

Decision 13-12-050 December 19, 2013

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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

Application 13-02-002
(Filed February 1, 2013)

**DECISION GRANTING SCHAT COMMUNICATIONS, LLC A CERTIFICATE OF
PUBLIC CONVENIENCE AND NECESSITY IN ORDER TO PROVIDE FULL
FACILITIES-BASED AND RESOLD LOCAL EXCHANGE SERVICE AND
INTEREXCHANGE SERVICE**

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

1. Summary

Pursuant to Pub. Util. Code § 1001, we grant Schat Communications, LLC a Certificate of Public Convenience and Necessity to provide full facilities-based and resold local exchange telecommunications services and interexchange service in California subject to the terms and conditions set forth in the Ordering Paragraphs.

2. Background

On February 1, 2013, Schat Communications, LLC (Schat Communications), a limited liability corporation in California filed an Application for a Certificate of Public Convenience and Necessity (CPCN) to provide resold and full facilities-based telecommunications services in the service territories of Pacific Bell Telephone Company doing business as AT&T California (AT&T), Verizon California Inc. (Verizon), Citizens Telecommunications Company of California, Inc. (doing business as Frontier Communications of California (Frontier), Frontier Communications of the Southwest, Inc. (Frontier Southwest), and SureWest Communications¹ (SureWest), and interexchange service throughout California.

Schat Communications proposes to provide local exchange services to business and residential customers via a wifi system tied to a combined middle mile/wireless connection. In addition, Schat Communications has filed a

¹ SureWest was formerly known as Roseville Telephone Company.

California Advanced Services Fund Application to build additional middle mile broadband and backhaul services.

Schat Communications' principal place of business is located at 174 N. Main Street, Bishop, CA 93514.

On February 21, 2013 the assigned Administrative Law Judge (ALJ) sent via e-mail a list of questions to Schat Communications. The applicant submitted its response on March 22, 2013 (March 22 Response).

On April 5, 2013 the assigned ALJ issued a ruling seeking information on Schat Communications's services and how those services relate to the Commission's jurisdiction. On April 19th, Schat Communications filed its response with the requested information (April 19 Response).

On July 22, 2013 the assigned ALJ issued another ruling seeking additional information clarifying some of applicant's previous filings. On August 21, 2013 Schat Communications filed its response (August 21 Response).

3. Jurisdiction

Pub. Util. Code § 216(a) defines the term "Public utility" to include a "telephone corporation," which in turn is defined in Pub. Util. Code § 234(a) as "every corporation or person owning, controlling, operating, or managing any telephone line for compensation within this state."

Pub. Util. Code § 710 states that the Commission, "shall not exercise regulatory jurisdiction or control over Voice over Internet Protocol and Internet Protocol enabled services except as required or expressly delegated by federal law or expressly directed to do so by statute or as set forth in subdivision (c)." Pub. Util. Code § 239 defines the relevant terms "Voice over Internet Protocol" and "Internet Protocol enabled service:"

239. (a) (1) "Voice over Internet Protocol" or "VoIP" means voice communications service that does all of the following:

- (A) Uses Internet Protocol or a successor protocol to enable real-time, two-way voice communication that originates from, or terminates at, the user's location in Internet Protocol or a successor protocol.
- (B) Requires a broadband connection from the user's location.
- (C) Permits a user generally to receive a call that originates on the public switched telephone network and to terminate a call to the public switched telephone network.

(2) A service that uses ordinary customer premises equipment with no enhanced functionality that originates and terminates on the public switched telephone network, undergoes no net protocol conversion, and provides no enhanced functionality to end users due to the provider's use of Internet Protocol technology is not a VoIP service.

(b) "Internet Protocol enabled service" or "IP enabled service" means any service, capability, functionality, or application using existing Internet Protocol, or any successor Internet Protocol, that enables an end user to send or receive a communication in existing Internet Protocol format, or any successor Internet Protocol format through a broadband connection, regardless of whether the communication is voice, data, or video.

Schat Communications argues that its intention to provide "middle-mile transport service"² and manage a network consisting of "conduits, ducts, poles, wires, cables and other property"³ qualifies it as a telephone corporation, and therefore a public utility. Public Utilities Code § 710 does not preclude our

² April 19 Response at 3.

³ *Id.* at 4.

regulation of “non-VoIP and other non-IP enabled”⁴ services such as the middle-mile transport intended by Schat Communications. Therefore, we agree with Schat Communications that it is a telephone corporation, and therefore a public utility subject to our jurisdiction.

4. California Environmental Quality Act (CEQA)

Pursuant to CEQA and Rule 2.4⁵ of the Commission’s Rules of Practice and Procedure, the Commission examines projects to determine any potential environmental impacts in order that adverse effects are avoided and environmental quality is restored or enhanced to the fullest extent possible under CEQA.

In the Proponent’s Environmental Assessment and Response, Schat Communications’s proposed construction activities will generally include the installation of fiber and/or related equipment primarily in or on the facilities and structures of other entities. Further, Schat Communications may engage in minor-ground-disturbing activities including micro-trenching, regular trenching, and installation of underground conduit, and replacing existing utility poles or installing new poles.

Schat Communications asserts that these activities may fall within the following classes of projects that are exempt from CEQA and for which neither an Environmental Impact Report nor a Negative Declaration is required.

⁴ Pub. Util. Code § 710(e) states: “This section does not affect any existing regulation of, proceedings governing, or existing commission authority over, non-VoIP and other non-IP enabled wireline or wireless service, including regulations governing universal service and the offering of basic service and lifeline service, and any obligations to offer basic service.”

⁵ Unless otherwise noted, items labeled “Rule” are from the Commissions Rules of Practice and Procedure.

- Class 3 Exemption: construction including water main, sewage, electrical, gas and *other utility extensions of reasonable length* to serve such construction. This includes the construction of limited numbers of new small facilities or utility extensions. 14 CCR § 15303.
- 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. Among other things, this includes 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. 14 CCR § 15304.
- Class 32 (“in fill”) Exemption: applies where: i) the projects are consistent with the applicable general plan designation and applicable general plan policies and applicable zoning designation and regulation; ii) proposed development occurs within city limits on a project site of no more than five acres substantially surrounded by urban uses; iii) the project site has no value as habitat for endangered, rare or threatened species; iv) approval of the project would not result in significant effects relating to traffic, noise, air quality or water quality; and v) the site can be adequately served by all required utilities and public services. 14 CCR § 15332.

Schat Communications’s proposed activities involve construction of reasonably short utility extensions (Class 3). In order to provide its service, Schat Communications will install its utility extensions such as new poles, underground conduit, and underground vaults. This equipment will be placed in existing rights-of-way and utility easements, often in developed urban and suburban areas. Exemption of these activities are consistent with Commission precedent. Schat Communications’s proposed new construction activities are similar to those undertaken by other carriers that we have decided are

categorically exempt from CEQA. See, e.g, Decision (D.) 06-04-063 (*ClearLinx Network Corporation*); D.06-04-067 (*CA-CLEC LLC*).

Schat Communications requests approval to utilize a procedure for expedited review of its projects once it is aware of a specific site(s) in which it plans construction. The proposed procedure tracks the expedited review procedure that we have approved for other carriers. Such a process will expedite CEQA review and is appropriate for the type of construction outlined here, which will be categorically exempt. By establishing this expedited review process, we are able to review the information on a specific project to confirm that it is categorically exempt from CEQA or to explain why further environmental review is required. At the same time, the proposed CEQA review process will enable Schat Communications to undertake construction of its projects in an efficient manner without experiencing delays caused by an unnecessarily protracted CEQA review.

Similar to the procedure approved for other carriers, the following procedure will be used to obtain Commission approval of Schat Communications' claimed CEQA exemptions for proposed construction projects:

- Schat Communications will provide the Commission's Energy Division with:
 - A detailed description of the proposed project, including:
 - Customer(s) to be served;
 - The precise location of the proposed construction project; and
 - Regional and local site maps.
 - A description of the environmental setting, to include at a minimum:
 - Cultural, historical, and paleontological resources;

- Biological resources; and
- Current land use and zoning.
- A construction workplan, to include:
 - Commission Preconstruction Survey Checklist – Archaeological Resources;
 - Commission Preconstruction Survey Checklist – Biological Resources;
 - A detailed schedule of construction activities, including site restoration activities;
 - A description of construction/installation techniques;
 - A list of other agencies contacted with respect to siting, land use planning, and environmental resource issues, including contact information; and
 - A list of permits required for the proposed project.
- A statement of the CEQA exemption(s) applicable to the proposed project; and
- Documentation and factual evidence sufficient to support a finding that the claimed exemption(s) is (are) applicable.
- The Energy Division will review Schat Communications’s submission for the proposed project to confirm that the claimed exemption(s) from CEQA are applicable.
- Within 21 days from the date of Schat Communications’s submittal, the Energy Division will issue either:
 - A Notice to Proceed (NTP) and file a Notice of Exemption with the State Clearinghouse, Office of Planning and Research, or
 - A letter of denial stating the specific reasons why the claimed exemption(s) are not applicable to the proposed project.

We have reviewed the application and Supplement and find that:

- Schat Communications's proposed facilities-based project activities are very limited;
- These activities would in almost all circumstances be very likely to qualify for an exemption from CEQA; and
- The proposed process for reviewing the applicability of CEQA exemptions to Schat Communications's facilities-based projects is not only adequate for the Commission's purposes as CEQA Lead Agency, but is also in the public interest because it enables Schat Communications to respond in a timely manner to requests for service without the delay or burden of a full CEQA review when such review is unnecessary.

We therefore approve Schat Communications's proposed process for Commission review of claimed CEQA exemptions for construction projects undertaken pursuant to Schat Communications's full facilities-based authority, based on the specific facts of this case with the following modifications related to the Commission's Energy Division review and approval or disapproval of the proposed exemptions.

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

Schat Communications shall not perform any full facilities-based construction activities without first obtaining an NTP from the Energy Division or authorization by the Commission after the requisite environmental review.

We have previously determined that the CPCN require that competition be allowed in the provision of competitive local exchange service, Rulemaking 95-04-043/Investigation 95-04-044. Granting this Application will benefit the public interest by expanding the availability of technologically advanced telecommunications services within the state.

5. 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.⁶ An applicant must also demonstrate that it has sufficient additional resources to cover all deposits required by local exchange carriers and/or interexchange carriers in order to provide the proposed service.⁷ In the Application, Schat Communications provided a showing that \$100,000 plus an amount equal to the deposit required by AT&T, Verizon, Citizens, Frontier, Frontier Southwest, and SureWest would be available to Schat Communications for one year following certification. Since Schat Communications has provided documentation that it possesses a minimum of \$100,000 that is reasonably liquid and available, it has demonstrated that it has sufficient funds to meet its start-up expenses and has fulfilled this requirement.

⁶ The financial requirement for Competitive Local Exchange Carriers (CLEC) is contained in D.95-12-056, Appendix C. The financial requirement for Non-Dominant Interexchange Carriers (NDIEC) is contained in D.91-10-041.

⁷ The requirement for Competitive Local Carrier applicants to demonstrate that they have additional financial resources to meet any deposits required by underlying Local Exchange Carriers and/or Interexchange Carriers is set forth in D.95-12-056, Appendix C. For NDIECs, the requirement is found in D.93-05-010.

Schat Communications proposed to initially interconnect with AT&T, Verizon, Citizens, Frontier, Frontier Southwest, and SureWest. Schat Communications stated that no deposit is required by AT&T, Verizon, Citizens, Frontier, Frontier Southwest, and SureWest.

Therefore, no additional resources are required at this time to cover deposits.

6. Technical Qualifications

To be granted a CPCN for authority to provide local exchange and interexchange service, an applicant must make a reasonable showing of managerial and technical expertise in telecommunications or a related business. Schat Communications supplied biographical information on its management in Exhibit 8 to its Application that demonstrated that it has sufficient expertise and training to operate as a telecommunications provider.

In its Application, Schat Communications verified that no one associated with or employed by Schat Communications as an affiliate, officer, director, partner, or owner of more than 10% of Schat Communications was previously associated with a telecommunications carrier that filed for bankruptcy, was sanctioned by the Federal Communications Commission or any state regulatory agency for failure to comply with any regulatory statute, rule, or order, or has been found either civilly or criminally liable by a court of appropriate jurisdiction for a violation of §17000, et seq. of the California Business and Professions Code, or for any actions which involved misrepresentations to consumers, nor is currently under investigation for similar violations. Schat Communications did disclose a number of tax liens for Aaron Schat. In its March 22nd Response, Schat Communications provided explanation and documentation that the majority of the liens have been resolved.

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

7. Tariffs

Schat Communications asserts that since it does not intend to offer residential basic service, it is entitled to an exception to the tariffing requirements. Pursuant to General Order (GO) 96-B and D.07-09-018, we grant Schat Communications's request for detariffing of its non-residential or internet-related services.

8. Map of Service Territory

To be granted a CPCN for authority to provide local exchange service, an applicant must provide a map of the service territories it proposes to serve.⁸ In its Response, Schat Communications provided a map of the location of its proposed service territory, in compliance with this requirement.

9. Rule 3.1(i) Statement

Rule 3.1(i) sets forth the requirement that a utility filing an application under Pub. Util. Code § 1001, provide a statement regarding GO 104-A, Section 2. Schat Communications states that it is not aware of any reportable matters pursuant to GO 104 A, Section 2. Schat Communications, therefore, has nothing to report under this rule.

On a going forward basis, though, Schat Communications must file all reports required of a public utility under Commission jurisdiction.

⁸ D.95-12-056 at Appendix C, Rule 4.E.

10. Expected Customer Base

Schat Communications provided its estimated customer base for the first and fifth years of operation in Exhibit 10 of its Application and in Confidential Attachment 3 to its March 22nd Response. Therefore, Schat Communications has complied with this requirement.

11. Request for Treatment as a Non-dominant Carrier

Applicant requests treatment as an NDIEC, which would include exemption from the requirements of Pub. Util. Code §§816-830 concerning stocks and security and § 851 concerning the encumbrance and transfer of utility property. The Commission detailed its rules regarding exemption of NDIECs in D.85-01-008, and subsequently modified in D.85-07-081 and D.85-11-044. We grant Applicant's request for NDIEC status, provided that they follow all rules detailed in the above-referenced decisions.⁹

12. Conclusion

We conclude that the Application conforms to our rules for certification as a competitive local exchange and interexchange carrier. Accordingly, we grant Schat Communications a CPCN to provide full facilities-based and resold local exchange telecommunications service in the service territory of AT&T, Verizon, Citizens, Frontier, Frontier Southwest, and SureWest and interexchange service throughout California subject to compliance with the terms and conditions set forth in the Ordering Paragraphs.

The CPCN granted by this decision provides benefits to Schat Communications and corresponding obligations. Schat Communications

⁹ While the Commission has granted exemption from §§ 816 – 830 to others, exemption from §§ 851 – 854 has not been granted previously and is not granted here.

receives authority to operate in the prescribed service territory, it can request interconnection with other telecommunications carriers in accordance with Section 251 of the Federal Communications Act (47 U.S.C. 251), and it receives access to public rights of way in California as set forth in D.98-10-058 subject to the CEQA requirements set forth in this decision. In return, Schat Communications is obligated to comply with all applicable Public Utilities Codes and Commission Rules, General Orders, and decisions applicable to telecommunications carriers providing approved services. The applicable Codes, Rules, etc. include, but are not limited to consumer protection rules, tariffing, and reporting requirements. Moreover, Schat Communications is obligated to pay all Commission prescribed user fees and public purpose program surcharges as set forth in the Appendix B of this decision, to comply with CEQA, and to adhere to Pub. Util. Code § 451 which states that every public utility "...shall furnish and maintain such adequate, efficient, just, and reasonable service, instrumentalities, equipment, and facilities, including telephone facilities, as defined in Section 54.1 of the Civil Code, as are necessary to promote the safety, health, comfort, and convenience of its patrons, employees, and the public."

13. Request to File Under Seal

Pursuant to Rule 11.4 of the Commission's Rules of Practice and Procedure, Schat Communications has filed motions for leave to file Exhibits 4 to 7 to the Application and Attachment 3 to the March 22nd Response as confidential materials under seal. Schat Communications represents that the information is sensitive, and disclosure could place Schat Communications at an unfair business disadvantage. We have granted similar requests in the past and do so here.

14. Motion of The California Association of Competitive Telecommunications Companies for Party Status

On May 1, 2013 The California Association of Competitive Telecommunications Companies (CALTEL) filed a motion for party status in this proceeding. Most evidence in this proceeding was submitted before CALTEL's motion was filed, and CALTEL does not present any plan for its participation in this proceeding. CALTEL's motion is denied.

In its motion, CALTEL states its concern that this application proceeding is not an appropriate venue for broad policy and legal decision making. Broad policy and legal decisions are not necessary in this application and CALTEL has not advanced any arguments related to the ultimate issues in this proceeding. In fact, today's decision does not reach any broad policy or legal decisions of the type CALTEL states are inappropriate for this type of proceeding.

15. Categorization and Need for Hearings

In Resolution ALJ 176-3309, dated February 13, 2013 the Commission preliminarily categorized this Application as Ratesetting, and preliminarily determined that hearings were not necessary. No protests have been received. There is no apparent reason why the Application should not be granted. Given these developments, a public hearing is not necessary, and it is not necessary to disturb the preliminary determinations.

16. Comments on Proposed Decision

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Section 311(g)(2) of the Public Utilities Code and Rule 14.6(c)(2), the otherwise applicable 30 day period for public review and comment is waived.

17. Assignment of Proceeding

Catherine J.K. Sandoval is the assigned Commissioner and Kevin R. Dudney is the assigned ALJ in this proceeding.

Findings of Fact

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

Communications Commission or any state regulatory agency for failure to comply with any regulatory statute, rule, or order; or 3) was previously associated with any telecommunication carrier that has been found either civilly or criminally liable by a court of appropriate jurisdiction for a violation of § 17000, et seq. of the California Business and Professions Code, or for any actions which involved misrepresentations to consumers, nor is currently under investigation for similar violations.

10. Schat Communications does not intend to offer residential basic service.

11. Schat Communications provided a map of the location of its proposed service territory.

12. Schat Communications has no information to report under Rule 3.1(i), which requires that a utility filing an application under Pub. Util. Code § 1001, provide a statement regarding compliance with GO 104 A, Section 2.

13. Schat Communications provided an estimate of its customer base for the first and fifth year of operation.

14. Pursuant to Rule 11.4, Schat Communications filed motions for leave to file confidential materials under seal, including Exhibit H to the application and Exhibit A to Response.

Conclusions of Law

1. Schat Communications should be granted a CPCN to provide full facilities-based local exchange telecommunications service in the service territories of AT&T, Verizon, Citizens, Frontier, Frontier Southwest, and SureWest and interexchange service in California, subject to the terms and conditions set forth in the Ordering Paragraphs.

2. Schat Communications should be allowed to use the Energy Division 21 day CEQA exemption process.

3. Schat Communications, once granted a CPCN, should be subject to the applicable Commission rules, decisions, General Orders, and statutes that pertain to California public utilities.

4. Schat Communications should be granted an exemption from the tariffing requirements of D.07-09-018.

5. Schat Communications's motion to file under seal its Exhibits 4 to 7 to the application and Attachment 3 to the March 22nd Response to the application, should be granted for two years.

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

O R D E R

IT IS ORDERED that:

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

2. The corporate identification number assigned to Schat Communications, LLC U-7255-C, must be included in the caption of all original filings with this Commission, and in the titles of other pleadings filed in existing cases.

3. Schat Communications, LLC (Schat Communications) must obtain a performance bond of at least \$25,000 in accordance with Decision 13-05-035. The performance bond must be a continuous bond (i.e., there is no termination date on the bond) issued by a corporate surety company authorized to transact surety business in California, and the Commission must be listed as the obligee on the bond. Within five days of acceptance of its Certificate of Public Convenience and Necessity authority, Schat Communications must submit a Tier 1 advice letter to the Director of Communications, containing a copy of the license holder's executed bond, and submit a Tier 1 advice letter annually, but not later than March 31st, with a copy of the executed bond.

4. Schat Communications, LLC must not allow its performance bond to lapse during any period of its operation. Pursuant to Decision 13-05-035, the Commission may revoke a Certificate of Public Convenience and Necessity if a carrier is more than 120 days late in providing the Director of the Communications Division a copy of its executed performance bond and the carrier has not been granted an extension of time by the Communications Division.

5. In addition to all the requirements applicable to competitive local exchange carriers and interexchange carriers included in Attachments B, C, and D to this decision, Schat Communications, LLC is subject to the Consumer Protection Rules contained in General Order 168, and all applicable Commission rules, decisions, General Orders, and statutes that pertain to California public utilities.

6. Schat Communications, LLC must file, in this docket, a written acceptance of the certificate granted in this proceeding within 30 days of the effective date of this order.

7. Schat Communications, LLC (Schat Communications) must annually pay the user fee and public purpose surcharges specified in Attachment B. Per the instructions in Exhibit E to Decision (D.) 00-10-028, the Combined California Public Utilities Commission Telephone Surcharge Transmittal Form must be submitted even if the amount due is \$0. Under Pub. Util. Code § 405, carriers that are in default of reporting and submitting user fees for a period of 30 days or more will be subject to penalties including suspension or revocation of their authority to operate in California. In accordance with D.13-05-035, Schat Communications must pay a minimum user fee of \$100 or 0.18% of gross intrastate revenue, whichever is greater.

8. Prior to initiating service, Schat Communications, LLC must provide the Commission's Consumer Affairs Branch with the name and address of its designated contact person(s) for purposes of resolving consumer complaints. This information must be updated if the name or telephone number changes, or at least annually.

9. Schat Communications, LLC must notify the Director of the Communications Division in writing of the date that local exchange service is first rendered to the public, no later than five days after service first begins.

10. Schat Communications, LLC must file an affiliate transaction report with the Director of the Communications Division, in compliance with Decision 93-02-019, on a calendar year basis using the form contained in Attachment D.

11. Schat Communications, LLC must file an annual report with the Director of the Communications Division, in compliance with General Order 104 A, on a calendar year basis with the information contained in Attachment C to this decision.

12. The staff of the Commission's Energy Division is authorized to review, process, and act upon Schat Communications, LLCs' requests for a determination that its full facilities based construction activities are exempt from the requirements of the California Environmental Quality Act.

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

14. Schat Communications, LLC will provide the Commission's Energy Division with:

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

- iv. A description of construction/installation techniques;
 - v. A list of other agencies contacted with respect to siting, land use planning, and environmental resource issues, including contact information; and
 - vi. A list of permits required for the proposed project.
 - d. A statement of the California Environmental Quality Act (CEQA) exemption(s) claimed to apply to the proposed project; and
 - e. Documentation supporting the finding of exemption from CEQA.
 - f. The Energy Division will then review the submittal and notify Schat Communications of either its approval or its denial of Schat Communications' claim for exemption from CEQA review within 21 days from the time that Schat Communications' submittal is complete.
 - g. If the Energy Division approves Schat Communications' claimed California Environmental Quality Act exemption(s), the staff will prepare a Notice to Proceed and file a Notice of Exemption with the State Clearinghouse, Office of Planning and Research.
 - h. If the Energy Division disapproves Schat Communications' claimed CEQA exemptions, the staff will issue to Schat Communications a letter which states the specific reasons that the claimed CEQA exemptions do not apply to the proposed project.
 - i. If the Energy Division disapproves Schat Communications' claimed CEQA exemption(s), Schat Communications 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.
15. Schat Communications, LLCs' motion to file under seal its Exhibits 4 to 7 to the application and Attachment 3 to the March 22nd Response is granted. The

information will remain under seal for a period of two years after the date of this order. During this two-year period, this information will remain under seal and may not be viewed by any person other than the assigned Commissioner, the assigned Administrative Law Judge (ALJ), the Assistant Chief ALJ, or the Chief ALJ, except as agreed to in writing by Schat Communications or as ordered by a court of competent jurisdiction. If Schat Communications believes that it is necessary for this information to remain under seal for longer than two years, Schat Communications may file a new motion at least 30 days before the expiration of this limited protective order.

16. Application 13-02-002 is closed.

This order is effective today.

Dated December 19, 2013, at San Francisco, California.

MICHAEL R. PEEVEY
President
MICHEL PETER FLORIO
CATHERINE J.K. SANDOVAL
MARK J. FERRON
CARLA J. PETERMAN
Commissioners

ATTACHMENT A

{Attachment A is intentionally left blank.}

(END OF ATTACHMENT A)

ATTACHMENT B

REQUIREMENTS APPLICABLE TO COMPETITIVE LOCAL EXCHANGE CARRIERS AND INTEREXCHANGE CARRIERS

1. Applicant must file, in this docket with reference to this decision number,¹⁰ a written acceptance of the certificate granted in this proceeding within 30 days of the effective date of this order.
2. Applicant is subject to the following fees and surcharges that must be regularly remitted. Per the instructions in Exhibit E to Decision (D.) 00-10-028, the Combined California PUC Telephone Surcharge Transmittal Form must be submitted even if the amount due is \$0.
 - a. The Universal Lifeline Telephone Service Trust Administrative Committee Fund (Pub. Util. Code § 879);
 - b. The California Relay Service and Communications Devices Fund (Pub. Util. Code § 2881; D.98-12-073);
 - c. The California High Cost Fund-A (Pub. Util. Code § 739.3; D.96-10-066, at 3-4, App. B, Rule 1.C);
 - d. The California High Cost Fund-B (D.96-10-066, at 191, App. B, Rule 6.F.; D.07-12-054);
 - e. The California Advanced Services Fund (D.07-12-054);
 - f. The California Teleconnect Fund (D.96-10-066, at 88, App. B, Rule 8.G).

¹⁰ Written acceptance filed in this docket does not reopen the proceeding.

g. The User Fee provided in Pub. Util. Code §§ 431-435. The minimum annual User Fee is \$100, as set forth in D.13-05-035.

Note: These fees change periodically. In compliance with Resolution T-16901, December 2, 2004, Applicant must check the joint tariff for surcharges and fees filed by Pacific Bell Telephone Company (dba AT&T California) and apply the current surcharge and fee amounts in that joint tariff on end-user bills until further revised. Current and historical surcharge rates can be found at <http://www.cpuc.ca.gov/PUC/Telco/Consumer+Information/surcharges.htm>.

- Carriers must report and remit CPUC telephone program surcharges online using the CPUC Telecommunications and User Fees Filing System (TUFFS). Information and instructions for online reporting and payment of surcharges are available at <http://www.cpuc.ca.gov/PUC/Telco/Information+for+providing+service/Surcharge+Remittance.htm>. To request a user ID and password for TUFFS online filing and for questions, please e-mail Telco_surcharges@cpuc.ca.gov.
 - Carriers must file and pay the PUC User Fee (see above item 2g) upon receiving the User Fee statement sent by the Commission. User Fees cannot be reported or paid online. Instructions for reporting filing are available at <http://www.cpuc.ca.gov/PUC/Telco/Information+for+providing+service/userfee.htm>. Please call (415) 703-2470 for questions regarding User Fee reporting and payment.
3. Applicant must obtain a performance bond of at least \$25,000 in accordance with Decision 13-05-035. The performance bond must be a continuous bond (i.e., there is no termination date on the bond) issued by a corporate surety

company authorized to transact surety business in California, and the Commission must be listed as the obligee on the bond. Within five days of acceptance of Certificate of Public Convenience and Necessity authority, Applicant must submit a Tier-1 advice letter to the Director of Communications, containing a copy of the license holder's executed bond, and submit a Tier-1 advice letter annually, but not later than March 31, with a copy of the executed bond.

4. Applicant must not allow its performance bond to lapse during any period of its operation. Pursuant to Decision 13-05-035, the Commission may revoke a Certificate of Public Convenience and Necessity if a carrier is more than 120 days late in providing the Director of the Communications Division a copy of its executed performance bond and the carrier has not been granted an extension of time by the Communications Division.
5. 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).
6. Applicant is a non-dominant interexchange carrier (NDIEC). The effectiveness of its future NDIEC tariffs is subject to the requirement of General Order 96-B and the Telecommunications Industry Rules (D.07-09-019).
7. Tariff filings must reflect all fees and surcharges to which Applicant is subject, as reflected in #2 above.
8. Applicant must file a service area map as part of its initial tariff.
9. Prior to initiating service, Applicant must provide the Commission's Consumer Affairs Branch with the name and address of its designated contact person(s) for purposes of resolving consumer complaints. This information

must be updated if the name or telephone number changes, or at least annually.

10. Applicant must notify the Director of the Communications Division in writing of the date that local exchange service is first rendered to the public, no later than five days after service first begins.
11. Applicant must notify the Director of the Communications Division in writing of the date local service is first rendered to the public within five days after service begins.
12. Applicant must keep its books and records in accordance with the Generally Accepted Accounting Principles.
13. In the event Applicant's books and records are required for inspection by the Commission or its staff, it must either produce such records at the Commission's offices or reimburse the Commission for the reasonable costs incurred in having Commission staff travel to its office.
14. Applicant must file an annual report with the Director of the Communications Division, in compliance with GO 104-A, on a calendar-year basis with the information contained in Attachment C to this decision.
15. Applicant must file an affiliate transaction report with the Director of the Communications Division, in compliance with D.93-02-019, on a calendar-year basis using the form contained in Attachment D.
16. Applicant must ensure that its employees comply with the provisions of Pub. Util. Code § 2889.5 regarding solicitation of customers.
17. Within 60 days of the effective date of this order, Applicant must comply with Pub. Util. Code § 708, Employee Identification Cards, and notify the Director of the Communications Division in writing of its compliance.

18. If Applicant is 90 days or more late in filing an annual report, or in remitting the surcharges and fee listed in #2 above, and has not received written permission from the Communications Division to file or remit late, the Communications Division must prepare for Commission consideration a resolution that revokes Applicant's CPCN.
19. Applicant is exempt from Rule 3.1(b) of the Commission Rules of Practice and Procedure
20. Applicant is exempt from Pub. Util. Code §§ 816-830.
21. Applicant is exempt from the requirements of Pub. Util. Code § 851 for the transfer or encumbrance of property whenever such transfer or encumbrance serves to secure debt.
22. If Applicant decides to discontinue service or file for bankruptcy, it must immediately notify the Communications Division's Bankruptcy Coordinator.
23. Applicant must send a copy of this decision to concerned local permitting agencies no later than 30 days from the date of this order.

(END OF ATTACHMENT B)

ATTACHMENT C

ANNUAL REPORT

An original and a machine readable, copy using Microsoft Word or compatible format must be filed with the California Public Utilities Commission, State Office Building, 505 Van Ness Avenue, Room 3107, San Francisco, CA 94102-3298, no later than March 31st of the year following the calendar year for which the annual report is submitted.

Failure to file this information on time may result in a penalty as provided for in Pub. Util. Code §§ 2107 and 2108.

Required information:

- 1.Exact legal name and U # of the reporting utility.
- 2.Address.
- 3.Name, title, address, and telephone number of the person to be contacted concerning the reported information.
- 4.Name and title of the officer having custody of the general books of account and the address of the office where such books are kept.
- 5.Type of organization (*e.g.*, corporation, partnership, sole proprietorship, etc.).
If incorporated, specify:
 - a. Date of filing articles of incorporation with the Secretary of State.
 - b. State in which incorporated.
- 6.Number and date of the Commission decision granting the Certificate of Public Convenience and Necessity.
- 7.Date operations were begun.
- 8.Description of other business activities in which the utility is engaged.
- 9.List of all affiliated companies and their relationship to the utility. State if affiliate is a:
 - a. Regulated public utility.
 - b. Publicly held corporation.
10. Balance sheet as of December 31st of the year for which information is submitted.

11. Income statement for California operations for the calendar year for which information is submitted.
12. Cash Flow statement as of December 31st of the calendar year for which information is submitted, for California operations only.

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

(END OF ATTACHMENT C)

ATTACHMENT D

CALENDAR YEAR AFFILIATE TRANSACTION REPORT

An original and a machine readable, copy using Microsoft Word and Excel, or compatible format must be filed with the California Public Utilities Commission, State Office Building, 505 Van Ness Avenue, Room 3107, San Francisco, CA 94102-3298, no later than May 1st of the year following the calendar year for which the annual report is submitted.

1. Each utility must list and provide the following information for each affiliated entity and regulated subsidiary that the utility had during the period covered by the Annual Affiliate Transaction Report.

- Form of organization (*e.g.*, corporation, partnership, joint venture, strategic alliance, etc.);
- Brief description of business activities engaged in;
- Relationship to the utility (*e.g.*, controlling corporation, subsidiary, regulated subsidiary, affiliate);
- Ownership of the utility (including type and percent ownership)
- Voting rights held by the utility and percent; and
- Corporate officers.

2. The utility must prepare and submit a corporate organization chart showing any and all corporate relationships between the utility and its affiliated entities and regulated subsidiaries in #1 above. The chart must have the controlling corporation (if any) at the top of the chart, the utility and any subsidiaries and/or affiliates of the controlling corporation in the middle levels of the chart, and all secondary subsidiaries and affiliates (*e.g.*, a subsidiary that in turn is owned by another subsidiary

and/or affiliate) in the lower levels. Any regulated subsidiary must be clearly noted.

3. For a utility that has individuals who are classified as “controlling corporations” of the competitive utility, the utility must only report under the requirements of #1 and #2 above any affiliated entity that either (a) is a public utility or (b) transacts any business with the utility filing the annual report excluding the provision of tariff services.

4. Each annual report must be signed by a corporate officer of the utility stating under penalty of perjury under the laws of the State of California (CCP 2015.5) that the annual report is complete and accurate with no material omissions.

5. Any required material that a utility is unable to provide must be reasonably described and the reasons the data cannot be obtained, as well as the efforts expended to obtain the information, must be set forth in the utility’s Annual Affiliate Transaction Report and verified in accordance with Section I-F of Decision 93-02-019.

6. Utilities that do not have affiliated entities must file, in lieu of the annual transaction report, an annual statement to the Commission stating that the utility had no affiliated entities during the report period. This statement must be signed by a corporate officer of the utility, stating under penalty of perjury under the laws of the State of California (CCP 2015.5) that the annual report is complete and accurate with no material omissions.

(END OF ATTACHMENT D)