

**BEFORE THE TENNESSEE REGULATORY AUTHORITY**

**NASHVILLE, TENNESSEE**

**April 18, 2011**

**IN RE:**

**APPLICATION OF ATC OUTDOOR DAS, LLC FOR A  
CCN TO PROVIDE FACILITIES-BASED AND RESOLD  
COMPETING LOCAL AND INTEREXCHANGE  
TELECOMMUNICATIONS SERVICES AND REQUEST  
FOR MARKET REGULATION**

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**DOCKET NO.  
10-00228**

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**ORDER GRANTING CERTIFICATE OF  
PUBLIC CONVENIENCE AND NECESSITY**

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This matter came before Chairman Mary W. Freeman, Director Eddie Roberson and Director Kenneth C. Hill of the Tennessee Regulatory Authority (the "Authority"), the voting panel assigned to this docket, at a Hearing held on March 28, 2011 to consider the *Application for a Certificate to Provide Facilities-Based and Resold Competing Local Telecommunications Services and Facilities-Based and Resold Interexchange Telecommunications Services and Request for Market Regulation* (the "*Application*") filed on December 14, 2010 by ATC Outdoor DAS, LLC ("ATC" or "Applicant"). In its *Application*, ATC seeks a Certificate of Public Convenience and Necessity ("CCN") for authority to provide facilities-based and resold competing local telecommunications services in Tennessee.

**Legal Standard for Granting Certificate of Public Convenience and Necessity**

ATC's *Application* was made pursuant to and considered in light of the criteria for granting a CCN as set forth in Tenn. Code Ann. § 65-4-201 (Supp. 2010), which provides, in pertinent part:

(a) No public utility shall establish or begin the construction of, or operate any line, plant, or system, or route in or into a municipality or other territory already receiving a like service from another public utility, or establish service therein, without first having obtained from the authority, after written application and hearing, a certificate that the present or future public convenience and necessity require or will require such construction, establishment, and operation, and no person

or corporation not at the time a public utility shall commence the construction of any plant, line, system or route to be operated as a public utility, or the operation of which would constitute the same, or the owner or operator thereof, a public utility as defined by law, without having first obtained, in like manner, a similar certificate . . .

\* \* \*

(c) After notice to the incumbent local exchange telephone company and other interested parties and following a hearing, the authority shall grant a certificate of convenience and necessity to a competing telecommunications service provider if after examining the evidence presented, the authority finds:

(1) The applicant has demonstrated that it will adhere to all applicable commission policies, rules and orders; and

(2) The applicant possesses sufficient managerial, financial, and technical abilities to provide the applied for services.

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Furthermore, pursuant to Tenn. Code Ann. § 65-5-112 (2004), a competing telecommunications provider is required to file with the Authority (1) a plan containing the provider's plan for purchasing goods and services from small and minority-owned telecommunications businesses; and (2) information on programs that might provide technical assistance to such businesses.

### **The March 28, 2011 Hearing**

Pursuant to Tenn. Code Ann. § 65-4-204 (2004), public notice of the Hearing in this matter was issued by the Hearing Officer on March 21, 2011. No persons sought intervention prior to or during the Hearing.

During the Hearing held on March 28, 2011, Mr. Michael Hill, Project Manager in DAS Strategic Relations Division, participated in the Hearing, and adopted the pre-filed testimony of Mr. Alexander Gamota and was subject to examination by the panel. Chuck Welch, Esq. represented the Company.

## **I. ATC's Qualifications**

1. ATC was incorporated under the laws of Delaware on December 20, 2007 and was licensed to transact business in Tennessee by the Secretary of State as of February 7, 2008.

2. The complete street address of the corporate office of ATC is 400 Regency Forest Drive, Suite 300, Cary, North Carolina 27518-7723. The telephone number is (919) 465-6665.

3. The *Application* and supporting information existing in the record indicate that ATC has the requisite technical and managerial ability to provide the applied for telecommunications services within the State of Tennessee. Specifically, ATC's senior management team possesses sufficient business, technical and operational experience.

4. ATC has the necessary capital and financial ability to provide the services it proposes to offer.

5. ATC has represented that it will adhere to all applicable statutes, policies, rules and orders of the Authority.

## **II. Proposed Services**

ATC will provide radio frequency Transport Services to business customers and is seeking the full range of resold and facilities-based local exchange and interexchange authority throughout the state so that it can have flexibility in provisioning its services in the future.

## **III. Permitting Competition to Serve the Public Convenience and Necessity**

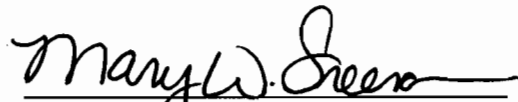
Upon a review of the *Application* and the record in this matter, the panel found that approval of ATC's *Application* would inure to the benefit of the present and future public convenience by permitting competition in the telecommunications services markets in the State of Tennessee and fostering the development of an efficient, technologically advanced statewide system of telecommunications services.

**IV. Small and Minority-Owned Telecommunications Business Participation Plan and Business Assistance Program**

ATC has filed a satisfactory small and minority-owned telecommunications business participation plan pursuant to Tenn. Code Ann. § 65-5-112 (2004) and the Authority's Rules.

**IT IS THEREFORE ORDERED THAT:**

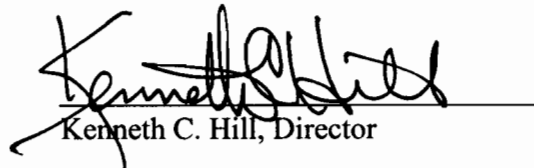
*The Application for a Certificate to Provide Facilities-Based and Resold Competing Local Telecommunications Services and Facilities-Based and Resold Interexchange Telecommunications Services and Request for Market Regulation* filed by ATC Outdoor DAS, LLC is approved; however, ATC shall file its request for market regulation in a separate docket.



Mary W. Freeman, Chairman



Eddie Roberson, Director



Kenneth C. Hill, Director