

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In that Matter of the Petition of Broadweave)	<u>DOCKET NO. 03-2410-01</u>
Networks of Utah LLC for Certificate of Public)	
Convenience and Necessity to Provide Local)	
Exchange and Facilities-Based interexchange)	
Services)	<u>REPORT AND ORDER</u>

ISSUED: September 29, 2003

SYNOPSIS

By this Report and Order, the Public Service Commission of Utah (the Commission) grants the request of Broadweave Networks of Utah, LLC (Applicant) for a Certificate of Public Convenience and Necessity (Certificate) authorizing Applicant to provide public telecommunications services within the State of Utah within the service territory of Qwest Corporation. The Commission, having considered the record in this proceeding and the applicable law, hereby makes, adopts, and enters the following Report and Order.

By the Commission:

PROCEDURAL HISTORY

Broadweave Networks of Utah, LLC (Applicant) filed its Application on July 9, 2003, pursuant to Utah Code Annotated ' 54-8b-1.1 *et. seq.*, and Title 63, Chapter 46b of the Utah Administrative Procedures Act. Qwest Corporation, the Incumbent Local Exchange Carrier (AILEC), sought intervention and stated it took no position on whether Applicant has “sufficient technical, financial, and managerial resources and abilities to provide the public telecommunications services applied for.”

The Division of Public Utilities (“DPU”) reviewed the Application and supporting materials and submitted a September 5, 2003, Memorandum. In its Memorandum, the DPU concludes that Applicant has sufficient financial, technical and managerial resources required by Utah Code 54-8b-2.1 and Commission rule. Although the DPU believes the Applicant meets the requirements concerning financial, technical and managerial concerns, it recommends that the Commission schedule a hearing to consider matters raised in its Memorandum.

The DPU raises concerns concerning the willingness and ability of Applicant to interconnect with other carriers and providing access to Applicant’s facilities. Applicant has responded to the DPU’s concerns and asserts that requiring a greater showing from Applicant, greater than the statutory identified criteria and greater than past Commission practice, would be unwarranted and discriminatory. We recognize that the DPU is attempting to preemptively address potential interconnection issues that may arise in one, limited, geographic area. We agree, however, with Applicant that such issues need not be addressed in proceedings concerning the issuance of the certificate. Utah law is clear that all telecommunications corporations are required to interconnect and make their essential facilities available. Utah Code 54-8b-2.2. A certificate holder is expected to comply with Utah law. The retention of its certificate is affected by its conformity with Utah law. Future disputes on interconnection issues, if they actually arise, may be resolved by the Commission. E.g., Utah Code 54-8b-17.

Applicant has made out a *prima facie* case in support of the Application Accordingly, the Commission, having been fully advised in the premises, enters the following Report, containing proposed Findings of Fact, Conclusions of Law, and the Order based thereon.

FINDINGS OF FACT

1. Applicant is qualified to do business in Utah.
2. Applicant has requested that the Commission grant a Certificate of Public Convenience and Necessity authorizing it to provide public telecommunications services within the State of Utah within the service territory of Qwest Corporation. .
3. Applicant is proposing to provide facilities-based services.
4. Applicant will utilize its managerial and technical expertise to support its Utah operations.
5. Applicant has sufficient technical resources and abilities to provide the public telecommunications services for which it has applied for a Certificate.
6. Applicant has sufficient managerial resources and abilities to provide the public telecommunications services for which it has applied for a Certificate.
7. Applicant has a secure and sufficient source of funding for its Utah operations that will enable it to meet projected capital and operating expenses and to implement its business plans.
8. Applicant has sufficient financial resources and abilities to provide the public telecommunications services for which it has applied for a Certificate.
9. In its provision of intrastate services, Applicant will be subject to competition from other certified telecommunications services providers.
10. The issuance of a Certificate to Applicant to provide public telecommunications

services is in the public interest.

11. The reporting requirements in Exhibit B attached hereto are in the public interest and should be binding upon Applicant until modified by the Commission.

12. Applicant has applied for exemptions from the requirements of various procedures of the Utah Code and the Commission's Rules and Regulations.

13. The grant of exemptions from the provisions of the Utah Code and the Commission's Rules and Regulations, as set forth in Exhibit B, is in the public interest.

CONCLUSIONS OF LAW

1. It is in the public interest to convert this matter to an informal proceeding, pursuant to ' 63-46b-4(3), UCA 1953, as amended.

2. Applicant meets each of the statutory requirements (' ' 54-8b-2.1, *et. seq.* UCA 1953, as amended) for issuance of a Certificate as a telecommunications corporation.

3. Applicant meets each of the statutory requirements (' ' 54-8b-2.1, *et. seq.*, UCA 1953, as amended) for authorization to provide the public telecommunications services for which it seeks a Certificate.

4. The issuance of a Certificate to Applicant to provide the telecommunications services for which it has applied is in accord with the legislative policy declarations set forth in Utah Code ' 54-8b-1.1.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED as follows:

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! This matter be, and it is, converted to an informal proceeding pursuant to
' 63-46b-4(3), UCA 1953, as amended.

! The Commission hereby grants Applicant the Certificate that is
attached hereto as Exhibit A and by this reference made a part of this Report and Order.

! Applicant shall provide reports to the Commission and to the Division of
Public Utilities, Utah Department of Commerce, as set forth in Exhibit B and by this reference
made part of this Report and Order.

! Applicant is exempt from certain provisions of the Utah Code and the
Commission=s Rules and Regulations, as set forth in Exhibit B.

! As Applicant does not propose to take customer deposits nor provide
pre-paid services, the Commission=s bond requirement is waived.

DATED at Salt Lake City, Utah, this 29th day of September 2003.

/s/ Ric Campbell, Chairman

/s/ Constance B. White, Commissioner

/s/ Ted Boyer, Commissioner

Attest:

/s/ Julie Orchard
Commission Secretary
G# 35289

EXHIBIT A

In that Matter of the Petition of Broadweave)	<u>DOCKET NO. 03-2410-01</u>
Networks of Utah LLC for Certificate of Public)	
Convenience and Necessity to Provide Local)	
Exchange and Facilities-Based interexchange)	
Services)	<u>CERTIFICATE</u>

ISSUED: September 29, 2003

By the Commission:

The Public Service Commission of Utah, pursuant to the Utah Code Ann. ' ' 54-8b-2.1, *et. seq.*, hereby issues a Certificate of Public Convenience and Necessity authorizing UPDATE (AGrantee@) to provide public telecommunications services within the State of Utah, excluding those local exchanges of less than 5,000 access lines of incumbent telephone corporations with fewer than 30,000 access lines in the state.

DATED at Salt Lake City, Utah, this 29th day of September 2003.

/s/ Ric Campbell, Chairman

/s/ Constance B. White, Commissioner

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/s/ Ted Boyer, Commissioner

Attest:

/s/ Julie Orchard
Commission Secretary
GW 35289

EXHIBIT B

I. Annual Report

Grantee shall file an Annual Report, on or before March 31 of each year, unless said grantee requests and obtains an extension. The Annual Report shall contain the following:

A. **Annual Revenues** from operations attributable to the State of Utah by major service categories. Such information would be provided on a **Total Utah** and **Utah Intrastate** basis. **Total Utah** will consist of the total of interstate and intrastate revenues. **Utah Intrastate** will reflect only revenues derived from intrastate tariffs, price lists, or contracts. Both **Total Utah** and **Intrastate Utah** revenues shall be reported according to at least the following classes of service:

- (1) private line and special access,
- (2) business local exchange,
- (3) residential local exchange,
- (4) measured interexchange, and
- (5) vertical services.

Business local exchange, residential local exchange and vertical service revenue will be reported by geographic area, to the extent feasible.

B. **Annual Expenses and Estimated Taxes** attributed to operations in the State of Utah.

C. **Year End Balances by Account for Property, Plant, Equipment, Annual Depreciation, and Accumulated Depreciation** for telecommunications investment in Utah. The Actual Depreciation Rates which were applied in developing annual and accumulated depreciation figures shall also be shown.

D. **Financial Statements** maintained in accordance with generally accepted accounting principles in the ordinary course of business. These financial statements shall at a minimum include an income statement, balance sheet and statement of cash flows.

E. **List of Services** offered to customers and the geographic areas in which those services are offered. This list shall be current and shall be updated whenever a new service is offered or a new area is served.

F. **Number of Access Lines in Service** by geographic area, segregated between business and residential customers.

G. **Number of Messages and Minutes of Services** for measured services billed to end users.

H. **List of Officers and Responsible Contact Personnel** updated annually.

I. **Chart of Accounts.** In addition to the foregoing, said grantee will provide its chart of accounts as existing and updated (no less than annually). Said Grantee will also work with the Division in good faith to develop a method of estimating intrastate expenses and investments.

II. Applicable Statutory Provisions and Exemptions from Statutes and Waiver of Regulations.

Grantee shall be exempted from the following statutory provisions and regulations:

A. Exemptions from Title 54

54-3-8, 54-3-19	--	Prohibitions of discrimination
54-7-12	--	Rate increases or decreases
54-4-21	--	Establishment of property values
54-4-24	--	Depreciation rates
54-4-26	--	Approval of expenditures

B. Waivers of Regulations

R746-340-2(D)	--	Uniform System of Accounts (47 C.F.R. 32)
R746-340-2(E)(1)	--	Tariff filings required
R746-340-2(E)(2)	--	Exchange Maps
R746-341	--	Lifeline 1
R746-344	--	Rate case filing requirements

This regulation would be waived only until the Commission establishes Lifeline rules that may include Grantee or until it begins to provide residential local exchange service.

R746-401	--	Reporting of construction, acquisition and disposition of assets
R746-405	--	Tariff formats
R746-600	--	Accounting for post-retirement

III. Obligations with Respect to Provision of Services.

Grantee agrees to provide service within specified geographic areas upon reasonable request and subject to the following conditions:

A. Grantee's obligation to furnish service to customers is dependent upon the availability of suitable facilities on its own network and the networks of underlying carriers. Grantee will provide a map identifying the areas within the state of Utah where it is offering any services. The map will be updated as Grantee serves new areas and no less frequently than annually.

B. Grantee will only be responsible for the operation and maintenance of services that it provides.

IV. Modification

It is anticipated that to the extent such requirements impact competitive entry or impact effective competition that they will be subject to the rulemaking requirements of the Utah Code Ann. ' 54-8b-2.2 and that the provisions set forth herein shall be superseded by any such rule adopted by the Commission.