Decision **PROPOSED DECISION OF ALJ PATRICK** **(Mailed 11/17/2008)**

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.	Application 08-03-004 (Filed March 6, 2008)

DECISION GRANTING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

1. Summary

ATC Outdoor DAS, LLC (ATC or Applicant), is granted a certificate of public convenience and necessity (CPCN) pursuant to Pub. Util. Code § 1001 to provide full facilities-based and resold competitive local exchange and interexchange services, subject to the terms and conditions set forth below. We also specify a procedure to be followed if ATC wishes to pursue full facilities-based construction activities that involve potential exemptions from environmental review under the California Environmental Quality Act (CEQA). This proceeding is closed.

2. Procedural Summary

On April 10, 2008, the Commission's Consumer Protection and Safety Division (CPSD) filed a protest to the application. ATC filed a reply on May 16, 2008. While ATC disputed the relevance and significance of CPSD's protest, they acknowledge the facts as accurate. There being no disputed material issues of fact, and therefore no need for evidentiary hearing, by ruling of

the assigned Administrative Law Judge (ALJ) dated July 8, 2008, this matter was submitted for decision based on the pleadings.

3. Background

In prior decisions, we authorized the provision of competitive interexchange services by carriers meeting specified criteria. In addition, we authorized the provision of competitive local exchange service, by carriers meeting specified criteria, within the service territories of Pacific Bell Telephone Company (Pacific), Verizon California Inc. (Verizon), SureWest Telephone (SureWest), and Citizens Telecommunications Company of California, Inc. dba Frontier Communications of California (CTC).

Applicant's legal name is ATC Outdoor DAS, LLC. Applicant is a Delaware Limited Liability Company. Its principal place of business is located at 116 Huntington Avenue, 11th Floor, Boston, Massachusetts.

4. Services to be Provided

Applicant seeks authority to provide limited facilities-based, full facilities-based and resold local exchange and access services to business customers in the service territories of Pacific, Verizon, SureWest and CTC, as well as limited facilities-based, full facilities-based and resold interexchange services to such customers throughout California. Applicant will provide competitive local transport services, access and nondominant interexchange services. Applicant intends to design and build distributed antenna systems (which 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 (RF) or optical transport and backhaul services for voice and data service providers.

5. Protest of the Consumer Protection and Safety Division

On April 10, 2008, the Consumer Protection and Safety Division (CPSD) filed a protest to the Application. ATC filed a reply on May 16, 2008.

CPSD protests ATC's application for reasons relating to alleged lack of full disclosure regarding matters related to the company's fitness to operate a business in California. The issues raised by CPSD are discussed below.

5.1. Failure to Disclose Civil Judgment Involving Rule Violations

CPSD states that ATC failed to disclose a civil proceeding involving rule violations. In December of 2001, a parent company to the Applicant, American Tower Corporation (American Tower), received a civil judgment against them in an action brought by the District Attorney for the County of Santa Clara, California. The judgment was for record keeping, registration, hazardous materials management and filing violations under California environmental laws. American Tower paid penalties of $150,000, reimbursed the county for more than $25,000 in costs and attorney's fees, and agreed to operate their facilities in the county in compliance with the relevant environmental requirements in the future. According to CPSD, ATC's failure to disclose this sanction against its parent company in the Application may constitute a Rule 1.1.violation.[1]

ATC agrees that CPSD is correct that Decision (D.) 97-06-107 requires that certain disclosures be made by applicants for interexchange authority.

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[1] Rule 1.1 of the Commission's Rules of Practice and Procedure provides that any person who transacts business with the Commission agrees never to mislead the Commission or its staff by an artifice or false statement of fact or law.

However, ATC contends that CPSD is incorrect that ATC was required to make such disclosures in this instance. ATC argues that both D.97-06-107 and Pub. Util. Code § 1013 relate to the Registration Process that certain competitive wireline carriers are permitted (but not required) to follow in lieu of the more extensive CPCN application process. According to ATC, in this case, since ATC is electing to obtain both facilities-based CLEC authority (which requires a traditional CPCN application), and Non-Dominant Interexchange Carrier (NDIEC) authorization, ATC elected to file for both types of authority via a traditional CPCN application.

ATC says it could locate nothing in the Commission's rules governing CPCN applications that requires disclosure of bankruptcy or prior regulatory sanctions.[2] According to ATC, the rules for CPCN applications require (more broadly) that an applicant demonstrate technical, financial and managerial capability to provide telecommunications services in the state and, as required, ATC made such a showing in its application. ATC believes that none of the legal actions involving ATC's parent or affiliates described in CPSD's protest undercuts that showing or detracts from that capability.

ATC also says it has not attempted to keep any of the information alleged in CPSD's Protest secret. ATC points out that this information is contained in the publicly available 10-K annual reports for ATC's ultimate parent entity, American Tower. These documents are posted on American Tower's

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[2] ATC refers to the Commission's Rules of Practice and Procedure, §§ 1-3; *also* California CLC Application Guidelines, available at http://www.cpuc.ca.gov/PUC/Telco/Information+for+providing+service/clcapps.htm.

website, and ATC even submitted portions of its parent American Tower's 2006 10-K with it Application.

5.2. Failure to Disclose a Regulatory Matter with the Environmental Protection Agency

CPSD states that ATC failed to disclose a 2005 regulatory matter with the Environmental Protection Agency (EPA), where a Facilities Audit Agreement (FAA) was signed between ATC's parent, American Tower, and the EPA in November of 2005. CPSD considers the FAA to be a sanction against ATC's parent company which should have been disclosed under D.97-06-107.

ATC argues that D.97-06-107 does not require such disclosure in a CPCN application because the FAA was a voluntary agreement and does not constitute a "sanction." According to ATC, the FAA is a mutual agreement based on the EPA's policy of voluntary self-policing. The purpose of the FAA is "to enhance protection of human health and the environment by encouraging regulated entities to voluntarily discover, promptly disclose and expeditiously correct violations of Federal environmental requirements." In the event that American Tower discovers any non-compliant locations, the FAA provides that American Tower will pay any specified civil penalties according to the terms of the FAA, even though any payment of penalties does "not constitute an admission of any violation . . . ." In return for ATC's disclosure of any non-compliant locations discovered during the self-audit process, the EPA agreed to "not impose gravity-based penalties . . . if they are disclosed and corrected."[3]

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[3] Incentives for Self-Policing; Discovery, Disclosure, Correction and Prevention of Violations," 65 FR 19, 68 (April 11, 2000).

ATC submits that this EPA regulatory matter has no bearing on ATC's lack of fitness. Rather, according to ATC, that its parent entity has demonstrated that it is willing to conduct a voluntary audit and report itself for failing to comply with certain environmental provisions is telling not only of ATC's parent company's ethics and character, but also of the company's willingness to ensure that ATC likewise abides by California's applicable regulations.

5.3. Failure to Disclose 2003 Bankruptcy of Verestar Inc.

CPSD states that Verestar, an affiliated entity to ATC, filed for bankruptcy in 2003 and some officers of ATC were also affiliated with Verestar at the time of the bankruptcy. CPSD questions whether Verestar is an interexchange carrier (IEC). According to CPSD, if Verestar is an IEC, then applicant would be in violation of Rule 1.1 for failing to disclose the bankruptcy. CPSD notes that D.97-06-107 requires that applicants requesting interexchange authority divulge in their application whether any affiliate, officer, or director held a position with an IEC that filed for bankruptcy.

ATC responds that this requirement of D.97-06-107 does not apply to CPCN applicants who are not electing to use the NDIEC registration form, and even if it did, it is not clear that the disclosure requirement would have been triggered in this instance. ATC states that prior to its integration into SES Americom, Inc., Verestar was a reseller of satellite transponder space capacity and provider of teleport (earth station uplink/downlink) services, whose customers included broadcasters, multi-national corporations, communications companies and government agencies. Verestar held no California State authority, and thus was not an IEC in California. ATC says that it is possible that Verestar was an EX under Federal law, but because it was a

distant affiliate and was sold off a number of years ago, ATC has not been able to ascertain its regulatory status.

ATC argues that, in any case, the bankruptcy of Verestar, a distant former affiliate, has no bearing on the Applicant's financial fitness or ability to provide service in California. As noted in its application, ATC will rely, in large part, upon the financial resources of American Tower, a large, financially healthy company. ATC believes it has shown through its submission of audited financial statements that it indeed has the financial resources necessary to provide service.

5.4. Failure to Disclose a Pending 2006 Securities Class Action Lawsuit

CPSD states that a 2006 securities class action lawsuit was filed against ATC's parent, American Tower, in which claims are made that American Tower allegedly violated federal securities laws by issuing a series of material misrepresentations to the market, thereby artificially inflating the price of the company's securities. CPSD also lists another pending investigation.

ATC responds that even if D.97-06-107 did apply in this case, the decision does not require a company to report pending litigation or settlements. According to ATC, the presence of litigation is simply a reality for any large company like American Tower. Moreover, ATC argues that there has been no admission of wrongdoing on American Tower's behalf in the securities matter, and points out that the stipulation agreed to by the parties specifically provides:

> "Defendants deny any wrongdoing, fault, liability, violation of law or damage alleged in the Complaint and do not admit or concede any wrongdoing, fault, liability, violation of law or damage in connection with any fact or claims that have been or could have been alleged against them . . . . but consider it desirable for the Action to be settled because the proposed Settlement will (i) bring to an

> end the substantial expenses, burdens, risks, and uncertainties associated with continued litigation . . . ."

ATC submits that to consider disputed allegations against ATC's parent entity as a criterion of whether to grant ATC's application would be legally unsound and patently unfair.

6. Discussion

We reject ATC's argument that the disclosure requirements of D.97-06-107 for expedited Registration Process applicants do not apply to CPCN applicants who do not use the expedited Registration Process. Regardless of which type of application is used, the issue is the same – the fitness of the applicant to provide telecommunications services in California. The question of fitness is broad and should be no different for the traditional CPCN applicant as opposed to the Registration Process applicant.[4]

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[4] The Commission's objective in adopting the expedited Registration Process was to allow applicants that have no history of questionable behavior and that present noncontroversial applications to rely on an expedited and inexpensive means of securing telecommunications operating authority. If applicants do not meet these standards, they need to use the more extensive (CPCN) application process. (*Rulemaking to Establish a Simplified Registration Process for Non-Dominant Telecommunications Firms,* D.97-06-107, 73 CPUC2d 288, 293.) The questions that must be answered under the expedited Registration Process, which ATC argues are not required to be addressed by CPCN Applicants, are:

> Question 7 of the Registration Process application asks the applicant to state that no officer, director, general partner, or owner of applicant had acted in that capacity with an interexchange carrier that 1) filed for bankruptcy; 2) had a judgment or verdict involving a violation of Bus. & Prof. Code § 1700 *et seq.* or consumer misrepresentation; or 3) is under investigation for similar violations.
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> Question 8 of the Registration Process application asks the applicant to state that neither applicant nor an officer, director or owner of applicant has been sanctioned by a state regulatory agency for failure to comply with that agency's rules or orders.

We commend CPSD for its diligence in carefully researching the background of CPCN applicants and bringing questionable behavior regarding fitness of applicants to the Commission's attention. However, we do not find that the matters brought to our attention by CPSD are a sufficient basis to deny ATC's application.

Our rules require disclosure of judgments or verdicts involving violations of the California Business and Professional Code and for consumer misrepresentations. ATC's failure to disclose the civil judgment against American Tower for violations of California environmental law and the voluntary agreement with EPA, do not comprise strict Rule 1.1 violations, because the Commission's rules require reporting of judgments or verdicts involving violations of the Bus. & Prof. Code § 1700 *et seq*. or consumer misrepresentations but not these types of violations. However, ATC's omission of this information is disturbing in light of the fact that applicant seeks full facilities-based authority. Also, we do not take lightly American Tower's transgressions with the County of Santa Clara in 2001. While the voluntary agreement with EPA (*see* Section 5.2 above) allows American Tower to claim that it was not sanctioned by EPA, nevertheless there would have been sufficient cause for EPA to have initiated an action against American Tower for failing to comply with environmental requirements. Furthermore, this matter with EPA is particularly significant since ATC's application now before us seeks authorization of a procedure for expedited review of claimed exemptions from CEQA.

On the other hand, we take into consideration that in 2005 American Tower entered into a voluntary agreement with EPA to institute a self-policing procedure to address environmental requirements. Thus, American

Tower has demonstrated a willingness to seriously address environmental requirements as a matter of corporate policy. Accordingly, we conclude that ATC's application should be granted on condition that ATC institutes procedures within the company for strict compliance with CEQA requirements. Should we find that ATC is less than serious about compliance with CEQA requirements or has not strictly followed our CEQA rules, we will not hesitate to take the steps necessary to withdraw ATC's operating authority.

Regarding the 2003 bankruptcy of Verestar Inc. issue raised by CPSD, ATC explained that Verestar held no California authority, was sold in 2004, and was not an IEC in California.[5] While some officers of ATC were also affiliated with Verestar at the time of the bankruptcy, there is no indication that any of them were found either criminally or civilly liable for a violation of §§ 17000 *et. seq.* of the California Business and Professional Code or for actions involving misrepresentation to consumers.[6] Therefore, we do not find the failure to disclose the Verestar bankruptcy to be a Rule 1.1 violation or a sufficient basis to deny ATC's application.

Regarding CPSD's assertion that ATC should have disclosed ongoing or pending civil litigation, including the securities class action suit, we are not persuaded that ATC was required to include information on pending litigation with its application. Nothing in our rules requires disclosure of such actions or

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[5] According to ATC, Verestar Inc. was a reseller of satellite transponder space capacity and provider of teleport (earth station uplink/downlink) services, and was not an IEC in California.

[6] Question 7, Application for Registration. Also, *see* D.97-06-107.

pending civil litigation, and we do not consider pending civil litigation as a basis to determine fitness to provide telecommunications services in California.

7. Financial Qualifications

To be granted a CPCN, an applicant for authority to provide 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.[7] An applicant must also demonstrate that it has sufficient additional resources to cover all deposits required by local exchange carriers and/or IEC's in order to provide the proposed service.[8] Applicant provided its most recent audited financial statement that demonstrates that it has sufficient cash to satisfy this financial requirement.

8. Motion for Protective Order

Pursuant to Pub. Util. Code § 583 and General Order (GO) 66-C, Applicant requests that the financial information submitted in the application be kept under seal. Applicant represents that the information is proprietary and sensitive, and the information, if revealed, would place Applicant at an unfair business disadvantage. We have granted similar requests in the past and will do so here.

All sealed information should remain sealed for a period of two years after the effective date of this order. If Applicant believes that further protection of

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[7] The financial requirement for CLCs is contained in D.95-12-056, Appendix C. The financial requirement for Non-dominant Interexchange Carriers is contained in D.91-10-041.

[8] The requirement for CLC applicants to demonstrate that they have additional financial resources to meet any deposits required by underlying LECs and/or IECs is set forth in D.95-12-056, Appendix C. For NDIECs, the requirement is found in D.93-05-010.

the sealed information is needed beyond the two years, Applicant shall comply with the procedure set forth in Ordering Paragraph 6.

9. Technical Qualifications

Applicants for Non-Dominant Interexchange Carrier (NDIEC) and Competitive Local Carrier (CLC) authority are required to make a reasonable showing of technical expertise in telecommunications or a related business. Applicant submitted biographical information on its officers that demonstrates that it possesses sufficient experience and knowledge to operate as a telecommunications provider.

10. Tariffs

The Commission staff reviewed Applicant's draft tariffs for compliance with Commission rules and regulations. The deficiencies to be corrected by Applicant are set forth in Attachment A.

11. California Environment Quality Act (CEQA)

CEQA requires the Commission 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.

11.1. Proposed Construction

ATC anticipates that most of its construction activity will involve no ground disturbing activity. In most instances, ATC will operate by installing equipment in or on existing streetlights, poles, towers, buildings, fiber, conduits, ducts, rights-of-way, trenches and other facilities and structures of other entities. ATC states that it will not need to construct any new buildings, towers, conduits, poles or trenches in California to provide the services for which it seeks authority. Occasionally when required to meet applicable engineering and safety

standards, ATC may also need to replace an existing pole. In these circumstances, ATC would proceed pursuant to its limited facilities-based authority. Also, pursuant to the full facilities-based authority requested in the application, ATC will undertake relatively minor ground-disturbing activities primarily in existing, well-used right-of-way and utility easements in developed areas.

ATC states that the activities for which it seeks authority include, micro-trenching, traditional trenching and installation of underground conduit in existing rights-of-way and utility easements. In addition, in limited instances, ATC construction plans may also call for replacing existing utility poles (performed at a utility's request or to meet applicable engineering and safety standards), installing new poles where existing ones are not available and installing underground vaults to accommodate communications equipment where such installment is required, typically by a city or municipality. Occasionally, a portion of this activity will take place on private property in existing easements. In some cases, underground conduit installation will involve use of a directional bore method in addition to or instead of trenching. ATC submits that the above activities have been ruled categorically exempt from CEQA.

11.2. Discussion

We agree with ATC that the above construction activities are similar to those undertaken by other carriers that the Commission recently has ruled are categorically exempt from CEQA. (*See, e.g.,* D.06-04-063. (*ClearLinx Network Corporation*); D.06-04-067 (*CA-CLEC-LLC*).) In addition, the Commission also has found that boring and installation of new conduit in an existing right-of-way is

exempt from CEQA. (D.08-12-017 (*Zephyr*).) Therefore, ATC need not request CEQA exemption review for these activities.

Nevertheless, in light of its application for full facilities-based authorization, ATC requests authorization of a CEQA exemption review procedure for proposed full facilities-based construction that it believes may be exempt from CEQA review. ATC states that it does not know at this time all of the specific areas where it may have to undertake construction. ATC therefore requests approval to utilize a procedure for expedited review of ATC proposed construction activity involving full facilities-based construction once ATC is aware of a specific instance in which it plans construction.

As requested by ATC, we set forth below a procedure whereby ATC may request the Commission's Energy Division to make a determination whether a project is categorically exempt from the requirements of CEQA review.

Procedure for Obtaining Expedited Review of CEQA Exemption Request

- Applicant reviews proposed project to determine that no conditions exist to warrant exceptions to an exemption pursuant to CEQA Guidelines § 15300.2.
- Applicant submits the following information to the Energy Division:
- A detailed description of the proposed project, including:
    1. Utility distribution system to be served.
    2. The precise locations of any proposed trenching, any new surface structures (a taller utility pole that is installed to replace an existing utility pole in order to accommodate additional attachments shall not be considered a "new" structure; nor shall broadband-over-powerline (BPL) equipment

(i) mounted on existing utility poles or taller replacement poles or (ii) installed within existing utility vaults, transformer enclosures, substations, or similar facilities, be deemed to be "new" structures), and any aerial BPL equipment installation, pole replacement, or aerial fiber optic cabling requiring overland access for installation (*i.e.,* not via an existing roadway or other previously-improved surface), and the precise route of any aerial fiber optic cabling.

3. Regional map showing route of aerial systems upon which facilities will be installed; and local site maps of any locations identified in the Energy Division's Preconstruction Survey Checklist - Archaeological Resources (Checklist), including locations of aerial fiber optic cable routes not requiring overland access for installation, or poles or BPL equipment not deemed to be new structures).

- A description of the environmental setting, to include at a minimum for locations identified in the Checklist (but not including settings of aerial fiber optic cable routes not requiring overland access for installation, or poles or BPL equipment not deemed to be new structures).
  - Cultural, historical, and paleontologic resources.
  - Biological resources.
  - Current land use and zoning.
- A construction workplan, to include:
  - Pre-Construction Survey Checklist – Archaeological Resources for appropriate locations identified in the Checklist.
  - Pre-Construction Survey Checklist – Biological Resources for appropriate locations identified in the Checklist.
  - A detailed schedule of construction activities, including site restoration activities for locations

identified in the Checklist, but not including aerial fiber optic cable not requiring overland access for installation or poles or BPL equipment not deemed to be new structures).

  - 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 for locations identified in the Checklist, (but not including aerial fiber optic cable not requiring overland access for installation or poles or BPL equipment not deemed to be new structures).
  - A list of permits required for the proposed project.
- A statement of the CEQA exemptions(s) applicable to the proposed project.
- Documentation and factual evidence sufficient to support a finding that the claimed exemption(s) is (are) applicable.
- Energy Division will review the Applicant's submission for the proposed project to confirm that the claimed exemption(s) from CEQA are applicable.
- Within 21 days from the date of Applicant's submittal 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 exemptions (s) are not applicable to the proposed project. (D.08-04-018.)
- If Energy Division denies the proposed exemption, Applicant could discuss with the staff the reason for the denial and, if possible, provide additional information and/or modify the proposed construction activity so that it would be categorically exempt. If the conclusion

> is that the construction simply is ineligible for categorical exemption and Applicant still desires to move forward, Applicant would follow standard Commission CEQA procedures in place at the time.

Each project may involve the installation of equipment in or on existing structures (limited facilities-based construction or LFB) as well as in underground trenches (full facilities-based construction or FFB). Under previous decisions, the Commission has determined that the installation of LFB equipment presents no possibility of affecting the environment. As a result, the Commission has customarily allowed the bearers of LFB authority to proceed with the installation of equipment in or on existing structures without Energy Division notification or further CEQA review.

However, CEQA prohibits the piecemealing of projects into smaller segments as a means of disaggregating the overall impacts of the project. Because a project may include both LFB and FFB segments, the Energy Division must consider the whole action when contemplating the approval of a categorical exemption for any project.

Local governments may be concerned that the expedited review process would permit the installation of utility poles in areas designated as underground districts. Local ordinances often grant exceptions to utilities for aerial construction in those districts for communications services. Thus, the procedure we adopt here will apply to installing utility poles in underground districts where local jurisdictions grant such exceptions.

The Commission is reviewing CEQA issues affecting telecommunications providers on a broader, policy level in Rulemaking (R.) 06-10-006. Applicant may utilize the above process for obtaining Commission review, and approval or disapproval of, proposed CEQA

exemptions unless the Commission adopts different requirements applicable to Applicant in R.06-10-006 or a subsequent proceeding.

12. Conclusion

We conclude that the application conforms to our rules for authority to provide resold competitive local exchange and interexchange telecommunications services. Accordingly, we shall approve the application subject to the terms and conditions set forth herein.

13. Categorization and Need for Hearing

In Resolution ALJ 176-3210, dated March 13, 2008, the Commission preliminarily categorized this application as Ratesetting, and preliminarily determined that hearings were not necessary. There is no need to change these determinations.

14. Comments on Proposed Decision

The proposed decision of the ALJ in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were filed on December 8, 2008, by CPSD and reply comments were filed by ATC on December 15, 2008. We have reviewed the comments and reply comments and made changes to the proposed decision as necessary. As proposed by CPSD, we clarify that our decision applies to their specific case's voluntary agreement with EPA, rather than voluntary agreements in general.

15. Assignment of Proceeding

Rachelle B. Chong is the assigned Commissioner and Bertram D. Patrick is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. Notice of the application appeared on the Daily Calendar on March 11, 2008.

2. A protest was filed by CPSD on April 10, 2008.

3. No hearing is required since there are no disputed material issues of fact.

4. While a voluntary agreement with the EPA was entered into and litigation involving the applicant's parents has occurred, these do not involve a sanction by the FCC or any state regulatory agency for failure to comply with any regulatory statue, rule, or order.

5. In prior decisions, the Commission authorized competition in providing interexchange services for carriers meeting specific criteria.

6. In prior decisions, the Commission authorized competition, by carriers meeting specified criteria, in providing local exchange telecommunications services within the service territories of Pacific, Verizon, SureWest and CTC.

7. Applicant has a minimum of $100,000 of cash or cash equivalent that is reasonably liquid and readily available to meet its start-up expenses.

8. Applicant has sufficient additional cash or cash equivalent to cover any deposits that may be required by other telecommunications carriers in order to provide the proposed service.

9. Applicant possesses sufficient experience and knowledge to provide telecommunications services.

10. As part of its application, Applicant submitted a draft of its initial tariff that contained the deficiencies listed in Attachment A to this decision. Except for these deficiencies, Applicant's draft tariff complies with the Commission's requirements.

11. As part of its application, Applicant submitted a proposal based on D.06-04-030 for a procedure for obtaining exemption from CEQA review for full facilities-based construction projects, by which it would provide for both notice of the claimed exemption and for Commission staff review of said claim.

12. Applicant submits that its full facilities-based construction activities are of such a limited nature that they should potentially qualify for a number of categorical exemptions available under CEQA.

13. Applicant's proposed full facilities-based construction activities are of a limited nature and would in almost all circumstances be highly likely to qualify for an exemption from CEQA review.

14. Applicant's proposed process for reviewing the applicability of exemptions from CEQA review for full facilities-based construction projects is adequate for the Commission's purposes as CEQA Lead Agency and in the public interest.

Conclusions of Law

1. Information bearing on an applicant's fitness does not vary as to relevance depending on whether applicant is seeking authority by application for a CPCN or registration.

2. The disclosure omissions of Applicant do not amount to a Rule 1.1 violation in this instance.

3. Applicant has the financial ability to provide the proposed service.

4. Applicant has sufficient technical expertise to operate as a telecommunications carrier.

5. Public convenience and necessity require that Applicant's resold competitive local exchange and interexchange services be subject to the terms and conditions set forth herein.

6. Applicant should be authorized to use the procedure set forth in this decision for obtaining Commission exemption from CEQA review for full facilities-based construction projects.

7. The application should be granted to the extent set forth below.

8. Applicant, once granted a CPCN, should be subject to the applicable Commission rules, decisions, General Orders, and statutes that pertain to California's public utilities.

9. Applicant's initial tariff filing should correct the deficiencies noted in its draft tariffs as indicated in Attachment A to this decision.

10. Because of the public interest in competitive local exchange and interexchange services, the following order should be effective immediately.

O R D E R

IT IS ORDERED that:

1. A certificate of public convenience and necessity is granted to ATC Outdoor DAS, LLC (Applicant) to operate as a full facilities-based and resale provider of competitive local exchange services, and interexchange services, subject to the terms and conditions set forth below.

2. Applicant is authorized to provide local exchange service in the service territories of Pacific Bell Telephone Company, Verizon California Inc., SureWest Telephone, and Citizens Telecommunications Company of California, Inc., dba Frontier Communications of California.

3. Applicant is authorized to file tariff schedules for the provision of competitive local exchange services and interexchange services with the deficiencies noted in Attachment A corrected. Applicant may not offer services until tariffs are on file. Applicant's initial filing shall be made in accordance with

General Order (GO) 96-B and the Telecommunications Industry Rules (D.07-09-019). Applicant shall comply with its tariffs.

4. The certificate granted, and the authority to render service under the rates, charges and rules authorized, will expire if not exercised within 12 months after the effective date of this order.

5. The corporate identification number assigned to Applicant, U7101C, shall be included in the caption of all original filings with this Commission, and in the titles of other pleadings filed in existing cases.

6. All sealed information shall remain sealed for a period of two years after the effective date of this order. After two years, all such information shall be made public. If Applicant believes that further protection of sealed information is needed beyond two years, Applicant may file a motion stating the justification for further withholding of the sealed information from public inspection. This motion shall be filed no later than 30 days before the expiration of the two-year period granted by this order.

7. Applicant shall comply with all applicable rules adopted in the Local Exchange Competitive proceeding (R.95-04-043/Investigation 95-04-044), the Commission's rules and regulations for nondominant interexchange carriers set forth in Decision (D.) 93-05-010, D.90-08-032, as well as all other applicable Commission rules, decisions, GOs, and statutes that pertain to California public utilities, subject to the exemptions granted in this decision.

8. Applicant shall comply with the requirements applicable to competitive local exchange carriers and non-dominant interexchange carriers included in Attachment B to this decision.

9. Applicant is authorized to construct equipment to be installed in existing buildings or structures (limited facilities-based construction) without prior

approval from the Commission. For all other future construction projects (full facilities-based construction), Applicant shall use the process set forth in this decision for seeking exemption from California Environmental Quality Act (CEQA) review.

10. The Commission's Energy Division staff is authorized to review, process, and act upon Applicant's request for a determination that its full facilities-based construction activities are exempt from CEQA review and issue a Notice to Proceed (NTP) where appropriate.

11. If Applicant wishes to engage in full facilities-based construction and believes that the proposed activities are exempt from CEQA review, Applicant shall first apply to the Energy Division staff for a determination of exemption from CEQA review.

12. Applicant shall not engage in any full facilities-based construction activity relating to a pending CEQA review exemption request before receiving a NTP from Commission Energy Division staff.

13. If Applicant wishes to engage in a project which involves both limited facilities-based construction and full facilities-based construction, Applicant shall apply to the Energy Division staff for a NTP.

14. Application 08-03-004 is closed.

This order is effective today.

Dated _____, at San Francisco, California.

ATTACHMENT A

List of deficiencies in draft tariff submitted by ATC Outdoor DAS, LLC, in A.08-03-004 to be corrected in its initial tariff compliance filing:

1. Tariff Sheet Format: CPUC assigned utility ID number (U#) should be included on each sheet in the upper left header along with Company name and address. (General Order 96B, Section 8.4.1.)
2. Tariff Inspection – Include a telephone number and a company address in California where a copy of tariff can be inspected by the public. (GO 96-B, Section 8.1.3.)
3. User Fee and Public Program Surcharges – include a rule conforming to AT&T tariffs for PUC User Fee and Public Program Surcharges (Resolution T-16901, December 2, 2004).
4. Conform Disputed Bill Rule to be consistent with requirements of Rule 8, Appendix B, D.95-07-054 (*i.e.,* to avoid disconnection, customer may deposit disputed amount with CPUC Consumer Affairs Branch).

(END OF ATTACHMENT A)

ATTACHMENT B

REQUIREMENTS APPLICABLE TO COMPETITIVE LOCAL EXCHANGE CARRIERS

1. Applicant shall file, in this docket, 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 fee and surcharges that must be regularly remitted per the instructions in Appendix E to D.00-10-028. The Combined California PUC Telephone Surcharge Transmittal Form must be submitted even if the amount due is zero.

3. Revenues collected for the California Advanced Services Fund (CASF) at the surcharge rate of 0.25% shall be held by the carrier in a memorandum account tracking system and the account will accrue monthly interest on the accumulated balance at the short-term commercial paper rate. Carriers shall continue to hold custody of all the collected CASF surcharge revenues and accumulated interest *until* the Commission provides further direction on the disposition of these revenues.

   a. The current 1.15% surcharge applicable to all intrastate services except for those excluded by D.94-09-065, as modified by D.95-02-050, to fund the Universal Lifeline Telephone Service Trust Administrative Committee Fund (Pub. Util. Code § 879; Resolution T-17071, dated March 1, 2007, effective April 1, 2007);
   b. The current 0.20% surcharge applicable to all intrastate services except for those excluded by D.94-09-065, as modified by D.95-02-050, to fund the California Relay Service and Communications Devices Fund (Pub. Util. Code § 2881; D.98-12-073 and Resolution T-17127, dated December 20, 2007, effective January 1, 2008);
   c. The user fee provided in Pub. Util. Code §§ 431-435, which is 0.18% of gross intrastate revenue (Resolution M-4819), dated June 7, 2007, effective July 1, 2007;

d. The current 0.13% surcharge applicable to all intrastate services except for those excluded by D.94-09-065, as modified by D.95-02-050, to fund the California High Cost Fund-A (Pub. Util. Code § 739.3; D.96-10-066, pp. 3-4, App. B, Rule 1.C; Resolution T-17128, dated December 20, 2007, effective January 1, 2008);

e. The current 0.25% surcharge applicable to all intrastate services except for those excluded by D.94-09-065, as modified by D.95-02-050, to fund the California High Cost Fund-B (D.96-10-066, p. 191, App. B, Rule 6.F., D.07-12-054);

f. The current 0.25% surcharge applicable to all intrastate services except for those excluded by D.94-09-065, as modified by D.95-02-050, to fund the California Advances Services Fund (D.07-12-054); and

g. The current 0.079% surcharge applicable to all intrastate services except for those excluded by D.94-09-065, as modified by D.95-02-050, to fund the California Teleconnect Fund (D.96-10-066, p. 88, App. B, Rule 8.G, Resolution T-17142, dated April 24, 2008, effective June 1, 2008).

Note: These fees change periodically. In compliance with Resolution T-16901, December 2, 2004, you should check the joint tariff for surcharges and fees filed by Pacific Bell Telephone Company and apply the current surcharge and fee amounts in that joint tariff on end-user bills until further revised.

4. 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).

5. Applicant is a nondominant interexchange carrier (NDIEC). The effectiveness of its future NDIEC tariffs is subject to the requirements of General Order 96-B and the Telecommunications Industry Rules (D.07-09-019).

6. Tariff filings shall reflect all fees and surcharges to which Applicant is subject, as reflected in 2 above.

7. Applicant shall file a service area map as part of its initial tariff.

8. Prior to initiating service, Applicant shall 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 shall be updated if the name or telephone number changes, or at least annually.

9. Applicant shall 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.

10. Applicant shall notify the Director of the Communications Division in writing of the date interLATA service is first rendered to the public within five days after service begins, and again within five days after intraLATA service begins.[1]

11. Applicant shall keep its books and records in accordance with the Generally Accepted Accounting Principles.

12. In the event Applicant's books and records are required for inspection by the Commission or its staff, it shall 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.

13. Applicant shall 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.

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[1] California is divided into ten Local Access and Transport Areas (LATAs), each containing numerous local telephone exchanges. InterLATA describes services, revenues and functions relating to telecommunications originating within one LATA and terminating in another LATA. IntraLATA describes services, revenues and functions relating to telecommunications originating within a single LATA.

14. Applicant shall 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.

15. Applicant shall ensure that its employees comply with the provisions of Public Utilities (Pub. Util.) Code § 2889.5 regarding solicitation of customers.

16. Within 60 days of the effective date of this order, Applicant shall comply with Pub. Util. Code § 708, Employee Identification Cards, and notify the Director of the Communications Division in writing of its compliance.

17. If Applicant is 90 days or more late in filing an annual report, or in remitting the surcharges and fee listed in 2 above, the Communications Division shall prepare for Commission consideration a resolution that revokes Applicant's CPCN unless it has received written permission from the Communications Division to file or remit late.

18. Applicant is exempt from Commission Rules of Practice and Procedure 3.1(b).

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

20. 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.

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

22. Applicant shall send a copy of this decision to concerned local permitting agencies not 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 shall be filed with the California Public Utilities Commission, 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 §§ 2107 and 2108 of the Public Utilities Code.

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.

For answers to any questions concerning this report, call (415) 703-2883.

(END OF ATTACHMENT C)

ATTACHMENT D
CALENDAR YEAR AFFILIATE TRANSACTION REPORT

1. Each utility shall 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 shall 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 should 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 should 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 no 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)