

BEFORE

THE PUBLIC SERVICE COMMISSION OF

SOUTH CAROLINA

DOCKET NO. 2016-249-C - ORDER NO. 2016-739

OCTOBER 19, 2016

IN RE: Application of SBA DAS & Small Cells, LLC for a Certificate of Public Convenience and Necessity to Provide Resold and Facilities-Based Local Exchange and Interexchange Telecommunications Services in the State of South Carolina, and for Flexible Regulation	)	ORDER GRANTING CERTIFICATE AND APPROVING FLEXIBLE REGULATION
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This matter comes before the Public Service Commission of South Carolina (“Commission”) by way of the Application of SBA DAS & Small Cells, LLC (“SBA” or the “Company”) requesting a Certificate of Public Convenience and Necessity authorizing it to provide facilities based and resold local exchange and interexchange telecommunications services within the State of South Carolina. The Company’s Application was filed pursuant to S.C. Code Ann. § 58-9-280 (Supp. 2015) and the rules and regulations of the Commission. By its Application, the Company also requests flexible regulation of its local exchange service offerings pursuant to Order No. 98-165 in Docket No. 1997-467-C, and waiver of certain Commission regulations.

The Commission’s Clerk’s Office instructed the Company to publish, one time, a Notice of Filing in newspapers of general circulation in the areas of the state affected by the Application. The purpose of the Notice of Filing was to inform interested parties of the Application of the Company and of the manner and time in which to file the appropriate pleadings for participation in the proceeding. The Company complied with this instruction

and provided the Commission with proofs of publication of the Notice of Filing. A Petition to Intervene was filed by the South Carolina Telephone Coalition (“SCTC”). Subsequent to the intervention, the Company and SCTC reached a Stipulation, attached hereto as Order Exhibit 1.

On August 25, 2016, counsel for the South Carolina Office of Regulatory Staff (“ORS”) filed a letter with the Commission setting out that it had reviewed the Application and did not oppose the Commission granting the Application. The ORS also sought to be permitted to be excused from the hearing in the Docket. The Applicant did not object to the ORS request. The Hearing Examiner granted the ORS request to be excused from the hearing by Directive dated August 30, 2016.

A hearing was convened on August 31, 2016, at 11:30 am in the offices of the Commission in Columbia, South Carolina, before Josh Minges, Hearing Examiner. SBA was represented by John J. Pringle, Jr., Esquire. The SCTC did not appear at the hearing. As noted, ORS requested to be excused from the hearing and did not appear.

Patrick Cochran, General Manager, DAS & Small Cells, SBA Communications, Inc. (the parent company of SBA), appeared via video conference and testified in support of the Company’s Application. The record reveals that the Company is a limited liability company (“LLC”) organized under the laws of the State of Florida and that it is registered to transact business in South Carolina as a foreign LLC.

According to Mr. Cochran, the Company seeks authority as a provider of facilities based and resold local exchange and interexchange services. Mr. Cochran explained the Company’s request for authority, and the record further reveals the Company’s services,

operations, and marketing procedures. SBA acts as a facilities-based wholesale transport carrier for wireless carriers and other large enterprise customers. SBA typically provides “RF transport services” using fiber optic technology, over dedicated transport facilities, to provide other service providers with transport options. When it provides service to wireless carriers, SBA will typically rely on a technical platform known as a “Distributed Antenna System,” or “DAS.” Radio Frequency (RF) transport services are used to transport voice and data communications between wireless capacity equipment (i.e., antennas) and hub facilities. The hub facility can be customer or SBA-provided. Bi-directional, RF-to-optical conversion equipment allows SBA to accept RF traffic from its customer and then send bi-directional traffic transmissions across the appropriate optical networks. At the remote end, SBA or the customer company provides RF-to-optical conversion equipment that allows bi-directional conversion between optical signals and RF signals. RF signals can be received and radiated at this remote node by the customer company. However, SBA is not limited to providing transport service over DAS networks and may provide telecommunications service to other large enterprise customers. Mr. Cochran also discussed SBA’s technical, financial, and managerial resources to provide the services for which it seeks authority. Mr. Cochran offered that SBA possesses sufficient financial resources to support its operations in South Carolina.

With regard to management and technical capabilities, the Company’s Application and Mr. Cochran’s testimony both evidence that the Company’s management has extensive experience in telecommunications, information technology, regulatory matters, and accounting and finance. Mr. Cochran also testified that the Company will operate in

accordance with Commission rules, regulations, guidelines, and Commission orders. Mr. Cochran offered that approval of the Company's Application would serve the public interest.

Mr. Cochran, on behalf of the Company, requests a waiver of 10 S.C. Code Ann. Regs. 103-610, since the Company's books are maintained in Florida. Further, the Company requests an exemption from record keeping policies that require maintenance of financial records in conformance with the Uniform System of Accounts ("USOA"). The Company maintains its books in accordance with Generally Accepted Accounting Principles ("GAAP").

After consideration of the applicable law, the Company's Application, and the evidence presented at the hearing, the Commission hereby issues its findings of fact and conclusions of law:

#### FINDINGS OF FACT

1. The Company is organized as an LLC under the laws of the State of Florida and is authorized to do business as a LLC in South Carolina by the Secretary of State.
2. The Company desires to operate as a provider of facilities based and resold local exchange and interexchange services in South Carolina.
3. We find that the Company possesses the managerial experience and capability to operate as a provider of local exchange and interexchange services in South Carolina.

4. We find, based on the financial statements submitted by the Company and the testimony at the hearing, that the Company possesses sufficient financial resources to provide the services as described in its Application and testimony.

5. We find that the issuance of a Certificate of Public Convenience and Necessity to the Company to operate as a provider of local exchange and interexchange telecommunications services in South Carolina would be in the public interest of the citizens of South Carolina by promoting the availability of more innovative services.

6. The Company requests a waiver of 10 S.C. Code Ann. Regs. 103-610 (Supp. 2015). The Commission finds the Company's requested waiver reasonable and understands the potential difficulty presented to the Company should the waiver not be granted. Further, we find that a waiver of 10 S.C. Code Ann. Regs. 103-610 to be in the public interest. We also believe that exemption from the policies that would require the Company to keep its records under the USOA is reasonable. Finally, since the Company does not intend to provide retail residential local exchange services, we find that it is appropriate and reasonable to waive 10 S.C. Code Ann. Regs. 103-607 (Supp. 2015). Should the Company offer residential local exchange services in the future in South Carolina, we find that it should comply with the bond requirement of 10 S.C. Code Ann. Regs. 103-607.

7. The Company has the managerial, technical, and financial resources to provide the services as described in its Application. S.C. Code Ann. Section 58-9-280(B)(1) (Supp. 2015).

8. The Commission finds that the Company’s “provision of service will not adversely impact the availability of affordable local exchange service.” S.C. Code Ann. Section 58-9-280(B)(3) (Supp. 2015).

9. The Commission finds that the Company will support universally available telephone service at affordable rates. S.C. Code Ann. Section 58-9-280(B)(4) (Supp. 2015).

10. The Commission finds that services to be provided by the Company will meet the service standards of the Commission. S.C. Code Ann. Section 58-9-280(B)(2) (Supp. 2015).

11. The Commission finds that the provision of local exchange service by the Company “does not otherwise adversely impact the public interest.” S.C. Code Ann. Section 58-9-280(B)(5) (Supp. 2015).

12. Following execution of a Stipulation with intervenor SCTC, the SCTC withdrew its opposition to the Application.

13. The ORS was permitted to be excused from the hearing and the fact that it did not oppose the grant of the Application herein is duly noted.

#### CONCLUSIONS OF LAW

1. The Commission concludes that the Company possesses the managerial, technical, and financial resources to provide the telecommunications services as described in its Application.

2. The Commission concludes that the Company will participate in the support of universally available telephone service at affordable rates to the extent that the Company may be required to do so by the Commission.

3. The Commission concludes that the Company will provide services which will meet the service standards of the Commission.

4. The Commission concludes that approval of the Company's Application to provide resold and facilities-based local exchange and interexchange telecommunications services within South Carolina will serve the public interest by providing for efficient use of existing telecommunications resources.

5. The Commission concludes that the provision of telecommunications service by the Company will not adversely impact the public interest.

6. The Commission concludes that the issuance of the authority to provide local exchange and interexchange telecommunications services as requested by the Company and as set forth in its Application and Mr. Cochran's testimony is in the public interest of the citizens of the State of South Carolina.

7. The Commission concludes that a Certificate of Public Convenience and Necessity should be granted to the Company to provide facilities-based and resold intrastate local exchange and interexchange telecommunications services.

8. The Commission concludes the Company's local exchange telecommunications services shall be regulated in accordance with the principles and procedures established for flexible regulation first granted to NewSouth Communications by Order No. 98-165 in Docket No. 97-467-C. Specifically, the Commission adopts for the

Company's competitive intrastate local exchange services a rate structure incorporating maximum rate levels with the flexibility for adjustment below the maximum rate levels approved by the Commission. Further, the Company's local exchange service tariff filings are presumed valid upon filing. An investigation of the tariff filing may be instituted within thirty (30) days of the tariff filing, in which case the tariff filing would be suspended pending further order of the Commission. If an investigation is instituted on a particular tariff filing, notice of the investigation will be provided to the person or entity making the tariff filing and to the Commission. The notice is timely if dated within thirty (30) days of the filing date. Further, any such tariff filings will be subject to the same monitoring process as similarly situated local exchange carriers.

9. We conclude that the Company's request for waiver of 10 S.C. Code Ann. Regs. 103-610 should be granted, since strict compliance with the regulation potentially causes undue hardship on the Company. We also grant exemption from the policies requiring the use of USOA, and grant waiver of S.C. Code Ann. Regs. 103-607.

14. The Stipulation between the Company and the SCTC should be approved.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED THAT:

1. A Certificate of Public Convenience and Necessity should be granted to the Company to provide facilities based and resold local exchange and interexchange telecommunications services within the State of South Carolina.

2. The regulatory treatment adopted for the Company's services shall conform to the design described in Conclusions of Law above.

3. If it has not already done so, the Company shall file its revised tariff utilizing the Commission's e-filing system for tariffs within thirty (30) days of the issuance of this Order. The revised tariff should be electronically filed in a text searchable PDF format using the Commission's DMS System (<http://dms.psc.sc.gov>). An additional copy should be sent via email to [etariff@psc.sc.gov](mailto:etariff@psc.sc.gov) to be included in the Commission's ETariff System (<http://etariff.psc.sc.gov>). Future revisions to the tariff should be made using the ETariff System. The revised tariff shall be consistent with the findings of this Order and shall be consistent with the Commission's Rules and Regulations.

4. The Company shall resell the services of only those local exchange carriers (LECs) authorized to do business in South Carolina by this Commission.

5. The Company shall file annual financial information in the form of annual reports and gross receipts reports as required by the Commission. The annual report and the gross receipt report will necessitate the filing of intrastate information. Therefore, the Company shall keep financial records on an intrastate basis for South Carolina to comply with the annual report and gross receipts filings. The proper form for filing annual financial information can be found at the ORS's website at [www.regulatorystaff.sc.gov](http://www.regulatorystaff.sc.gov). The title of this form is "Telecommunications Company Annual Report." This form shall be utilized by the Company to file annual financial information with the Commission and ORS and shall be filed no later than **April 1<sup>st</sup>**.

6. Commission gross receipts forms are due to be filed with the Commission and ORS no later than **August 31<sup>st</sup>** of each year. The proper form for filing gross receipts

information can be found at the ORS website at [www.regulatorystaff.sc.gov](http://www.regulatorystaff.sc.gov), and the appropriate form is entitled “Gross Receipts Form.”

7. Each telecommunications company certified in South Carolina is required to file annually with the ORS the Intrastate Universal Service Fund (“USF”) worksheet, which may be found on the ORS’s website at [www.regulatorystaff.sc.gov](http://www.regulatorystaff.sc.gov). This worksheet provides ORS information required to determine each telecommunications company’s liability to the State USF fund. The Intrastate USF worksheet is due to be filed annually no later than **August 1<sup>st</sup>** with the Commission and ORS.

8. The Company shall, in compliance with Commission regulations, designate and maintain an authorized utility representative who is prepared to discuss, on a regulatory level, customer relations (complaint) matters, engineering operations, tests, and repairs. In addition, the Company shall provide to the Commission and ORS in writing the name of the authorized representative to be contacted in connection with general management duties as well as emergencies which occur during non-office hours. The Company shall file the names, addresses, and telephone numbers of these representatives with the Commission within thirty (30) days of receipt of this Order. The “Authorized Utility Representative Information” form can be found at the Commission’s website at [www.psc.sc.gov/reference/forms.asp](http://www.psc.sc.gov/reference/forms.asp); this form shall be utilized for the provision of this information to the Commission and ORS. Further, the Company shall promptly notify the Commission and ORS in writing if the representatives are replaced.

9. The Company is directed to comply with all Rules and Regulations of the Commission, unless a regulation is specifically waived by the Commission.

10. The Company requested a waiver of 10 Code Ann. Regs. 103-610 (Supp. 2015), which requires that records required by the Commission's Rules and Regulations be maintained in South Carolina. The Commission finds the Company's requested waiver reasonable and understands the potential difficulty presented to the Company should the waiver not be granted. The Commission therefore grants the requested waiver. However, the Company shall make available its books and records at all reasonable times upon request by ORS, and the Company shall promptly notify the Commission and ORS if the location of its books and records changes. Further, the Commission acknowledges that the Company shall maintain its financial records in conformance with GAAP. Finally, we waive the requirement that the Company file a bond pursuant to S.C. Code Ann. 103-607 until such time as the Company provides retail residential local exchange service in South Carolina.

11. In the event that the Company offers or provides any service that would implicate Title 23, Chapter 47 of the South Carolina Code Annotated, the Company is required to comply with that Title and Chapter, which governs the establishment and implementation of a "Public Safety Communications Center," which is more commonly known as a "911" system or "911 service." Services available through a 911 system include law enforcement, fire, and emergency medical services. In recognition of the necessity of quality 911 services being provided to the citizens of South Carolina, in the event the Company offers or provides the appropriate services, the Commission hereby instructs the Company to contact the appropriate authorities regarding 911 service in the counties and cities where the Company will be operating, should the Company become interconnected

to the public switched telephone network. Contact with the appropriate 911 service authorities is to be made before beginning local exchange telephone service in South Carolina. Located on the homepage of this Commission’s website at [www.psc.sc.gov](http://www.psc.sc.gov) is a “Quick Link” column. One of the tabs in this column is called “E- 911 Information.” Clicking on this tab will provide a list of county and city E-911 coordinators with contact information. By this Order and prior to providing voice or dialtone services in South Carolina, the Company shall contact the 911 coordinator in each county (and city where the city has its own 911 system) and shall provide information regarding the Company’s operations as required by the 911 system.

12. The Stipulation with SCTC is hereby approved and incorporated as part of this Order.

13. This Order shall remain in full force and effect until further order of the Commission.

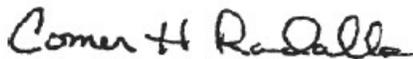
BY ORDER OF THE COMMISSION:



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Swain E. Whitfield, Chairman

ATTEST:



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Comer H. Randall, Vice Chairman

BEFORE  
THE PUBLIC SERVICE COMMISSION OF  
SOUTH CAROLINA

Docket No. 2016-249-C

Re: Application of SBA DAS & Small Cells, )  
LLC for a Certificate of Public )  
Convenience and Necessity to Provide )  
Resold and Facilities-Based Local )  
Exchange and Interexchange )  
Telecommunications Service and for )  
Flexible Regulation )

**STIPULATION**

The South Carolina Telephone Coalition ("SCTC") (see attachment "A" for list of companies) and SBA DAS & Small Cells, LLC ("Applicant") hereby enter into the following stipulations. As a consequence of these stipulations and conditions, SCTC does not oppose Applicant's Application. SCTC and Applicant stipulate and agree as follows:

1. SCTC does not oppose the granting of a statewide Certificate of Public Convenience and Necessity to Applicant, provided the South Carolina Public Service Commission ("Commission") makes the necessary findings to justify granting of such a certificate, and provided the conditions contained within this stipulation are met.

2. Applicant stipulates and agrees that any Certificate which may be granted will authorize Applicant to provide service only to customers located in non-rural local exchange company ("LEC") service areas of South Carolina, except as provided herein.

3. Applicant stipulates that it is not asking the Commission to make a finding at this time regarding whether competition is in the public interest for rural areas.

4. Applicant stipulates and agrees that it will not provide any local service, by its own facilities or otherwise, to any customer located in a rural incumbent LEC's service area, unless and until Applicant provides such rural incumbent LEC and the Commission with written notice of its intent to do so at least thirty (30) days prior to the date of the intended service. During such notice period, the rural incumbent LEC will have the opportunity to petition the Commission to exercise all rights afforded it under Federal and State law. Also, Applicant acknowledges that the Commission may suspend the intended date for service in rural LEC territory for ninety (90) days while the Commission conducts any proceeding incident to the Petition or upon the Commission's own Motion, provided that the Commission can further suspend the implementation date upon showing of good cause.

5. Applicant stipulates and agrees that, if Applicant gives notice that it intends to serve a customer located in a rural incumbent LEC's service area, and either (a) the Commission receives a Petition from the rural incumbent LEC to exercise its rights under Federal or State law within such 30-day period, or (b) the Commission institutes a proceeding of its own, then Applicant will not provide service to any customer located within the service area in question without prior and further Commission approval.

6. Applicant acknowledges that any right which it may have or acquire to serve a rural telephone company service area in South Carolina is subject to the conditions contained herein, and to any future policies, procedures, and guidelines relevant to such proposed service which the Commission may implement, so long as such policies, procedures, and guidelines do not conflict with Federal or State law.

7. The parties stipulate and agree that all rights under Federal and State law are reserved to the rural incumbent LECs and Applicant, and this Stipulation in no way suspends or

adversely affects such rights, including any exemptions, suspensions, or modifications to which they may be entitled.

8. Applicant agrees to abide by all State and Federal laws and to participate, to the extent it may be required to do so by the Commission, in the support of universally available telephone service at affordable rates.

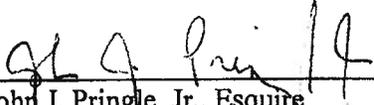
9. Applicant hereby amends its application and its prefiled testimony in this docket to the extent necessary to conform with this Stipulation.

10. Notwithstanding any provision contained herein, the terms, conditions and limitations of the Stipulation apply only in those instances where a rural telephone company's federal exemption under 47 U.S.C. §251(f)(1) is implicated.

AGREED AND STIPULATED to this 25<sup>th</sup> day of July, 2016.

SBA DAS & Small Cells, LLC

South Carolina Telephone Coalition

  
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John J. Pringle, Jr., Esquire  
Adams and Reese, LLP  
1501 Main Street, 5<sup>th</sup> Floor  
Columbia, SC 29201  
(803) 343-1270  
[Jack.pringle@arlaw.com](mailto:Jack.pringle@arlaw.com)

Attorney for Applicant

  
\_\_\_\_\_  
M. John Bowen, Jr.  
Margaret M. Fox  
McNair Law Firm, P.A.  
Post Office Box 11390  
Columbia, South Carolina 29211  
(803) 799-9800  
[jbowen@mcnair.net](mailto:jbowen@mcnair.net)  
[pfox@mcnair.net](mailto:pfox@mcnair.net)

Attorneys for the South Carolina Telephone  
Coalition

ATTACHMENT A

South Carolina Telephone Coalition Member Companies  
for Purposes of Local Service Stipulation

Chesnee Telephone Company  
Chester Telephone Company, d/b/a TruVista  
Comporium, Inc. (f/k/a Rock Hill Telephone Company)  
Farmers Telephone Cooperative, Inc.  
Ft. Mill Telephone Company, d/b/a Comporium  
Home Telephone ILEC, LLC d/b/a Home Telecom  
Lancaster Telephone Company, d/b/a Comporium  
Lockhart Telephone Company, d/b/a TruVista  
McClellanville Telephone Company (TDS)  
Norway Telephone Company (TDS)  
Palmetto Rural Telephone Cooperative, Inc.  
Piedmont Rural Telephone Cooperative, Inc.  
PBT Telecom, d/b/a Comporium  
Ridgeway Telephone Company, d/b/a TruVista  
Sandhill Telephone Cooperative, Inc.  
St. Stephen Telephone Company (TDS)  
West Carolina Rural Telephone Cooperative, Inc.  
Williston Telephone Company (TDS)