

Decision 12-06-009 June 7, 2012

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Application of Sonic Telecom, LLC  
(U7002C) for Modification of its Existing  
Certificate of Public Convenience and  
Necessity to Include Full Facilities-Based  
Authority.

Application 12-02-017  
(Filed February 13, 2012)

**DECISION GRANTING A MODIFICATION OF  
CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY  
TO PROVIDE FULL FACILITIES-BASED AND RESOLD  
LOCAL EXCHANGE AND INTEREXCHANGE SERVICE**

**1. Summary**

Sonic Telecom, LLC (Applicant) seeks modification of its existing certificate of public convenience and necessity under Public Utilities Code Section 1001 to obtain authority to provide full facilities-based local exchange and interexchange telecommunications services in California. We grant the application, subject to the requirements and conditions stated below.

We also authorize Applicant to utilize a procedure for 21-day expedited environmental review by Commission Energy Division Staff, if Applicant wishes to engage in full facilities-based construction activities that involve potential statutory or categorical exemptions from the California Environmental Quality Act, as described in the application.

This proceeding is closed.

## **2. Background**

In 2006, Sonic Telecom, LLC (Applicant) applied for and was granted a certificate of public convenience and necessity (CPCN) for limited facilities-based and resold local exchange and interexchange telecommunication services. (Decision (D.) 06-11-008.) D.06-11-008 sets forth the terms and conditions of Applicant's CPCN. Applicant now requests authority to use an expedited California Environmental Quality Act (CEQA) review process for future full-facilities based services.

Applicant's legal name is Sonic Telecom, LLC. Applicant is a California limited liability company with a principal place of business located at 2260 Apollo Way, Santa Rosa, California 95407.

## **3. Environmental (CEQA) Review**

CEQA (Public Resources Code Sections 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 (hereafter CEQA Guidelines), Section 15002.)

CEQA requires the Commission to act as the designated lead agency to assess the potential environmental impact of a project so that adverse effects are avoided, alternatives are investigated, and environmental quality is restored or enhanced to the fullest extent possible. In Commission Rules of Practice and Procedure Rule 2.4(b), the Commission recognizes that certain classes of projects are exempted from CEQA. In cases where such exemptions apply, we are not required to issue an Environmental Impact Report or Negative Declaration.

At this time, Applicant states that it does not know of any specific projects that it will undertake. Applicant therefore requests approval to utilize a procedure for expedited review of Applicant's projects once Applicant is aware of a specific site(s) in which it plans construction. The Commission has previously approved an expedited CEQA review process for facilities-based service where the anticipated future projects will be categorically exempt.

According to the application, Applicant anticipates that its construction will primarily consist of last mile facilities including network feeder and distribution and associated equipment. These activities could include 1) trenching, micro-trenching, or boring; and 2) installation of vaults, hand holes, small cabinets, and associated facilities and equipment. These activities will take place in developed urban and suburban areas in which previous ground-disturbing construction has occurred.

Applicant contends that these activities may fall within categorical exemptions to CEQA, including but not limited to:

- CEQA Guidelines § 15303, Class 3(d) and 3(e): Construction and location of limited numbers of new, small facilities or structures; installation of small new equipment and facilities in small structures; and the conversion of existing small structures from one use to another where only minor modifications are made in the exterior of the structure.
- CEQA Guidelines § 15304, Class 4(a), 4(c), and 4(f): Minor public or private alterations in the condition of land, water, and/or vegetation which do not involve removal of healthy, mature, scenic trees except for forestry and agricultural purposes, and the filling of earth into previously excavated land with material compatible with the natural features of the site, and minor trenching and backfilling where the surface is restored.

- CEQA Guidelines § 15332, Class 32(a) – (e):  
Small scale in-fill development that meets specified criteria.

We have previously granted other carriers authority to rely upon the expedited 21-day process for CEQA review by Commission Energy Division Staff (ED Staff) to determine if proposed construction projects are exempt from CEQA.<sup>1</sup> Applicant's proposed construction activities, as described in the application, are limited and may, in some circumstances, fall within CEQA exemptions.

By this decision, we make the expedited 21-day process for CEQA review by ED Staff available to Applicant, for full facilities-based projects, as described in the application, which Applicant claims are categorically or statutorily exempt from CEQA. The Commission, as Lead Agency, must evaluate the availability of any claimed exemptions and direct any additional CEQA review that may be necessary.

If Applicant wishes to engage in full facilities-based construction activities and believes that these activities are exempt from CEQA, Applicant shall first apply to the Commission ED Staff for a determination of exemption from CEQA using the following procedure:

- A. Required Information From Applicant. Applicant will provide the Commission Energy Division with:

---

<sup>1</sup> 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), Trillion Partners, Inc. (D.07-11-028), Freedom Telecommunications, Inc. (D.09-11-021), Central Valley Telecom, LLC (D.11-07-019).

1. A detailed description of the proposed project, including:
  - a) Customer(s) to be served;
  - b) The precise location of the proposed construction project; and
  - c) Regional and local site maps.
2. A description of the environmental setting, including at a minimum:
  - a) Cultural, historical, and paleontological resources;
  - b) Biological resources; and
  - c) Current land use and zoning.
3. A construction work plan, including:
  - a) Commission Preconstruction Survey Checklist – Archaeological Resources;
  - b) Commission Preconstruction Survey Checklist – Biological Resources;
  - c) A detailed schedule of construction activities, including site restoration activities;
  - d) A description of construction/installation techniques;
  - e) A list of other agencies contacted with respect to siting, land use planning, and environmental resource issues, including contact information; and
  - f) A list of permits required for the proposed project.
4. A statement of the CEQA exemption(s) claimed to apply to the proposed project; and
5. Documentation and evidence sufficient to support a finding that the claimed CEQA exemption(s) apply to the project.
6. A proof of service showing that Applicant has served a copy of the above information on the city and county in which the project, if approved, will be constructed.

- B. Review by Commission Energy Division. The Commission Energy Division will then review the submittal and notify Applicant of either its approval or its denial of Applicant's claim for exemption from CEQA review no later than 21 days after the date on which Applicant's submittal is complete.
- C. Approval of Claimed CEQA Exemption(s)/Notice to Proceed. If the Commission Energy Division approves Applicant's claimed CEQA exemption(s), the staff will prepare a Notice to Proceed (NTP) and file a Notice of Exemption with the State Clearinghouse, Office of Planning and Research.
- D. Disapproval of Claimed CEQA Exemption(s). If the Commission Energy Division disapproves Applicant's claimed CEQA exemptions, ED Staff will issue to Applicant a letter which states the specific reasons that the claimed CEQA exemptions do not apply to the proposed project.

If the Commission Energy Division disapproves Applicant's claimed CEQA exemption(s), Applicant shall either re-design the specific project and facilities and then reapply for a finding of exemption from CEQA, or shall file a formal application with the Commission seeking the requisite approval and undergo full CEQA review, before commencing any full facilities-based construction activities.

Applicant shall not engage in any construction activity relating to a pending CEQA exemption request before receiving an NTP from ED Staff. Applicant may follow the above procedures unless and until the Commission adopts different requirements for CEQA review, which are applicable to Applicant, in Rulemaking 06-10-006 or a subsequent proceeding.

We grant Applicant authorization to utilize the above procedure only for certain projects as described in the application, to be constructed in existing

public rights-of-way and utility easements in developed urban or suburban areas. Other types of full facilities-based construction may require a different level of CEQA review. Therefore, if Applicant wishes to pursue full facilities-based construction projects other than as described in the application, Applicant shall file for additional authority from the Commission and shall undergo any required CEQA review before commencing construction.

#### **4. Conclusion**

We conclude that the application conforms to our rules for authority to provide full facilities-based local exchange and interexchange telecommunications services, and that it is appropriate for Applicant to utilize the 21-day process for expedited CEQA review by ED Staff of potentially CEQA-exempt construction projects as described in the application. Accordingly, we approve the application subject to the terms and conditions set forth herein.

#### **5. Request to File Under Seal**

Applicant requests that confidential financial information filed with this application be filed under seal. We have granted similar requests in the past, and we grant Applicant's request here.

#### **6. Categorization and Need for Hearings**

In Resolution ALJ 176-3290 dated March 8, 2012, the Commission preliminarily categorized this proceeding as ratesetting, and preliminarily determined that hearings were not necessary. No protests have been received. There is no apparent reason why the application should not be granted. Given these developments, a public hearing is not necessary, and it is not necessary to disturb the preliminary determinations.

## **7. Comments on Proposed Decision**

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

## **8. Assignment of Proceeding**

Catherine J.K. Sandoval is the assigned Commissioner and Jeanne M. McKinney is the assigned Administrative Law Judge in this proceeding.

### **Findings of Fact**

1. Applicant seeks expansion of its existing CPCN to obtain authorization to provide full facilities-based local exchange and interexchange services.

2. There is no opposition to granting this Application.

3. The Commission is the Lead Agency for this project under CEQA.

4. By this application, Applicant is not seeking authorization for any specific construction project.

5. Applicant proposes to utilize the Commission's 21-day process for expedited environmental review by ED Staff for its full facilities-based projects that are potentially exempt from CEQA.

6. Applicant anticipates that its full facilities-based construction activities will primarily consist of a) trenching, micro-trenching, trenching or boring; and b) installation of vaults, hand holes, small cabinets and associated facilities and equipment.

7. Applicant states that its full facilities-based construction activities will take place in existing public rights-of-ways and utility easements in heavily

developed urban and suburban areas in which previous ground-disturbing construction has occurred.

8. Applicant states that its full facilities-based construction activities may fall within categorical exemptions to CEQA, including but not limited to:

a) CEQA Guidelines § 15303, Class 3(d) and 3(e): Construction and location of limited numbers of new, small facilities or structures; installation of small new equipment and facilities in small structures; and the conversion of existing small structures from one use to another where only minor modifications are made in the exterior of the structure; b) CEQA Guidelines § 15304, Class 4(a), 4(c), and 4(f): Minor public or private alterations in the condition of land, water, and/or vegetation which do not involve removal of healthy, mature, scenic trees, except for forestry and agricultural purposes, and the filling of earth into previously excavated land with material compatible with the natural features of the site, and minor trenching and backfilling where the surface is restored; and c) CEQA Guidelines § 15332, Class 32(a) – (e): Small scale in-fill development that meets specified criteria.

9. The Commission has previously authorized other carriers to utilize the 21-day expedited process for environmental review by ED Staff for potentially CEQA-exempt construction projects.

10. Applicant's proposed facilities-based project activities, as described in the application, are of a limited nature and may, in some circumstances, fall within statutory or categorical exemptions to CEQA.

11. Applicant's utilization of the expedited 21-day process for environmental review by ED Staff of proposed construction projects that are potentially exempt from CEQA, as described in the application, is adequate for the Commission's purposes as the CEQA Lead Agency and is in the public interest.

12. Applicant has filed no changes to its existing tariffs which were previously approved in D.06-11-008.

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

### **Conclusions of Law**

1. Except for the requirement for additional environmental (CEQA) review, the requirements for a full facilities-based CPCN are generally the same as for a limited facilities-based CPCN.

2. Applicant's description of its future construction projects and proposed utilization of the 21-day expedited process for environmental review by ED Staff of potentially CEQA-exempt projects, as described in the application, meet the requirements of CEQA, based on the specific facts of this case.

3. The 21-day process for expedited environmental review by ED Staff of potentially CEQA-exempt projects is appropriate for certain construction activities as described in the application. If Applicant proposes construction activities other than as described in the application, a different level of CEQA review may be required.

4. Applicant should be granted a full facilities-based CPCN, subject to the requirement that Applicant comply with the expedited 21-day process for the ED Staff review of potentially CEQA-exempt projects, as described in the application, and shall apply for Commission approval and undergo any required CEQA review for other full facilities-based projects.

5. Public convenience and necessity require Applicant's full facilities-based local exchange and interexchange services to be offered to the public subject to the terms and conditions set forth herein.

6. The application should be approved.

7. Upon approval of the application, Applicant should be subject to the applicable Commission rules, decisions, General Orders, and statutes that pertain to California public utilities.

8. Applicant should remain subject to the requirements of D. 06-11-008, its licensing decision.

9. Applicant's request to file its financial information under seal should be granted, to the extent set forth below.

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. Sonic Telecom, LLC's existing certificate of public convenience and necessity (U7002C), which authorized Sonic Telecom LLC (Applicant) to provide limited facilities-based and resold local exchange and interexchange services in this state, is modified to authorize Applicant to provide full facilities-based local exchange services in the service territories of Pacific Bell Telephone Company, Verizon California Inc., Citizens Telecommunications Company of California, Inc., and SureWest Communications and interexchange services statewide, subject to the terms and conditions set forth below.

2. Sonic Telecom, LLC, is authorized to construct the facilities addressed in this decision only upon receiving prior Commission approval and undergoing any required environmental review.

3. The staff of the Commission's Energy Division is authorized to review, process, and act upon Sonic Telecom, LLC's requests for a determination that its full facilities-based construction activities, as described in the application, are exempt from the requirements of the California Environmental Quality Act.

4. If Sonic Telecom, LLC (Applicant) wishes to engage in full facilities-based construction activities as described in the application and believes that these activities are exempt from the California Environmental Quality Act (CEQA), Applicant shall first apply to the Commission's Energy Division staff for a determination of exemption from CEQA using the following procedure:

A. Required Information From Applicant. Applicant shall provide the Commission Energy Division with:

- 1) A detailed description of the proposed project, including:
  - a) Customer(s) to be served;
  - b) The precise location of the proposed construction project; and
  - c) Regional and local site maps.
- 2) A description of the environmental setting, including at a minimum:
  - a) Cultural, historical, and paleontological resources;
  - b) Biological resources; and
  - c) Current land use and zoning.
- 3) A construction work plan, including:
  - a) Commission Preconstruction Survey Checklist – Archaeological Resources;
  - b) Commission Preconstruction Survey Checklist – Biological Resources;
  - c) A detailed schedule of construction activities, including site restoration activities;

- d) A description of construction/installation techniques;
  - e) A list of other agencies contacted with respect to siting, land use planning, and environmental resource issues, including contact information; and
  - f) A list of permits required for the proposed project.
- 4) A statement of the CEQA exemption(s) claimed to apply to the proposed project; and
  - 5) Documentation and evidence sufficient to support a finding that the claimed CEQA exemption(s) apply to the project.
  - 6) A proof of service showing that Applicant has served a copy of the above information on the city and county in which the project, if approved, will be constructed.
- B. Review by Commission Energy Division. The Commission Energy Division shall review the submittal and notify Applicant of either its approval or its denial of Applicant's claim for exemption from CEQA review no later than 21 days after the date on which Applicant's submittal is complete.
- C. Approval of Claimed CEQA Exemption(s)/Notice to Proceed. If the Commission 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.
- D. Disapproval of Claimed CEQA Exemption(s). If the Commission Energy Division disapproves Applicant's claimed CEQA exemptions, Energy Division Staff shall issue to Applicant a letter which states the specific reasons that the claimed CEQA exemptions do not apply to the proposed project.

If the Commission's Energy Division disapproves Applicant's claimed CEQA exemption(s), Applicant shall either redesign the specific project and facilities and then reapply for a finding of exemption from CEQA, or shall file a formal application with the Commission seeking the requisite approval and undergo full CEQA review, before commencing any full facilities-based construction activities.

5. The procedure stated in Ordering Paragraph 4 above for expedited 21-day environmental review by Commission's Energy Division staff of potentially California Environmental Quality Act-exempt construction projects applies only to certain construction activities as described in Application 12-02-017. If Sonic Telecom, LLC (Applicant) wishes to perform other full facilities-based construction activities, Applicant shall first apply for Commission authorization and undergo any required environmental review before commencing construction.

6. Sonic Telecom, LLC (Applicant) shall not engage in any full facilities-based construction activity that Applicant believes is exempt from the California Environmental Quality Act, before receiving a Notice to Proceed from the Commission's Energy Division, pursuant to the procedure stated in Ordering Paragraph 4 above.

7. Sonic Telecom, LLC (Applicant) remains subject to the requirements of Decision 06-11-008, including but not limited to all tariff, surcharge and reporting requirements adopted therein, which granted Applicant a certificate of public convenience and necessity authorizing the company to provide limited facilities-based and resold local exchange services and interexchange services in California.

8. Application 12-02-017 is closed.

This order is effective today.

Dated June 7, 2012, at San Francisco, California

MICHAEL R. PEEVEY

President

TIMOTHY ALAN SIMON

MICHEL PETER FLORIO

CATHERINE J.K. SANDOVAL

MARK J. FERRON

Commissioners