

Decision 11-10-039 October 20, 2011

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of ExteNet Systems (California) LLC (U-6959-C) for Authority to Engage in Ground-Disturbing Outside Plant construction in Compliance with Decision 06-04-063.

Application 10-06-004
(Filed June 7, 2010)

**OPINION GRANTING EXTENET SYSTEMS (CALIFORNIA) LLC
A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY**

Summary

This decision grants the application¹ of ExteNet Systems (California) LLC (ExteNet) for authorization to engage in ground-breaking construction in the Caltrans right-of-way along a portion of State Highway Route 35 in San Mateo County, in order to deploy a fiber-fed Distributed Antenna Communications System.

We also find that the project, as mitigated, will not have significant adverse effects on the environment and approve the Initial Study/Mitigated Negative Declaration (ISMND) prepared by Commission staff for the project, as the Lead Agency under the California Environmental Quality Act (CEQA).

¹ The application was filed on June 7, 2010. In Resolution ALJ 176-3256, dated June 24, 2010, we preliminarily categorized this application as ratesetting and preliminarily determined that a hearing is not necessary. No protests to the application were filed.

Background

ExteNet, a California limited liability company, holds a CPCN authorizing the company to provide full facilities-based local exchange and interexchange services in this state.²

In Decision (D.) 06-04-063,³ we amended ExteNet's original CPCN,⁴ which authorized the provision of limited facilities-based interexchange services only, to authorize the provision of full facilities-based local exchange and interexchange services. A full facilities-based CPCN is required when a telecommunications provider wishes to perform construction other than very minor activities, such as the installation of switches in existing buildings or structures.

In proceedings resulting in the adoption of D.06-04-063, ExteNet stated that its facilities-based Distributed Antenna Communications System (DAS) projects would consist of: (a) predominantly aerial fiber optic facilities and the installation of compact "nodes" on existing utility poles, (b) a minor amount of ground-disturbance (100-200 feet) associated with connecting equipment enclosures on private property within the aerial right-of-way; and (c) aerial fiber runs of short distances, rarely exceeding 1,000 feet. All of ExteNet's facilities would be located within public utility rights-of-way (except for ingress and egress), and the projects and facilities would be widely separated geographically.

² See D.06-04-063.

³ At the time of the application and Decision, ExteNet was known as ClearLinx Network Corporation.

⁴ ExteNet authorized to provide limited facilities based interexchange service by D.05-07-004 on July 6, 2005.

Therefore, ExteNet proposed an expedited process for Commission determination of whether ExteNet's facilities-based projects are exempt from review under CEQA, in order to receive Commission authorization to commence construction without unnecessary delays.

In D.06-04-063, we found that ExteNet's facilities-based DAS projects were of a limited nature and would, in almost all circumstances, most likely qualify for an exemption from CEQA. We also determined that ExteNet's proposed expedited process for Commission review of claimed CEQA exemptions for these projects was adequate for the Commission's purposes as a Lead Agency under CEQA, and is in the public interest. We therefore approved an expedited procedure for review of ExteNet's proposed CEQA exemptions for its facilities-based projects.

Under the expedited process approved in D.06-04-063, ExteNet is required to submit certain information to the Commission's Energy Division (ED) regarding its planned construction projects and the CEQA exemptions claimed to apply to these projects. ED then reviews the information submitted by ExteNet and determines whether the claimed CEQA exemption(s) applies. Within 21 days of ExteNet's submittal of all required information, ED must either:

- Issue a Notice to Proceed with construction and file a Notice of Exemption with the State Clearinghouse, Office of Planning and Research; or
- Issue a letter of denial explaining the specific reasons that the claimed CEQA exemption(s) does not apply to the project.

If the ED determines that the proposed CEQA exemption(s) does not apply, ExteNet must either redesign the project and reapply for a determination that a

CEQA exemption(s) applies or file a formal application with the Commission and undergo CEQA review for the project before commencing construction.⁵

The Proposed State Route 35 Project

Pursuant to California Public Utilities Code (Pub. Util. Code) § 1001 and D.06-04-063, ExteNet filed an Application with the California Public Utilities Commission (Commission) for authority to engage in ground-disturbing outside plant construction related to the installation of fiber optic cable and related node facilities (collectively referred to as a “Distributed Antenna Communications System” or DAS) primarily in the right-of-way along a portion of State Route 35 in San Mateo County, California (the State Route 35 Project). The Application was filed on June 7, 2010, and included the Proponent’s Environmental Assessment prepared by ExteNet pursuant to Rules 2.4 and 2.5 of Commission’s Rules of Practice and Procedure (Rule).

In this application, ExteNet seeks authorization to construct a fiber-fed DAS system along State Route 35 in San Mateo County. Before filing this application, ExteNet followed the expedited procedure adopted in D.06-04-063 and attempted to obtain a determination from ED that this project is exempt from CEQA. However, because ED determined that due to exceptional and unique circumstances; i.e., Highway 35 is a designated Scenic Highway, it was not appropriate to issue a Notice to Proceed in this instance and that a formal application and CEQA review is required.

⁵ D.06-04-063 also notes that the Commission is conducting a rulemaking proceeding regarding the application of CEQA to telecommunications entities in general. If the Commission modifies the above procedure in the rulemaking, ExteNet must comply with the new procedure.

The proposed project includes installation of fiber optic cable and related node facilities along a portion of State Route 35. The State Route 35 Project will begin near the town of Woodside, California. The remainder of the project alignment would be located within county road rights-of-way and an existing Pacific Gas and Electric Company utility easement that roughly parallels State Route 35. Construction involves installing 17 new wooden utility poles, approximately 12.5 miles of overhead cable, approximately 1,100 feet of underground cable, and related antenna and node facilities. The project would be constructed in four phases over a period of approximately 11 weeks.

ExteNet states in its application that the proposed project is needed to provide added diversity within the existing telecommunications system, and would ensure that existing systems remain compatible with future technology advances in fiber optic equipment. According to the application, the proposed project would provide greater bandwidth, multiple modes of communication compatible with existing and evolving systems, more predictable delivery of bandwidth, and greater control over the ordering, provisioning, and management of this bandwidth to meet the growing bandwidth needs of customers. The system will be capable of carrying traffic that is classified as broadband, thereby enhancing the development of an advanced telecommunications infrastructure in California. Finally, the communications system would provide cellular phone coverage in an area that currently does not provide such coverage, enhancing public safety as the network may carry 911 traffic.

ExteNet further states in the application that the proposed project would expand and enhance California's national and international telecommunications access and the nation's existing and support future demands for

telecommunications services by enabling more networks to exchange traffic across California and enhancing the reliability thereof by using high-quality, state-of-the-art fiber-optic technology. The proposed project would also increase competition among existing telecommunications carriers, and promote opportunities for economic growth in California as businesses shift their focus to information services and technology.

Authority to Construct

Under ordinary circumstances, the project activities proposed by ExteNet would generally fall within their existing authority to install fiber optic DAS facilities and related equipment pursuant to an informational advice letter process that the Commission has implemented on a case-by-case basis for DAS projects to streamline its processes with respect to the implementation of CEQA. However, because the proposed project lies within a California Scenic Highway where utility facilities are generally required to be underground, the Commission staff, out of an abundance of caution, rejected the informal advice letter route for this particular project in favor of a formal application and CEQA analysis. Due to the need to install some of the proposed facilities above-ground, requiring an exception to the general policy for Scenic Highways, and due to the fact that significant work would occur within the Right-of-Way of a scenic highway, the Commission staff opted to require a full CEQA analysis for the proposed project.

Environmental Review

The CEQA (Public Resources Code Section 21000, et seq.) applies to discretionary projects to be carried out or approved by public agencies. A basic purpose of CEQA is to “inform governmental decision-makers and the public about the potential, significant environmental effects of the proposed activities.”

(Title 14 of the California Code of Regulations, hereinafter, "CEQA Guidelines," Section 15002.)

Since the proposed project is subject to CEQA and the Commission must issue a discretionary decision without which the project cannot proceed (i.e., the Commission must act on the application before it for an approval of a construction project subject to Pub. Util. Code § 1001), this Commission must act as either a Lead or a Responsible Agency under CEQA. The Lead Agency is the public agency with the greatest responsibility for supervising or approving the project as a whole (CEQA Guidelines Section 15051(b)).

The Commission is the Lead Agency for this proposed project under CEQA. CEQA requires that the Commission consider the environmental consequences of a project that is subject to its discretionary approval. In particular, the Commission must consider the environmental documents and findings prepared by staff pursuant to CEQA before acting upon or approving the project (CEQA Guidelines Section 15074(b)).

ExteNet's application to construct the State Route 35 Project includes the Proponent's Environmental Assessment (PEA) prepared by ExteNet pursuant to Rule 2.4. The proposed project would consist of the following four phases:

- Phase 1: Installation of 1,187 linear feet (.23 miles) of fiber optic polyvinyl chloride (PVC) conduit. Installation will occur through trenching and boring.
- Phase 2: Installation of 17 fiber-fed antenna nodes with associated fiber-optic communications equipment. The nodes will be placed on existing, newly-installed, or replaced wooden utility poles.
- Phase 3: Installation and splicing of 66,898 feet (12.67 miles) of fiber-optic cable in existing conduit, in newly installed conduit, and on existing and newly installed utility poles; installation of new wooden utility

service poles at specific node locations to bring fiber-optic cable and electricity to node locations.

- Phase 4: Connection of the DAS system to an existing cell site base station south of Node #52, and the installation of a new cell site base at the southern terminus of the project alignment.

As the Lead Agency for this project, the Commission staff prepared and issued on September 2, 2011, an Initial Study and Mitigated Negative Declaration (ISMND) pursuant to CEQA. This ISMND reviewed the potential environmental impacts of the ExteNet proposed project over the entire range of applicable environmental resources and concluded that the instant project could not have a significant effect on the environment with the required mitigation. The mitigation measures identified in the ISMND are designed to avoid significant impacts to: Aesthetics, Air Quality, Biology, Cultural Resources, Geology and Soils, and Transportation and Traffic. These mitigation measures will be made conditions of project approval.

The ISMND was submitted to the State Clearinghouse at the Office of Planning and Research and circulated to the San Mateo County Planning Department, and the State Department of Transportation, among others. The comment period was from September 2, 2011 through October 3, 2011. Additionally, a "Notice of Intent to Adopt a Negative Declaration" was published twice during two successive weeks in the local paper of record. No comments on the ISMND were received.

The Commission has independently reviewed the application by ExteNet for authority to construct fiber optic cable and related facilities, including the ISMND prepared by Commission staff. The Commission finds that the ISMND was developed in accordance with CEQA and is adequate for the Commission's decision-making purposes as a Lead Agency pursuant to CEQA.

The Commission will order the filing of a Notice of Determination with the Office of Planning and Research pursuant to Public Resources Code Section 21152 and California Code of Regulations Section 15075, and makes the following findings:

- The Commission finds that the ISMND was developed in accordance with CEQA and is adequate for the Commission's decision-making purposes as a Lead Agency pursuant to CEQA;
- On the basis of the whole record, including the ISMND, there is no substantial evidence the project will have a significant adverse effect on the environment; and
- The Mitigated Negative Declaration reflects the Commission's independent judgment and analysis.

Discussion

Based on the above, we find that approval of ExteNet's proposed State Route 35 Project is in the public interest, because the project will expand the availability of telecommunications services in California, help ensure that existing systems remain compatible with future technological advances in fiber-optic equipment, and will improve the safety of motorists and the public on State Route 35, without causing significant adverse effects on the environment, provided that mitigation measures required in the ISMND are implemented.

We therefore grant ExteNet's application for authorization to construct the State Route 35 Project, as described in the application, subject to the conditions stated in the ISMND.

Categorization and Need for Hearing

In Resolution ALJ 176-3256, dated June 24, 2010, the Commission preliminarily categorized this application as ratesetting and preliminarily determined that hearings were not necessary. No protests have been received.

Given these developments, it is not necessary to disturb the preliminary determinations made in Resolution ALJ 176-3256.

Reduction of Comment Period

Pursuant to Rule 14.6(b) of the Commission's Rules of Practice and Procedure, all parties stipulated to reduce the 30-day public review and comment period required by Section 311 of the Public Utilities Code to two days.

Assignment of Proceeding

Catherine J.K. Sandoval is the assigned Commissioner and Katherine MacDonald is the assigned Administrative Law Judge.

Findings of Fact

1. Notice of the application was published in the Commission's Daily Calendar on June 14, 2010. No protests have been filed. No hearings were conducted.
2. ExteNet holds a CPCN authorizing the provision of full facilities-based telecommunications services in this state.
3. Under D.06-04-063, ExteNet is required to apply for Commission authorization to perform full facilities-based construction projects and to undergo CEQA review if, based on information submitted by ExteNet, ED finds that the proposed project is not exempt from CEQA and therefore is unable to issue a Notice to Proceed with construction.
4. ExteNet is applying for authorization to construct a fiber-fed DAS system along State Route 35 in San Mateo County (the State Route 35 Project).
5. Pursuant to the expedited procedure adopted in D.06-04-063, ExteNet previously applied to ED for a determination that the State Route 35 Project is exempt from CEQA and for authorization to proceed with construction, but ED

did not issue a Notice to Proceed based on its determination that a formal application and CEQA review should be required in this case.

6. ED determined that the State Route 35 Project should undergo CEQA review because the project will be constructed in a right-of-way adjacent to a scenic highway, and certain project facilities will be constructed above-ground when, as a general policy, utility facilities along scenic highways must be located underground.

7. The Commission is the lead agency for the State Route 35 Project under CEQA.

8. Commission staff prepared and issued an ISMND pursuant to CEQA on September 2, 2011.

9. The ISMND prepared by the Commission analyzed the potential environmental impacts of the State Route 35 Project over the entire range of applicable environmental resources and concluded that the project would not have a significant adverse effect on the environment with the required mitigation.

10. Commission staff filed the ISMND with the State Clearinghouse Office of Planning and Research on September 2, 2011, in order to circulate the ISMND for formal comment for 30 days from September 2, 2011 through October 3, 2011. No comments were received.

11. The Commission's ISMND identified a number of project elements that are required to be addressed by ExteNet as Conditions of Approval. These elements were associated with avoiding impacts in the areas of Aesthetics, Air Quality, Biology, Cultural Resources, Geology and Soils, and Transportation and Traffic.

12. The Mitigation Measures outlined in the Commission's ISMND are required mitigation and will be made Conditions of Approval for the State Route 35 Project.

13. The Commission has independently considered the ISMND for ExteNet's State Route 35 Project in its decision-making process in accordance with the CEQA Guidelines Section 15096(f).

14. On the basis of the whole record, including the ISMND, the Commission finds that there is no substantial evidence the project will have a significant effect on the environment.

15. The State Route 35 Project will increase the availability of telecommunications services in this state and will help ensure that existing systems remain compatible with future technological advances in fiber-optic equipment.

16. In order to abide by resource avoidance timetables, ExteNet must begin construction of the project in the fall of 2011, prior to the rainy season.

17. The Final ISMND must be formally adopted by the Commission on an expedited basis so that ExteNet may obtain necessary construction permits and contracts needed to begin construction prior to the rainy season of 2011/2012.

18. The Final ISMND can be found at:

<http://www.cpuc.ca.gov/environment/info/mha/hwy35/hwy35.htm>.

Conclusions of Law

1. The application is uncontested, and a public hearing is not necessary.
2. It is not necessary to disturb the preliminary determinations made in Resolution ALJ 176-3256 regarding the category of this proceeding and the need for a hearing.

3. Granting ExteNet's application to construct the State Route 35 Project, as described in the application and subject to the mitigation measures required by the ISMND, is in the public interest.

4. The ISMND developed by Commission staff was prepared pursuant to CEQA and is adequate for the Commission's decision-making purposes.

5. The Final ISMND is competent, comprehensive, and has been completed in compliance with CEQA and the Public Resources Code.

6. The Final ISMND reflects our independent judgment.

7. The Final ISMND should be adopted by the Commission as adequate for our decision-making purposes pursuant to CEQA.

8. Under Rule 14.6(b) parties have stipulated to reducing the comment period to two days.

9. Approving this Decision and adopting the Final ISMND is in the public interest and outweighs a full comment period.

10. In order to expedite construction of the State Route 35 Project, our approval of this application should be made effective immediately.

O R D E R

IT IS ORDERED that:

1. The application of ExteNet Systems (California) LLC, for authorization to construct a fiber-fed Distributed Antenna Communications System along State Route 35 in San Mateo County (the State Route 35 Project), as described in the application, is granted, subject to the conditions below.

2. The Final Study/Mitigated Negative Declaration
(<http://www.cpuc.ca.gov/environment/info/mha/hwy35/hwy35.htm>)

prepared by Commission staff for ExteNet Systems (California) LLC State Route 35 Project is adopted.

3. Commission staff shall file a Notice of Determination for the Study/Mitigated Negative Declaration with the State Office of Planning and Research within the time required by law.

4. The Mitigation Measures outlined in the Commission's Final Study/Mitigated Negative Declaration are required as Conditions of Approval for the State Route 35 Project. ExteNet Systems (California) LLC, must comply with these mitigation measures in its construction of the State Route 35 Project.

5. The ExteNet Systems (California) LLC authorization to construct the State Route 35 Project shall expire if not exercised within two years, unless this time is previously extended at least 30 days in advance of expiration by the Commission's Energy Division.

6. Our authorization for ExteNet Systems (California) LLC to construct the State Route 35 Project may be revoked or modified, after giving notice to ExteNet Systems (California) LLC, if the public convenience, necessity, or health and safety so require.

7. Application 10-06-004 is closed.

This order is effective today.

Dated October 20, 2011, at San Francisco, California.

MICHAEL R. PEEVEY

President

TIMOTHY ALAN SIMON

MICHEL PETER FLORIO

CATHERINE J.K. SANDOVAL

MARK J. FERRON

Commissioners