

Decision 09-11-021 November 20, 2009

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Freedom Telecommunications, Inc. (U7110C) to Expand its Existing Certificate of Public Convenience and Necessity to Include Full Facilities-Based Telecommunications Services.

Application 09-07-003
(Filed July 1, 2009)

**DECISION GRANTING REQUEST FOR FULL FACILITIES-BASED
LOCAL EXCHANGE AUTHORITY AND EXPEDITED ENVIRONMENTAL
REVIEW FOR CERTAIN PROJECTS**

1. Summary

This decision grants the unopposed¹ application of Freedom Telecommunications, Inc. (Applicant) to expand its existing certificate of public convenience and necessity to authorize the provision of full facilities-based competitive local exchange services. It grants Applicant authorization to utilize an expedited 21-day process for environmental review by Energy Division staff for certain projects that potentially fall within statutory or categorical exemptions to the California Environmental Quality Act (CEQA). This expedited review process is limited to full facilities-based construction projects which are potentially exempt from CEQA and which do not exceed five miles in length. It also requires Applicant to apply to the Commission for approval of any projects

¹ The application was filed on July 1, 2009. No protests were filed.

that are not exempt from the requirements of CEQA and to undergo appropriate environmental review by the Commission before commencing construction.

2. Background

Freedom Telecommunications, Inc. (Applicant), a California corporation which maintains its principal place of business in Marina Del Rey, California, currently holds a certificate of public convenience and necessity (CPCN) authorizing the provision of resold local exchange services pursuant to Decision (D.) 08-08-016.

Pursuant to its existing CPCN authority, Applicant currently provides resold local exchange services to both residential and business customers in California.

In this application, Applicant is requesting expanded CPCN authority so that the company may undertake new projects that will expand its service offerings and benefit California customers. At present, Applicant anticipates new projects in urban areas within San Diego County, Los Angeles County, and San Francisco County, but states that the exact location of these projects is not known. Applicant aims to provide its services to commercial and community facilities, such as hospitals, libraries, schools, and governmental agencies, in which broadband solutions are not readily available.

Applicant states that its current business provides “last-mile” data solutions via fiber using existing conduits that are located both underground and inside existing buildings and infrastructure. Applicant is applying for full facilities-based authority because in order to provide expanded service, Applicant may need to perform additional construction activities. For example, Applicant may need to insert its own conduits underground or within existing structures when there are no existing conduits in place or there is not adequate

space on the existing conduits. In some circumstances, Applicant may also need to install conduit or fiber in the public rights of way (PROW) and existing utility easements in order to carry out its projects, and may sometimes wish to construct new utility poles in these areas. These activities will also generally require trenching. Applicant further anticipates that in some cases, the company may need to construct new facilities in order to provide “last-mile” services to customers, but would apply to the Commission for authorization of these projects and would undergo any required environmental review.

Applicant also requests authorization to utilize the expedited 21-day process for Energy Division (ED) staff review of projects which Applicant believes may be exempt from the requirements of California Environmental Quality Act (CEQA). Applicant states that certain of the above-described projects fall within various categorical exemptions under CEQA, and that the Commission has already permitted several of its competitors, including ClearLinx Network Corporation and CA-CLEC LLC, to utilize this expedited process for CEQA review.²

3. Financial Qualifications

Applicants for authority to provide full facilities-based local exchange services must demonstrate access to a minimum of \$100,000 of cash or cash equivalent to meet the company’s start-up expenses.³ Applicants must also demonstrate access to sufficient additional resources to cover all deposits required by local exchange carriers (LECs) and/or interexchange carriers (IECs)

² See D.06-04-063 (Clearlinx Network Corporation) and D.06-04-067 (CA-CLEC, LLC).

³ The financial requirements for (CLCs) are set forth in D.95-12-056, Appendix C.

in order to provide the proposed services.⁴ Applicant provided financial documents demonstrating sufficient funds to satisfy our financial requirements.

4. Technical Qualifications

Applicants for full facilities-based authority are required to make a reasonable showing of technical and managerial expertise in telecommunications or a related business. Applicant submitted biographical information on its officers with its previous application for resold competitive local exchange authority,⁵ which demonstrates that the company possesses sufficient experience and knowledge to operate as a telecommunications provider.

5. Tariffs

No tariffs were provided. Applicant states that this application will have no effect on rates charged for the services rendered. Accordingly, we waive the requirement set forth in Rule 3.1(h) of the Commission's Rules of Practice and Procedure.

6. California Environmental Quality Act

CEQA applies to discretionary projects to be carried out or approved by a public agency, such as the Commission. The basic purpose of CEQA is to "inform governmental decision-makers and the public about the potential significant environmental effects of the proposed activities." Cal. Code Regs., Tit. 14, § 15002. CEQA requires the Commission to act as the Lead Agency for purposes of considering the environmental consequences of projects subject to its

⁴ 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.

⁵ Application (A.) 08-05-009.

discretionary approval. Cal. Code Regs., Tit. 14, § 15051. The Lead Agency is the public agency with the greatest responsibility for supervising or approving the project as a whole. Cal. Code Regs., Tit. 14, § 15051(b). Here, the Commission is the Lead Agency under CEQA.

Applicant is not requesting approval for any specific construction or extension of its facilities in this proceeding. Nor is Applicant seeking authority to construct new telecommunication facilities within existing rights-of-way without obtaining Commission approval. We denied this type of request in D.07-06-001. Instead, Applicant is seeking authority to undertake certain construction activities that it believes are exempt from CEQA subject to the 21-day process for obtaining review and approval of such construction by the Commission ED staff.

According to the application, Applicant's proposed construction activities will primarily consist of: 1) installation of new fiber, conduit, and poles, 2) small-scale trenching and underground conduit installation, and 3) micro-trenching and installation of laterals. These activities will generally take place in existing PROW and utility easements in urban areas. Applicant states that these activities involve the construction of reasonably short utility extensions and the installation of a limited number of poles, and that most of the ground-disturbing activity will be limited to minor trenching and backfilling in heavily developed urban and suburban areas.

We have granted other carriers authority to rely upon the 21-day review process to determine if a proposed project is exempt from CEQA. *See, e.g.,* ClearLinx Network Corporation (D.06-04-063), New Path Networks, LLC (D.06-04-030), CA-CLEC LLC (D.06-04-067), Sunesys, Inc. (D.06-06-047), NextG

Networks of California, Inc. (D.07-04-045), Broadband Associates International (D.07-08-026), and Trillion Partners, Inc. (D.07-11-028).

Applicant claims that these full facilities-based construction projects will most likely fall within various exemptions to CEQA.⁶ The Commission, as Lead Agency, must evaluate the availability of any claimed exemption from CEQA and direct any additional CEQA review that may be necessary. By this decision, we make the expedited 21-day process for CEQA review available to Applicant.

7. Expedited Review Process for Certain Construction Projects

⁶ For example, Applicant states that one or more of the following categorical exemptions under CEQA may apply to these projects:

- 1) Class 3 Exemption: Construction including water main, sewage, electrical and other utility extensions of reasonable length to serve such construction. According to Applicant, this exemption includes construction of limited numbers of new small facilities or utility extensions. *14 CCR Section 15303.*
- 2) Class 4 Exemption: Minor public or private alterations in the condition of land, water, and/or vegetation which do not involve the removal of healthy, mature scenic trees except for forestry and agricultural purposes. According to Applicant, this exemption includes the filling of earth into previously excavated land with material compatible with the natural features of the site and minor trenching and backfilling when the surface is restored. *14 CCR Section 15304.*
- 3) Class 32 ("In Fill") Exemption: This exemption applies when: a) the projects are consistent with the applicable general plan designation and applicable general plan policies and zoning designation and regulations; b) 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 significant impacts related to traffic noise, noise, air quality, or water quality, and e) the site can be adequately served by all required utilities and public services. *14 CCR 15332.*

If Applicant believes that any construction project qualifies for an exemption from CEQA, the 21-day review process described below will apply before Applicant may commence construction:

- Applicant shall 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, including at a minimum:
 - Cultural, historical, and paleontology resources;
 - Biological resources; and
 - Current land use and zoning.
 - A construction workplan, including:
 - 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) claimed to apply to the proposed project; and
 - Documentation supporting the finding of exemption from CEQA.

- The Commission's Energy Division shall then review the submittal and shall notify Applicant of either its approval or its denial of Applicant's claim for exemption from CEQA review within 21 days from the time that Applicant's submittal is complete.
- If the Commission's Energy Division approves Applicant's claimed CEQA exemption(s), the staff shall prepare a Notice to Proceed (NTP) and file a Notice of Exemption with the State Clearinghouse, Office of Planning and Research.
- If the Commission's Energy Division disapproves Applicant's claimed CEQA exemption(s), the staff shall issue to Applicant a letter which states the specific reasons that the claimed CEQA exemption(s) do not apply to the proposed project.
- If the Commission's Energy Division disapproves Applicant's claimed CEQA exemption(s) and Applicant wishes to pursue the project, Applicant shall 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 full facilities-based construction activities.
- Applicant states that its proposed construction activities would involve construction of reasonably short utility extensions and installation of a limited number of poles. Accordingly, we limit Applicant's future requests for CEQA exemptions for such facilities-based construction projects to no more than five miles. For projects exceeding five miles, Applicant shall file a formal application seeking full CEQA review.

Applicant shall not perform any construction activities other than in or on existing structures without first obtaining an NTP from the Commission's ED or authorization by the Commission after any other required environmental review.

We find that this review process is appropriate for certain projects as described in the application. Should Applicant propose construction related to other types of customers or other service facilities, a different level of CEQA

review may be required. In that instance, Applicant is required to file for additional authority from the Commission before commencing construction.

We also note that the Commission is reviewing CEQA issues pertaining to telecommunications providers on a broad policy level in Rulemaking (R.) 06-10-006,⁷ which may result in rules applicable to Applicant different than those adopted today.

8. Categorization and Need for Hearings

In Resolution ALJ 176-3237, dated July 9, 2009, the Commission preliminarily categorized this proceeding as ratesetting and preliminarily determined that hearings were not necessary. No protests have been received. As such, a public hearing is not necessary, and it is not necessary to disturb the preliminary determinations.

8.1. Conclusion

We grant the application for expansion of Applicant's existing CPCN (U7110C) to include full facilities-based authority and for CEQA review of proposed construction, which Applicant believes is potentially exempt from CEQA, by the Commission's ED under the expedited procedure set forth herein.

9. Waiver of Comment Period

⁷ This pending rulemaking, which was first initiated in R.00-02-003, seeks to develop and implement changes to the Commission's application of the CEQA to telecommunications utilities under our jurisdiction. The objective is to develop rules and policies that will (1) ensure that the Commission's practices comply with the current requirements and policies of CEQA, (2) promote the development of an advanced telecommunications infrastructure, particularly with regard to facilities that provide broadband capabilities, and (3) make certain that the application of CEQA in the area of telecommunications does not cause undue harm to competition, particularly intermodal competition.

No protests were filed in this proceeding. Therefore, this is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Pub. Util. Code § 311(g)(2), the otherwise applicable 30-day period for public review and comment is being waived.

10. Assignment of Proceeding

Rachelle B. Chong is the assigned Commissioner and Myra J. Prestidge is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. Notice of the application appeared in the Daily Calendar on July 7, 2009.
2. No protests have been filed.
3. A hearing is not required.
4. Applicant has a minimum of \$100,000 of cash or cash equivalent that is reasonably liquid and readily available to meet the financial showing requirements.
5. Applicant possesses sufficient experience and knowledge to provide telecommunications services.
6. Applicant states that the authority sought by this application will not impact customer rates. Accordingly, no tariff was included with the application.
7. The Commission is the Lead Agency for the proposed project under CEQA.
8. By this application, Applicant does not seek permission to engage in any specific project.
9. Applicant's proposed facilities-based construction activities, as described in the application, are limited and, in some circumstances, may qualify for an exemption from CEQA.

10. The expedited 21-day process for ED staff review of the applicability of the CEQA exemptions for certain proposed facilities-based construction projects, as set forth in this decision, is adequate for the Commission's purposes as the CEQA Lead Agency and is in the public interest.

11. The application provides detailed information on the degree to which the proposed projects may implicate CEQA.

12. Applicant has met the requirements for issuance of a CPCN authorizing the provision of full facilities-based local exchange services.

Conclusions of Law

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

2. Applicant has sufficient technical expertise to operate as a full facilities-based telecommunications carrier.

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

4. The CEQA review process set forth below is appropriate for certain construction projects described in the application, which may be exempt from the requirements of CEQA. Should Applicant propose other types of construction projects, a different level of CEQA review may be required, and Applicant should file for an application for project approval from the Commission and undergo any required environmental review.

5. Applicant should be granted a full facilities-based CPCN, subject to the requirement that Applicant comply with the expedited 21-day process for ED staff review of potentially CEQA-exempt projects, as stated in this order, and apply for Commission approval and undergo CEQA review for other types of projects.

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

O R D E R

IT IS ORDERED that:

1. The certificate of public convenience and necessity currently held by Freedom Telecommunications, Inc. (U7110C) is expanded to authorize full facilities-based services, subject to the terms and conditions set forth below.

2. Freedom Telecommunications, Inc. is authorized to provide full facilities-based local exchange service in the service territories of Pacific Bell Telephone Company dba AT&T California, Verizon California Inc., SureWest Communications (formerly Roseville Telephone Company), and Citizens Telecommunications Company of California, Inc., dba Frontier Communications.

3. Freedom Telecommunications, Inc. (Applicant) may seek authorization to construct facilities which may be subject to an exemption from the requirements of the California Environmental Quality Act, pursuant to the process set forth in Ordering Paragraph 5 below. For other types of projects, Applicant shall apply for Commission authorization and undergo any required environmental review before commencing construction.

4. The California Environmental Quality Act review process adopted in today's decision is appropriate for the projects as described in the application. A different level of California Environmental Quality Act review may be required, should Applicant propose different types of construction projects.

5. The staff of the Commission's Energy Division is authorized to review, process, and act upon Freedom Telecommunications, Inc.'s (Applicant) requests for a determination that its proposed construction activities are exempt from the

requirements of the California Environmental Quality Act, using the following procedure:

- Freedom Telecommunications, Inc. 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, including at a minimum:
 - Cultural, historical, and paleontologic resources;
 - Biological resources; and
 - Current land use and zoning.
 - A construction workplan, including:
 - 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 California Environmental Quality Act exemption(s) claimed to apply to the proposed project and documentation supporting the finding of exemption from California Environmental Quality Act.

- The Commission's Energy Division will then review the submittal and notify Freedom Telecommunications, Inc. of either its approval or its denial of Applicant's claim for exemption from California Environmental Quality Act review within 21 days from the time that Applicant's submittal is complete.
- If the Commission's Energy Division approves Freedom Telecommunications, Inc.'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.
- If the Commission's Energy Division disapproves Applicant's claimed California Environmental Quality Act exemptions, the staff will issue to Applicant a letter which states the specific reasons that the claimed California Environmental Quality Act exemptions do not apply to the proposed project.
- If the Commission's Energy Division disapproves Applicant's claimed California Environmental Quality Act exemption(s), Applicant 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.

6. Freedom Telecommunications, Inc. shall not engage in any construction activity relating to a pending California Environmental Quality Act exemption request before receiving a Notice to Proceed from the Commission's Energy Division.

7. Freedom Telecommunications, Inc. may follow the California Environmental Quality Act procedure in Ordering Paragraph 5 unless and until the Commission adopts different requirements, applicable to Applicant, for California Environmental Quality Act compliance in Rulemaking 06-10-006 or a subsequent proceeding.

8. The certificate granted will expire if not exercised within 12 months after the effective date of this order.

9. The corporate identification number assigned to Freedom Telecommunications, Inc., (U7110C), shall be included in the caption of all original filings with this Commission, and in the titles of other pleadings filed in existing cases.

10. Freedom Telecommunications, Inc. shall comply with all applicable Commission rules, decisions, general orders, and statutes that pertain to California telecommunication public utilities, subject to any exemptions granted in this decision.

11. Application 09-07-003 is closed.

This order is effective today.

Dated November 20, 2009, at San Francisco, California.

MICHAEL R. PEEVEY
President
DIAN M. GRUENEICH
JOHN A. BOHN
RACHELLE B. CHONG
TIMOTHY ALAN SIMON
Commissioners