, American Tower Corporation

⁷ Application, at 11.

⁸ *Order Adopting Interim Rules Application to Competition within the Local Service Territories of the State’s Two Largest Local Exchange Telephone Carriers.*

⁹ *Order Authorizing 59 Competitive Local Carriers to Operate as Resellers of Local Exchange and IntraLATA Telecommunications Services.*

5. 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.¹⁰ ATC supplied resumes and biographical information on its management in Exhibit H to its application. As the biographies of these individuals demonstrate sufficient expertise and training to operate as a telecommunications provider, we conclude that ATC has met this requirement.

In its application, ATC verified, under penalty of perjury, that no one associated with or employed by ATC as an affiliate, officer, director, partner, or owner of more than 10 percent of ATC was previously associated with a telecommunications carrier that filed for bankruptcy, was sanctioned by the Federal Communications Commission or any state regulatory agency for failure to comply with any regulatory statute, rule, or order, or 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.

For the above reasons, we find that ATC is in compliance with the requirements of D.95-12-056.

6. Tariffs

ATC does not intend to offer residential basic service. Instead, it will offer services to other carriers or to large enterprise customers. ATC is, therefore,

¹⁰ D.95-12-056 at Appendix C Rule 4.A.

exempt from the tariffing requirements as provided by General Order (GO) 96-B, Telecommunications Industry Rule 5.

7. 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.¹¹ In Exhibit C to its application, ATC provided maps 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, must provide a statement regarding GO 104-A. ATC states its ultimate parent entity, American Tower Corporation, is a publicly traded company that files quarterly and annual reports with the Securities and Exchange Commission. In conformity with Rule 3.1(i), ATC has attached as Exhibit F to its application a copy of American Tower Corporation's 2013 proxy statement sent to shareholders. ATC states that it has nothing to report under this rule. On a going-forward basis, however, ATC must file all reports required of a public utility under Commission jurisdiction.

¹¹ Decision 95-12-056 at Appendix C Rule 4.E.

9. Affidavit of Bond Amount

In D.13-05-035 and in R.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. The requirement applies to new applications, as well as existing CPCN holders. Accordingly, ATC must obtain the bond and submit a copy to the Commission within five days of written acceptance of the CPCN authority granted by this decision.

10. Expected Customer Base

ATC provided its estimated customer base for the first and fifth years of operation in Confidential Exhibit G of its Application.

11. Identification of Required Franchise and Health and Safety Permits (Rule 3.1(d))

ATC shall obtain all necessary health and safety permits required by the appropriate city or county agencies to operate as a full facilities-based provider and reseller of local exchange and interexchange service.

12. Estimated Cost of Construction, Annual Fixed and Operating Costs, and Economic Feasibility (Rule 3.1(f))

Where possible, ATC shall use existing streetlights, poles, towers, buildings, fiber, conduits, ducts, rights-of-way, trenches, and other facilities and structures of telecommunications carriers, utilities, and municipalities. As such, the estimated cost of construction is expected to be low and fully within ATC's financial resources.

13. Request for Treatment as a Non-dominant Carrier

Applicant 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 and transfer of utility property. 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 Applicant's request for non-dominant interexchange carrier status, provided that they follow all rules detailed in the above referenced decisions.¹²

14. Facts Demonstrating Public Convenience and Necessity (Rule 3.1 (c))

This Commission has found on previous occasions that competition in the provision of local exchange service is in the public interest as it brings greater efficiency in pricing, improved service quality, expanded product and service capabilities, greater reliability, and increased consumer choice.¹³

¹² While the Commission has granted exemption from §§ 816 - 830 to others, exemption from §§ 851 - 854 has not been granted previously and is not granted here.

¹³ See, e.g., Decision (D.) 96-04-052; Decision (D.) 96-02-072; Decision (D.) 95-07-054; and Decision (D.) 94-09-065.

In addition, the Commission has also found that competition in the provision of interexchange service is also in the public interest as the Legislature has recognized the importance of advanced telecommunications networks for the vitality of California's economy and for providing critical infrastructure for education, health, and public safety needs.

We find that authorizing ATC to operate as a full facilities-based local exchange and interexchange carriers will provide greater diversity of the supply of existing and future telecommunications services, which will promote competitively driven cost-based rates for telecommunications services.

15. Conclusion

We conclude that ATC's application conforms to our rules for certification as a competitive local exchange and interexchange carrier. Accordingly, we grant ATC Outdoor DAS, LLC a CPCN to provide limited facilities-based, full facilities-based, and resold local exchange and non-dominant interexchange services in the service territory of AT&T, Verizon, Citizens Frontier, and SureWest, and interexchange services throughout California subject to the terms and conditions set forth in the Ordering Paragraphs.

The CPCN granted by this decision provides benefits to ATC and corresponding obligations. ATC receives authority to operate in the prescribed service territory, it can request interconnection with other telecommunications carriers in accordance with § 251 of the Federal Communications Act (47 U.S.C. 251), and it receives 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, ATC 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. Moreover, ATC is obligated to pay all Commission prescribed user fees and public purpose program surcharges as set forth in the Appendix 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."

16. Request to File Under Seal

Pursuant to Rule 11.4 of the Commission's Rules of Practice and Procedure, ATC has filed a motion for leave to file Exhibits E and G to the Application as confidential materials under seal. ATC represents that the information is sensitive, and disclosure could place ATC at an unfair business disadvantage. We have granted similar requests in the past and do so here.

17. Categorization and Need for Hearings

In Resolution ALJ 176-3312, dated April 4, 2013, the Commission preliminarily categorized this application as ratesetting, and preliminarily determined that hearings were not necessary. No protests have been received. There is no apparent reason why the application should not be granted. Given these developments, a public hearing is not necessary, and it is not necessary to disturb the preliminary determinations.

18. 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.

19. Assignment of Proceeding

Catherine J. K. Sandoval is the assigned Commissioner and Robert M. Mason III is the assigned ALJ in this proceeding.

Findings of Fact

1. Notice of the application appeared on the Daily Calendar on April 4, 2013. No protests have been filed. A hearing is not required.
2. ATC is a telephone corporation and a public utility as defined in Pub. Util. Code §§ 234(a) and 216(a).
3. The Commission is the Lead Agency for this project under CEQA.
4. ATC's proposed construction activity falls within one or more CEQA categorical exemptions.
5. ATC's authority to provide local exchange services will not have a significant adverse effect upon the environment.
6. ATC has a minimum of \$100,000 of cash or cash equivalent that is reasonably liquid and readily available to meet its start-up expenses.
7. ATC has sufficient additional cash or cash equivalent to cover deposits that may be required by other telecommunications carriers in order to provide the proposed service.
8. ATC's management possesses sufficient experience, knowledge, and technical expertise to provide local exchange services to the public.
9. No one associated with or employed by ATC as an affiliate, officer, director, partner, or owner of more than 10 percent of ATC was previously associated with a telecommunications carrier that filed for bankruptcy; was sanctioned by the Federal Communications Commission 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.

10. ATC provided a map of the location of its proposed service territory.

11. ATC has filed the 2012 proxy statement sent to the stockholders, as required by Rule 3.1(i) and in compliance with GO 104-A.

12. ATC provided an estimate of its customer base for the first and fifth year of operation in Exhibit G to its application. ATC represents that the information is sensitive, and disclosure could place ATC at an unfair business disadvantage.

13. Pursuant to Rule 11.4, ATC filed motions for leave to file Exhibits E and G as confidential materials under seal.

Conclusions of Law

1. ATC should be granted a CPCN to provide resold, limited facilities-based, and full facilities-based local exchange telecommunications service in the service territories of AT&T, Verizon, Citizens, Frontier, and SureWest and non-dominant interexchange service in California, subject to the terms and conditions set forth in the OPs, including obtaining a performance bond, as required by D.13-05-035.

2. ATC should be allowed to use the Energy Division 21-day CEQA exemption process.

3. ATC, once granted a CPCN, should be subject to the applicable Commission rules, decisions, GO, and statutes that pertain to California public utilities.

4. ATC's motion to file under seal Exhibits E and G to its application, should be granted for three years.

5. ATC should be granted non-dominant carrier status, subject to Commission rules and regulations as detailed in D.85-01-008 and modified in D.85-07-081 and D.85-11-044.

O R D E R

IT IS ORDERED that:

1. A Certificate of Public Convenience and Necessity is granted to ATC Outdoor DAS, LLC to provide resold, limited facilities-based and full facilities-based local exchange telecommunications services in the territories of Pacific Bell Telephone dba AT&T California, Verizon California Inc., Citizens Telecommunications Company of California, Inc. dba Frontier Communications of California and SureWest Communications, and interexchange service in California, subject to the terms and conditions set forth below.

2. The corporate identification number assigned to ATC Outdoor DAS, LLC is U-7264-C, and must be included in the caption of all original filings with this Commission, and in the titles of other pleadings filed in existing cases.

3. 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, ATC Outdoor DAS, 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.

4. ATC Outdoor DAS, LLC (ATC) 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 written acceptance of the certificate granted herein, ATC must submit a Tier-1 Advice Letter to the Director of Communications, 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.

5. ATC Outdoor DAS, 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 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.

6. ATC Outdoor DAS, 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 order.

7. ATC Outdoor DAS, LLC 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 \$0.00. 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. In accordance with Decision 13-05-035, ATC Outdoor DAS, LLC must

pay a minimum user fee of \$100 or 0.18% of gross intrastate revenue, whichever is greater.

8. Prior to initiating service, ATC Outdoor DAS, LLC 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. This information must be updated if the name or telephone number changes, or at least annually.

9. Prior to initiating service, Applicant 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/Information+for+providing+service/>. This information must be updated if the name or telephone number changes, or at least annually.

10. ATC Outdoor DAS, LLC must notify the Director of the Communications Division in writing of the date that local exchange and non-dominant interexchange service is first rendered to the public, no later than five days after service first begins.

11. ATC Outdoor DAS, LLC 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.

12. ATC Outdoor DAS, LLC 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.

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

14. If ATC Outdoor DAS, LLC (ATC) wishes to engage in full facilities-based construction activities and believes that these activities are exempt from California Environmental Quality Act, ATC shall first apply to the Commission's Energy Division staff for a determination of exemption from California Environmental Quality Act using the following procedure set forth in Ordering Paragraph 17.

15. ATC Outdoor DAS, LLC (ATC) will provide the Commission's 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 work plan, 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 submission and notify ATC of either its approval or its denial of ATC's claim for exemption from California Environmental Quality Act review within 21 days from the time that ATC's submission is complete.
- g. If the Energy Division approves ATC's claimed California Environmental Quality Act exemption(s), the staff will prepare a Notice to Proceed and file a Notice of Exemption with the State Clearinghouse, Office of Planning and Research.
- h. If the Energy Division disapproves ATC's claimed California Environmental Quality Act exemptions, the staff will issue to Synergy a letter which states the specific reasons that the claimed California Environmental Quality Act exemptions do not apply to the proposed project.
- i. If the Energy Division disapproves ATC's claimed California Environmental Quality Act exemption(s), ATC 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.
16. ATC Outdoor DAS, LLC's (ATC) motion to file under seal its Exhibits E and G is granted for a period of three years after the date of this order. During this three year period, this information shall not be publicly disclosed except on

further Commission order or Administrative Law Judge ruling. If ATC believes that it is necessary for this information to remain under seal for longer than three years, ATC may file a new motion at least 30 days before the expiration of this limited protective order.

17. Application 13-03-019 is closed.

This order is effective today.

Dated _____, at San Francisco, California.

ATTACHMENT A

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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,¹⁴ 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. (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 (dba AT&T California) and apply the

¹⁴ Written acceptance filed in this docket does not reopen the proceeding.

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. ATC Outdoor DAS, LLC (ATC) 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 written acceptance of the certificate granted herein, ATC must submit a Tier-1 Advice Letter to the Director of Communications, containing a copy of the license holder's executed bond.

6. Tariff filings must reflect all fees and surcharges to which Applicant is subject, as reflected in #2 above.
7. Applicant must file a service area map as part of its initial tariff.
8. 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. This information must be updated if the name or telephone number changes, or at least annually.
9. Prior to initiating service, Applicant 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/Information+for+provideing+service/> . This information must be updated if the name or telephone number changes, or at least annually.
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)

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)