

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



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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 No. 13-02-002

**RESPONSE TO ALJ RULING
REQUESTING ADDITIONAL INFORMATION**

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Pursuant to Administrative Law Judge (“ALJ”) Dudney’s Ruling requesting additional information,¹ Schat Communications, LLC (“Schat Communications”) respectfully submits the following responses in the above-captioned matter. Schat Communications appreciates this opportunity to provide the ALJ with the additional information contained herein.

- 1. Please describe in detail the services to be provided by Applicant. Address what technologies and protocols will be used to provide these services, including whether the services will be offered over broadband facilities and whether services will be offered using Time-Division Multiplexing, Internet Protocol or other protocols. Also address the extent to which the services will be provided over the Public Switched Telephone network and whether any facilities constructed will interconnect to the Public Switched Telephone Network.**

Schat Communications will provide a middle mile network that will facilitate the availability of telecommunications, broadband, and related services. This network will utilize a combination of fiber optic and microwave technology and also be interconnected to the Public Switched Telephone Network (“PSTN”). The network will support broadband services such as access to the Internet, and voice over Internet Protocol (“VoIP”) services, and will also support telecommunications services transmitted over the PSTN.

Among other things, Schat Communications will connect to Digital 395 middle mile network fiber at 12 sites in Inyo and Mono Counties. These sites are primarily public service

¹ On April 5, 2013, ALJ Dudney released a Ruling seeking further information regarding Schat Communications’ Application.

institutions (i.e. fire departments) where Schat Communications will cover the cost of their organizational connection. The locations include: Benton, Benton Paiute, Coleville, Conway Summit, Crowley Lake, June Mountain, Mammoth Lakes, Big Pine, Fort Independence, Keeler, Lone Pine.

Among other things, Schat Communications intends to offer telecommunications services to other carriers. Through interconnecting with other carriers, Schat Communications will connect to the PSTN, which will enable it to transmit telecommunications services traveling from and to the PSTN. As discussed further below in response to Question 2, while Schat Communications' Application noted that it will provide voice services using Internet Protocol technology, Schat Communications has determined not to provide VoIP services directly to end-users. Instead, Schat Communications will lease network access to its affiliate, Schat.net, which will provide broadband and related services and voice services (including interconnected VoIP) through its microwave system to residential and business customers. Schat.net's service will use fixed wireless broadband, by which in-home or in-business devices can access the Internet or WAN through a fixed wireless connection.

- 2. Please state the legal basis on which Applicant claims the Commission can grant it the requested CPCN. Among other things, Applicant's response should address Public Utilities Code Sections 216, 233-234, 239, 710, and 1001; and 47 USC 153(43) and 251; and any other statutes or case law Applicant deems relevant. Also state the legal reason(s) that Applicant believes the requested authority is necessary to pursue Applicant's business.**

As explained in its Application, Schat Communications seeks a Certificate of Public Convenience and Necessity ("CPCN") as part of its application for California Advanced Services Fund ("CASF") grant funding. Under the CASF rules, grant funding is limited to telephone corporations, i.e., entities with a CPCN.² To facilitate the project proposed in its CASF Application, Schat Communications has proposed to construct a network over which it will

² See D.12-02-015, mimeo at 19.

provide broadband service with a minimum of 6Mbps download and 2 Mbps Upload as well as other telecommunications services. Without this CASF grant, Schat Communications will be unable to complete this broadband infrastructure project.

Schat Communications does not seek a CPCN for any service over which the Commission does not have regulatory authority. Schat Communications' CPCN application only seeks approval for its intended offering of telecommunications services.³ Specifically, Schat Communications intends to offer middle-mile transport service, which is a distinct and separate offering from other services that may be offered *via* its network, including services such as VoIP, the latter of which Schat Communications is not seeking authorization to provide in California. Given the Commission's apparent uncertainty as to how to proceed with regard to a telephone corporation's offering of non-telecommunications services such as VoIP, however, Schat Communications has decided to clarify herein that it will not offer VoIP services at this time. Instead, its affiliate, Schat.net, will offer such services.⁴

Accordingly, to the extent that this question seeks information about whether the Commission may grant a CPCN to a provider of telecommunications services (who incidentally also offers VoIP services), such a question is moot. Schat Communications provides below additional information as to the Commission's authority to grant a CPCN to Schat Communications for the middle-mile network services for which it seeks a CPCN.

a. Schat Communications Intends to Operate as a Telephone Corporation Under the California Public Utilities Code

Pursuant to California Public Utilities ("PU") Code Section 1001, the Commission has the authority to grant a CPCN to, among other entities, a "telephone corporation" constructing "a *line, plant, or system*, or of any extension." Under PU Code Section 234(a), a telephone

³ CPCN Application at 3.

⁴ Schat.net is not a certificated entity and offers WIFI-based fixed broadband service. See Response of Schat Communications, LLC to ALJ Request for Information at 2 (March 22, 2013).

corporation is defined as “every corporation or person *owning, controlling, operating, or managing any telephone line for compensation* within this state.”⁵ The PU Code further defines “telephone lines” to include “all conduits, ducts, poles, wires, cables, instruments, and appliances, and all other real estate, fixtures, and personal property owned, controlled, operated, or managed in connection with or to facilitate communication by telephone.”⁶

Schat Communications’ proposed middle-mile network will consist of conduits, ducts, poles, wires, cables and other property over which Schat Communications will offer transmission services to other certificated carriers (i.e., telephone corporations) as well as to business customers. Carriers purchasing Schat Communications’ transmission will then be able to offer telephone services to their customers. As such, Schat Communications’ middle mile network will be comprised of “telephone lines” and by such offering, Schat Communications will be a “telephone corporation” pursuant to the PU Code. Moreover, Schat Communications anticipates offering to business customers the use of its lines and resale services to support business customers’ communications needs. Therefore, pursuant to PU Code Section 1001, Schat Communications requires, and the Commission has authority to grant it, a CPCN.

b. Schat Communications Intended Offering Constitutes “Telecommunications Services”

Although Schat Communications’ facilities may support services beyond communications by telephone, its facilities will offer the basic transmission service that is considered “telecommunications service” under federal law and which this Commission has similarly considered as eligible for a CPCN. As a threshold matter, this Commission has often used the term “telecommunications services” to refer to the services offered by telephone

⁵ PU Code Section 234(a). Pursuant to PU Code Section 216, telephone corporations are public utilities.

⁶ PU Code Section 233.

corporations for which it has granted CPCNs,⁷ and has equated the federal terms “telecommunications services” and “telecommunications carrier” with the state terms “telephone corporation” and offering of service over a “telephone line.”⁸ A provider of “telecommunications services” is a “telephone corporation” subject to the requirements of a CPCN.

The Federal Telecommunications Act of 1996 (“1996 Act”) defines “telecommunications service” as the “offering of telecommunications directly to the public, or to such classes of users as to be effectively available directly to the public.”⁹ Federal law further defines “telecommunications” as the “transmission, between or among points specified by the user, of information of the user’s choosing, without change in the form or content of the information as sent and received.”¹⁰ Schat Communications’ offering of transmission services to other carriers and business customers meets the federal definition of “telecommunications services.” Specifically, Schat Communications intends that its middle-mile transport services will allow other carriers to use its facilities to transmit information of end-users without changing the form or content of the information – i.e., “telecommunications.”

Further, to the extent that other providers purchase Schat Communications’ transmission or lease its middle-mile network in order to integrate that transmission with their offering of access to the Internet, for example, the Federal Communications Commission (“FCC”) has noted

⁷ The Commission has noted that “‘local exchange service(s)’ and ‘interexchange service(s)’ are terms of art in the telecommunications industry, and are part and parcel of the regulatory terminology employed by the Commission and by the Federal Communications Commission.” D.11-01-027, mimeo at 6-7. *See, e.g.*, D.13-01-013 (granting CPCN for the provision of facilities-based and resold local exchange “*telecommunications services*”) (emphasis added). *See also* D.12-12-027, D.12-12-028, and D.12-10-040.

⁸ *See* D.07-08-031, mimeo at n.3.

⁹ 47 U.S.C. Section 153(53).

¹⁰ 47 USC Section 153(50). In contrast, to telecommunications services, “information services” require (among other things) some form of processing, generating, or transforming the content of information, and are not subject to the Commission’s CPCN requirements. 47 U.S.C. Section 153(24)

that the underlying transmission itself can be considered “telecommunications.”¹¹ Similarly, the FCC has recognized that the “transmission component of wireless broadband Internet access service is ‘telecommunications.’”¹² The FCC has also found that a broadband transmission service *may* be offered as “telecommunications service.”¹³ Thus, Schat Communications’ intended offering of transmission services to other carriers – even where those carriers use the underlying transmission as part of their offering of wireless broadband Internet access or other broadband service – constitutes “telecommunications services.”¹⁴ An offering of “telecommunications services” subjects Schat Communications to the CPCN requirement.

c. The Commission has Previously Granted CPCNs to Carriers Proposing to Provide VoIP and IP-Enabled Services

Whether an entity is offering other services that are not “telecommunications services” *in addition to* telecommunications services should not be germane to the Commission’s consideration of whether it can grant a CPCN to that entity. In D.12-02-015, the Commission granted the California Broadband Cooperative, Inc. (“CBC”) a CPCN¹⁵ to provide telecommunications services (even while CBC noted that it would be providing VoIP). In addition, the Commission granted a CPCN for Greenfield Communications, Inc., which stated in its CPCN application its intention to provide VoIP services (in addition to its

¹¹ See *Appropriate Framework for Broadband Access to the Internet Over Wireline Facilities et al.*, CC Docket Nos. 02-33, 01-337, 95-20, 98-10, WC Docket Nos. 04-242, 05-271, Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 14853 n.15 (2005) (*Wireline Broadband Report and Order*) at para. 5.

¹² *In the Matter of Appropriate Regulatory Treatment for Broadband Access to the Internet Over Wireless Networks*, WT Docket No. 07-53, Declaratory Ruling, FCC 07-30 (2007), at para.1.

¹³ See *Appropriate Framework for Broadband Access to the Internet Over Wireline Facilities et al.*, CC Docket Nos. 02-33, 01-337, 95-20, 98-10, WC Docket Nos. 04-242, 05-271, Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 14853 (2005) (*Wireline Broadband Report and Order*) at para. 5 (emphasis added).

¹⁴ The Commission has previously recognized, moreover, that telecommunications service may be offered via the facilities and technologies proposed to be used by Schat Communications. In D.09-12-036, the Commission granted Inyo Networks, Inc. a CPCN to provide full facilities-based and resold local exchange and interexchange telecommunications service, where Inyo proposed to build a last mile broadband project using “a combination of underground fiber-to-the-premise and *WiMax* technology to serve customers in underserved areas.” Similarly, Schat Communications has proposed a CASF project “utilizing a combination of technologies including fiber and *WIMAX*.” Shasta County Telecom, Inc. was also granted a CPCN where it proposed to use fixed Internet protocol-based wireless service. D.08-12-052, mimeo at 1.

¹⁵ D.11-12-014.

telecommunications offering).¹⁶ Telephone corporations regularly offer services that are not “telecommunications services” (such as “voicemail” or caller-ID). The offering of such ancillary services does not mean that the telephone corporation is not also offering “telecommunications services.” To the extent that these carriers intended to offer other services, such as VoIP services, such services were not subject to analysis or the CPUC’s approval in any of the aforementioned CPCN decisions.

d. PU Code Sections 239 and 710 Do Not Prohibit the Commission From Granting a CPCN for the Telecommunications Services at Issue

Although Schat Communications’ CPCN application noted that it plans to offer voice service over its network using IP technology (VoIP service),¹⁷ it did so merely for informational purposes. As reflected by Commission precedent, the offering of VoIP service itself is not subject to the CPUC’s review and approval, nor did it prevent the Commission from such approvals.

The enactment of PU Code Section 710, moreover, does not prevent the Commission from exercising its existing authority to grant a CPCN to Schat Communications (even were Schat Communications to offer VoIP services in addition to telecommunications services). Specifically, Section 710 does not prohibit the Commission from its “existing regulation of... or existing Commission authority over, *non-VoIP and other non-IP enabled wireline* or wireless service,” which include telecommunications services.¹⁸ Thus, the Commission cannot assert that it no longer has authority to grant CPCNs to entities offering “telecommunications services,” simply because those entities also offer VoIP services.

¹⁶ See D.08-02-021, mimeo at 2.

¹⁷ PU Code Section 239 defines a VoIP service as that which: (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.

¹⁸ PU Code Section 710(e).

e. Schat Communications' Clarification of its CPCN Application to Exclude Statement as to Offering Voice Services Using Internet Protocol Technology

Notwithstanding Schat Communications' position that its offering of VoIP services would not preclude it from obtaining a CPCN for the purpose of providing telecommunications services, in the interest of expediting review and approval of its application, Schat Communications seeks to clarify herein that it will not offer VoIP or IP enabled services at this time.¹⁹ Accordingly, to the extent that review of Schat Communications' application would have focused on whether Schat Communications would offer VoIP services, the Commission need not consider that question in this application.

For the forgoing reasons, the Commission has authority to grant Schat Communications a CPCN for the services it intends to offer. Schat Communications hopes that the information provided herein is sufficient to facilitate the ALJ's determination on the Application.

Respectfully submitted,

/s/

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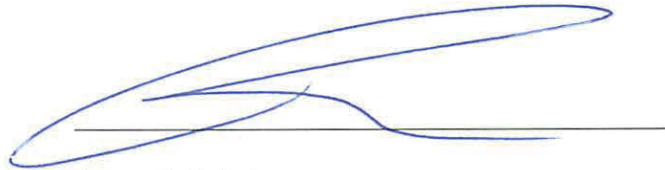
¹⁹ Instead, its affiliate Schat.net will offer IP enabled services, after purchasing telecommunications service from Schat Communications.

Verification

I, Aaron Schat, am the president of Schat Communications, LLC, the Applicant in the above-entitled matter, and am authorized to make this verification on its behalf. The statements in the foregoing document are true of my own knowledge, except as to matters which are therein stated on information and belief and which I also believe to be generally true.

I declare under penalty of perjury of the laws of the state of California that the foregoing is true and correct.

Executed on the __19th__ day of April, 2013 at __Bishop_____, California



Aaron I. Schat

President, Schat Communications, LLC