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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

GARY PIERCE - Chairman
BOB STUMP
SANDRA D. KENNEDY
PAUL NEWMAN
BRENDA BURNS

Arizona Corporation Commission
DOCKETED
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DOCKETED BY

IN THE MATTER OF THE APPLICATION OF ATC OUTDOOR DAS, LLC FOR APPROVAL OF A CERTIFICATE OF CONVENIENCE AND NECESSITY TO PROVIDE NON-SWITCHED LOCAL TRANSPORT SERVICES FOR WIRELESS CARRIERS IN ARIZONA.

DOCKET NO. T-20595A-08-0278

DECISION NO. 72243

OPINION AND ORDER

DATE OF HEARING: February 23, 2011

PLACE OF HEARING: Phoenix, Arizona

ADMINISTRATIVE LAW JUDGE: Teena Jibilian

APPEARANCES: Mr. Michael Hallam, LEWIS & ROCA LLP, on behalf of ATC Outdoor DAS, LLC; and

Ms. Ayesha Vohra, Staff Attorney, Legal Division, on behalf of the Utilities Division of the Arizona Corporation Commission.

BY THE COMMISSION:

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Having considered the entire record herein and being fully advised in the premises, the Commission finds, concludes, and orders that:

FINDINGS OF FACT

Procedural History

1. On May 30, 2008, ATC Outdoor DAS, LLC ("ATC Outdoor" or "Company"), filed with the Arizona Corporation Commission ("Commission") an application for a Certificate of Convenience and Necessity ("CC&N") to provide non-switched local transport services for wireless carriers throughout Arizona.

2. On July 7, 2008, the Commission's Utilities Division ("Staff") filed its First Set of Data Requests and on August 5, 2008, the Company docketed responses to those Data Requests.

3. On November 5, 2010, Staff filed its Staff Report recommending approval of the Application.

4. On November 30, 2010, by Procedural Order, a hearing was scheduled on the application for February 23, 2011, notice of the hearing was ordered, and other filing deadlines were established.

5. On January 12, 2011, an Affidavit of Publication was docketed, indicating that the Company caused notice of the application to be published in *The Arizona Republic*, a newspaper of statewide circulation, on December 22, 2010.

6. No public comments or requests for intervention were filed in the docket.

7. The evidentiary hearing on the application convened as scheduled on February 23, 2011, before a duly authorized Administrative Law Judge of the Commission. The Company and Staff appeared through counsel and presented evidence through the sworn testimony of witnesses. No members of the public appeared to provide comment.

Fitness and Properness to Obtain a CC&N

8. ATC Outdoor, founded on December 20, 2007, is a Delaware limited liability company in good standing with the Commission's Corporations Division. ATC Outdoor's corporate officers and directors are Gerard Ainsztein, Senior Vice President, and Daniel Wojciechowski, Vice President. ATC Outdoor is wholly owned by SpectraSite Communications LLC. SpectraSite Communications LLC is wholly owned by SpectraSite, LLC. American Tower Corporation ("American Tower") is the sole member and manager of SpectraSite, LLC.

9. American Tower, ATC Outdoor's ultimate parent, is publicly traded on the New York Stock Exchange and owns and operates over 30,000 wireless and broadcast communications sites in the United States, Mexico and Brazil. American Tower merged with SpectraSite Communications, Inc. in 2005. American Tower and its subsidiaries are currently authorized to conduct business in all 50 states, and have a total of 991 employees in the United States.

10. ATC Outdoor has neither had an application for authority to provide service denied, nor had its authority to provide service revoked in any state. There are, and have been, no formal complaint proceedings involving ATC Outdoor.

11. According to the Staff Report, ATC Outdoor is authorized to provide private line telecommunications services similar to those it intends to offer in Arizona in thirty-one states and the District of Columbia. ATC Outdoor is currently providing telecommunications services similar to those it intends to offer in Arizona in Michigan.

12. The Staff Report indicates that Staff contacted fifteen of the jurisdictions in which ATC Outdoor is authorized to provide service and found that no complaints had been filed.

13. ATC Outdoor is in good standing with the Commission's Corporations Division.

14. Staff's search of the Federal Communications Commission's website revealed that there have been no formal or informal complaints filed against ATC Outdoor.

15. ATC Outdoor disclosed in its application that its ultimate parent American Tower has been involved in the following civil matters:

a. American Tower was subject to and in compliance with a stipulated order, effectively a consent decree, in the State of California from 2001 through its expiration in 2006. The subject of the complaint giving rise to the stipulated order was American Tower's failure to file proper forms with Santa Clara County under the Emergency Planning and Community Right-to-Know Act of 1986 ("EPCRA") and other environmental statutes relative to its fuel storage and underground tanks. The stipulated order stated that American Tower was in substantial compliance with the code sections alleged in the complaint, and that there had not been any known significant release of a hazardous material to the environment as a result of any of the violations alleged in the complaint.

b. In June 2005, the Antitrust Division of the Department of Justice issued Civil Investigative Demands concerning American Tower's merger with SpectraSite, Inc. According to the Staff Report, the investigation was a routine part of the merger transaction, and American Tower fully complied with the investigation, which closed on October 24, 2005.

c. In November 2005, American Tower entered into a Facilities Audit Agreement with the United States Environmental Protection Agency ("EPA") that

provides for payment of penalties as a result of non-compliance with certain notice and record-keeping requirements. Pursuant to the Facilities Audit agreement, American Tower conducted audits of approximately 12,500 towers. American Tower disclosed approximately 200 violations of EPCRA reporting violations. In November 2008, American Tower paid a penalty of approximately $35,000 under the Facilities Audit Agreement, which satisfied its obligation under the agreement.

d. During May-August 2006, American Tower received a letter of informal inquiry from the Securities and Exchange Commission Division of Enforcement, a subpoena from the office of the United States Attorney for the Eastern District of New York, and a Document Request from the Internal Revenue Service for information concerning stock option granting practices. American Tower has fully cooperated with all document and information requests. The investigations have been dormant for more than four years, and American Tower believes that the agencies have terminated their investigations.

e. In August 2007 American Tower received a request for information from the Department of Labor with respect to the Company's retirement plan and stock option granting practices. In a letter dated September 11, 2008, the Department of Labor indicated that its review was concluded and that it contemplated no further action.

f. In 2008, American Tower settled a securities class action suit filed in the United States District Court for the District of Massachusetts, and in 2009, the dismissal of shareholder derivative lawsuits filed in 2006 was upheld by the Massachusetts Supreme Judicial Court.

Technical Capabilities

16. ATC Outdoor's top two executives, combined, have 28 years of experience in the telecommunications industry.

17. ATC proposes to offer non-switched local transport and backhaul services of voice and data signals, leased on a long term basis, similar to the private line services offered on a competitive basis by other telecommunications providers in Arizona, primarily for wireless telephony and data providers throughout the State of Arizona. ATC Outdoor's services will be offered through a Distributed Antenna System ("DAS") network. Its radio frequency ("RF") transport services will use optical technology, including multiwavelength optical technology. RF transport services will connect customer-provided wireless capacity equipment to customer-provided or ATC Outdoor-provided bi-directional RF-to-optical conversion equipment at a hub facility. The hub facility can be customer-provided or ATC Outdoor-provided. The conversion equipment will allow ATC Outdoor to accept RF traffic from the customer and then transmit bi-directional traffic across the appropriate optical networks. At the remote end, ATC Outdoor or the telecommunications company will provide RF-to-optical conversion equipment to allow bi-directional conversion between optical signals and RF signals. RF signals can be received and radiated at this remote node.

18. ATC Outdoor will not provide voice services or dial tone local exchange telecommunications services.

19. ATC Outdoor currently does not have any employees that are exclusively dedicated to ATC Outdoor's operations. American Towers, Inc., an affiliate of ATC Outdoor, has employees in Arizona who dedicate their time to addressing the needs of both companies.

20. ATC Outdoor does not plan to have a customer service center or employees in Arizona. However, services and operations to Arizona customers will be handled by employees of American Towers, Inc., which has employees in Arizona. ATC Outdoor's Arizona customers will have access to a customer hotline 24 hours a day, seven days a week.

21. Based on its analysis of the application and its investigation, Staff concluded that ATC possesses the technical capabilities to provide the services it is requesting authority to provide.

Financial Resources

22. ATC Outdoor indicated in its application that it will rely, in large part, upon the financial resources of its parent American Tower to provide services in Arizona. ATC Outdoor provided Staff with audited consolidated financial statements, with notes, of American Tower for the

years ending 2005 through 2009. The financial statements list total assets of over $8.5 billion; total equity of over $3.3 billion; and net income of approximately $247 million for the full year 2009.

23. ATC Outdoor projects total Arizona intrastate revenue of $1,800,000 for the first twelve months of service, with total intrastate operating expenses of $1,080,000 for the same period. The Company stated in the application that it does not plan to deploy a system until it has a customer under contract.

24. ATC Outdoor projects a net book value of $0 for all Arizona jurisdictional assets used to provide telecommunications services to Arizona customers for the first 12 months of service. Currently, ATC Outdoor has no Arizona jurisdictional assets.

Competitive Services/Proposed Rates

25. ATC requested that its proposed services be classified as competitive because it intends to provide point-to-point transport and backhaul private line telecommunications service leased on a long term basis, similar to the private line services offered on a competitive basis by other telecommunications providers in Arizona.

26. Staff stated that ATC Outdoor would be providing private line service as a new entrant in areas where it would face competition from both an incumbent local exchange carrier ("ILEC"), along with various competitive local exchange carriers ("CLECS") and interexchange carriers ("IXCs"). Staff stated that IXCs and ILECs hold a substantial share of the private line service market, and a number of CLECs have been authorized to provide private line service or substantially similar service. Staff stated that ATC Outdoor will have to compete with several existing companies in order to obtain customers, and as such, the Company would generally not be able to exert market power.

27. Staff recommends that ATC Outdoor's proposed services be classified as competitive because there are alternatives to ATC Outdoor's services, ATC Outdoor will have to convince customers to purchase its services, and ATC Outdoor has no ability to adversely affect the local exchange or interexchange service markets.

28. Staff stated that because ATC Outdoor provides service to customers on a site-to-site basis, the vast majority of ATC Outdoor's customers are expected to purchase transport and backhaul

services under individual case basis ("ICB") contracts, but that ATC Outdoor customers who choose not to negotiate an ICB contract will be allowed to purchase services in accordance with the rates established in ATC Outdoor's proposed tariff. Staff reviewed the rates to be charged by ATC Outdoor and determined that the rates are for highly competitive services targeted for sophisticated carriers and communications companies who are experienced in negotiating the best market prices for services and have adequate resources to protect their business interests. Staff noted that ATC Outdoor's proposed tariff contains initial rates that equal the maximum rates, and that pursuant to A.A.C. R14-2-1109, the rate charged for service may not be less than the Company's total service long-run incremental cost of providing the service. Staff determined that ATC Outdoor's proposed tariff rates are comparable to the rates charged by other carriers operating within the State of Arizona, and that they are just and reasonable.

29. In general, rates for competitive services are not set according to rate of return regulation. While Staff considered the fair value rate base ("FVRB") information submitted by ATC Outdoor, Staff did not accord that information substantial weight in its analysis.

30. We find that ATC Outdoor's current FVRB is $0 and that it is too small to be useful in an analysis of ATC Outdoor's rates.

Performance Bond/Irrevocable Sight Draft Letter of Credit

31. ATC Outdoor does not offer prepaid services, does not collect deposits, and will not collect advance payments.

32. While ATC Outdoor's proposed tariff filed with its application indicated that it might collect a deposit for service from any applicant or customer whose financial responsibility is not established to the Company's satisfaction, ATC Outdoor later indicated that it does not intend to collect deposits from its Arizona customers, and that it will remove the deposit language from its conforming tariff.

33. Staff stated in the Staff Report that because ATC Outdoor is requesting approval to provide non-switched local transport and backhaul services primarily to other carriers, and not to individuals or small businesses, and because ATC Outdoor will not be collecting deposits, advances or prepayments from its customers, Staff does not believe it is necessary for the Company to obtain a

performance bond or irrevocable sight draft letter of credit.

Regulatory Requirements

34. Commission rules require ATC Outdoor to file a tariff for each competitive service that states the maximum rate as well as the effective (actual) price that will be charged for the service. Under A.A.C. R14-2-1109(A), the minimum rate for a service must not be lower than the total service long-run incremental cost of providing the service. Any change to ATC Outdoor's effective price for a service must comply with A.A.C. R14-2-1109, and any change to the maximum rate for a service in ATC Outdoor's tariff must comply with A.A.C. R14-2-1110.

35. A.A.C. R14-2-1107 requires a competitive telecommunications service provider to file an application for authorization with the Commission before it discontinues service; the rule also establishes customer notice requirements and other requirements related to discontinuance of service.

.Staff's Recommendations

34. The Staff Report recommends that ATC Outdoor's Application for a CC&N to provide intrastate telecommunications services described herein be approved.

35. The Staff Report further recommends:

a. That ATC Outdoor be required to comply with all Commission Rules, Orders and other requirements relevant to the provision of intrastate telecommunications services;

b. That ATC Outdoor be required to notify the Commission immediately upon changes to its name, address or telephone number;

c. That ATC Outdoor be required to cooperate with Commission investigations including, but not limited to customer complaints; and

d. That ATC Outdoor be authorized to discount its rates and service charges to the marginal cost of providing the services.

36. Staff further recommends that ATC Outdoor be ordered to docket conforming tariffs for each service within its CC&N within 365 days from the date of an Order in this matter or 30 days prior to providing service, whichever comes first, and that the tariffs submitted shall coincide with the application and state that ATC Outdoor does not collect advances, deposits and/or prepayments from its customers.

37. At the hearing, the Company's witness agreed with Staff's recommendations.

CONCLUSIONS OF LAW

1. ATC Outdoor is a public service corporation within the meaning of Article XV of the Arizona Constitution and A.R.S. §40-281 and 40-282.

2. The Commission has jurisdiction over ATC Outdoor and the subject matter of this application.

3. Notice of ATC Outdoor's application was given in accordance with the law.

4. A.R.S § 40-282 allows a telecommunications company to file an application for a CC&N to provide competitive telecommunications services.

5. Pursuant to Article XV of the Arizona Constitution, as well as the Arizona Revised Statutes, it is in the public interest for ATC Outdoor to provide the telecommunications for which it has requested authorization in its application.

6. ATC Outdoor is a fit and proper entity and has the technical capabilities and financial resources necessary to receive a CC&N authorizing it to provide competitive private line telecommunications services in Arizona.

7. The telecommunications services that ATC Outdoor intends to provide are competitive within Arizona.

8. ATC Outdoor's FVRB is $0 and is not useful in determining just and reasonable rates for the competitive services it proposes to provide to Arizona customers.

9. Pursuant to Article XV of the Arizona Constitution as well as 14 A.A.C. 2, Article 11, it is just and reasonable and in the public interest for ATC Outdoor to establish rates and charges for competitive services that are not less than ATC Outdoor's total service long-run incremental costs of providing the competitive services approved herein.

10. ATC Outdoor's rates, as they appear in the proposed tariff, are just and reasonable and should be approved.

11. Staff's recommendations as set forth in Findings of Fact Nos. 35 and 36 are reasonable and should be adopted.

ORDER

IT IS THEREFORE ORDERED that the application of ATC Outdoor DAS, LLC, for a

Certificate of Convenience and Necessity to provide competitive private line telecommunications services within the State of Arizona, is hereby granted approved, subject to the conditions set forth in Findings of Fact Nos. 35 and 36 and in accordance with the following ordering paragraphs.

IT IS FURTHER ORDRED that if ATC Outdoor DAS, LLC, fails to meet the conditions outlined in Findings of Fact No. 36 within the timeframes therein, the Certificate of Convenience and Necessity conditionally granted herein shall be considered null and void after due process.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

CHAIRMAN

COMMISSIONER

COMMISSIONER

COMMISSIONER

COMMISSIONER

IN WITNESS WHEREOF, I, ERNEST G. JOHNSON, Executive Director of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this 7th day of April, 2011.

ERNEST G. JOHNSON
EXECUTIVE DIRECTOR

DISSENT _____

DISSENT _____

SERVICE LIST FOR: ATC OUTDOOR DAS, LLC

DOCKET NO.: T-20595A-08-0278

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