

**PENNSYLVANIA PUBLIC UTILITY COMMISSION
HARRISBURG, PENNSYLVANIA 17120**

Application of SQF, LLC for approval to offer, render, furnish or supply telecommunications services as a Competitive Access Provider throughout the Commonwealth of Pennsylvania

**Public Meeting November 5, 2015
2490501-TUS
Docket No. A-2015-2490501**

**STATEMENT OF
VICE CHAIRMAN JOHN F. COLEMAN, JR.**

SQF, LLC (SQF or Applicant) requests a Certificate of Public Convenience (CPCN) from the Commission to operate as a Competitive Access Provider (CAP) in Pennsylvania. SQF seeks authority to provide radio frequency (RF) transport and backhaul services to commercial mobile radio service (CMRS) providers using a system of fiber optic cables and small antennas and conversion equipment attached to poles and other structures.¹ SQF also may transport and distribute its commercial wireless customers' data services. SQF avers that it will provide both interstate and intrastate wholesale services in Pennsylvania.

A threshold question raised by the application is whether SQF is a public utility under Pennsylvania law that can be certificated by the Commission. Based on the application and discussions with the Applicant, SQF could be viewed as offering "mobile domestic cellular radio telecommunications service" that is expressly excluded from the definition of "public utility" under the Public Utility Code (Code).² The argument is that the service is part and parcel of and cannot be separated from the underlying mobile cell phone service provided to retail end users. As such, SQF would not be a public utility under Pennsylvania law.

On the other hand, SQF will not be directly offering mobile cell phone service to retail customers. Rather, SQF will be offering a wholesale, facilities-based transport service to carriers that do offer such services. SQF's service offering could be viewed as a fixed, not mobile, point-to-point service that is separate and distinct from the mobile cell phone service provided to retail end users. Based on this view, SQF could be considered a public utility under Pennsylvania law.³

¹ Carriers like SQF often are called DAS providers because they gather, transport, and distribute CMRS traffic through a distributed antennae system or "DAS" in combination with other network facilities and equipment.

² Section 102(2)(iv) of the Code excludes from the definition of "public utility" any "person or corporation who or which furnishes mobile domestic cellular radio telecommunications service." 66 Pa. C.S. § 102(2)(iv). CMRS is a defined term in the federal Communications Act but not in the Public Utility Code. However, I view CMRS as synonymous with "mobile domestic cellular radio telecommunications service."

³ 66 Pa. C.S. § 102(1)(vi). SQF's service could be viewed as "conveying or transmitting messages or communications by domestic public land mobile radio service" in accordance with Code Section 102(1)(vi).


I note that SQF's application was unopposed. I further note that the Commission previously has granted CPCNs to DAS providers seeking CAP authority to offer RF transport and backhaul services to CMRS carriers.⁴ This includes granting CAP authority to Gamma Ventures, LLC, which is a decision that I previously supported.⁵ Therefore, in granting SQF's application, the Commission would be treating SQF like the other DAS providers that have come before it requesting a CPCN. For these reasons, I am willing to grant SQF CAP authority in Pennsylvania at this time.

At the same time, I believe there is a legitimate question as to whether the Commission can certificate carriers like SQF. Although I support certificating SQF at this time, I still question whether a DAS provider like SQF is a "public utility" as defined by Pennsylvania law that can be certificated.⁶ I also question whether the Commission is required under federal law to certificate a DAS provider.⁷

Furthermore, it is my understanding that the DAS applications for authority that the Commission previously granted were all uncontested. This means that the legal and factual issues surrounding whether to certificate DAS carriers have yet to be fully and openly vetted in an on-the-record proceeding before the Commission.

For these reasons, I support initiating a formal proceeding to examine the issues surrounding certification of DAS carriers, including whether DAS providers are public utilities under Pennsylvania law that can be certificated and whether the Commission is required to certificate these carriers under federal law. This approach has the added benefit of ensuring that no individual DAS provider is singled out and that all DAS providers are treated in a competitively-neutral manner regarding their certification status.

DATE: November 5, 2015



JOHN F. COLEMAN, JR.
VICE CHAIRMAN

⁴ See, e.g., *Application of ATC Outdoor DAS, LLC for approval to offer, render, furnish or supply telecommunication services as a Competitive Access Provider to the Public in the Commonwealth of Pennsylvania*, A-2008-2072972 (Order entered December 22, 2008).

⁵ *Application of Gamma Ventures, LLC for approval to offer, render, furnish or supply telecommunication services as a Competitive Access Provider to the Public in the Commonwealth of Pennsylvania*, A-2014-2412630 (Order entered June 19, 2014).

⁶ Again, the Code expressly excludes CMRS carriers from the definition of "public utility." SQF essentially collects CMRS traffic from end-user customers and delivers it to the CMRS provider's network, which can be argued does not change the nature of the service from CMRS. Nevertheless, I view the nature of DAS service as an issue that should be examined further by the Commission. Another issue to examine is how DAS service compares to the wholesale services provided by other telecommunications carriers certificated in Pennsylvania as public utilities, including the wholesale services provided to retail VoIP and Internet service providers.

⁷ As one example, under federal law, "[n]o State or local statute or regulation... may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service." 47 U.S.C. § 253(a). A Commission finding that a DAS provider is not a public utility would not preclude the provider from operating in Pennsylvania. Rather, the provider would be able to operate but without Commission oversight. Thus, I do not necessarily view denying Commission certification to DAS providers as prohibiting or having the effect of prohibiting DAS service in Pennsylvania. Nevertheless, whether failing to certificate a DAS provider violates federal law is another issue that should be examined further by the Commission.