

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of the Application of)
Wholesale Carrier Services, Inc. for a) DOCKET NO. 11-2545-01
Certificate of Public Convenience and)
Necessity to Provide Resold and Facilities-)
Based Local Exchange Services within the) ORDER DENYING
State of Utah) APPLICANT FOR "CPCN"

ISSUED: March 9, 2012

By The Commission:

BACKGROUND

On November 22, 2011, Wholesale Carrier Services, Inc. ("Wholesale") filed an application for a certificate of public convenience and necessity ("CPCN") to provide resold facilities-based local exchange services within the State of Utah. See Application, filed November 22, 2011. On December 12, 2011, the Commission issued an action request to the Division of Public Utilities ("Division") on Wholesale's application.

While the Division's action request was pending, the Utah Rural Telecom Association ("URTA"), on behalf of itself and URTA members, petitioned the Commission for intervention on January 6, 2012. See Petition, filed January 6, 2012. URTA's petition explains that it is seeking intervention because "[Wholesale's] application does not indicate it is seeking its certificate only in those areas with more than 5,000 access lines. Therefore, URTA's interest in this proceeding is [Wholesale's] potential entry into a Frontier exchange with fewer than 5,000 access lines." Id. at 2. URTA's petition to intervene was granted on January 27, 2012. See Order Granting Intervention, issued January 27, 2012.

On January 9, 2012, the Division of Public Utilities (“Division”) filed a recommendation to approve Wholesale’s application. See Division Recommendation, filed January 9, 2012. The Division’s recommendation states, in part: “The Applicant seeks statewide authority except within exchange areas with less than 5,000 access lines that are owned or controlled by an ILEC [Incumbent Local Exchange Carrier] with fewer than 30,000 total access lines in accordance with Utah Code Ann. § 54-8b-2.1(3) and (4).”

On January 30, 2012, the Office of Consumer Services (“Office”) filed a response noting there could be a conflict in the information submitted by the Division and the actual service area sought to be served by Wholesale. See Office Response, filed January 30, 2012. The Office explained that it had served a discovery request upon Wholesale in order to clarify certain parts of Wholesale’s application. See id. at 2. Specifically, “[t]he Office asked [Wholesale] if it intended to serve in Frontier’s service territory with less than 5,000 access lines (which would be in areas other than the Moab exchange).” Id. Wholesale responded, “Yes.” Id. “The Office also asked if [Wholesale] intended to serve the entire Frontier service territory or only those areas with greater than 5,000 access lines.” Id. Wholesale responded that it intends to serve the “entire” Frontier service territory. Id. Based on the foregoing, the Office recommends the Commission not approve a CPCN until Wholesale clarifies its application on this issue.

On February 9, 2012, a scheduling conference was conducted by the administrative law judge for the Commission. The scheduling conference was duly noticed on February 2, 2012. The scheduling conference was conducted “to determine the scope of the hearing, particularly in light of the conflicting information submitted by the [Division] and the [Office] related to the scope of the service area in which the applicant seeks to serve.” Notice of

Scheduling Conference, filed February 2, 2012, at 1. Wholesale did not attend the scheduling conference but several other interested parties were present. Given that Wholesale did not attend the scheduling conference and had not otherwise responded to the Commission, clarification was still needed regarding Wholesale's application and, more specifically, where Wholesale intended to serve within the State.

On February 15, 2012, the Commission issued an order requiring additional information from Wholesale before its application for CPCN could be considered further. The order states: "Because it is unclear what service area Wholesale seeks to serve, it is necessary for Wholesale to amend its application. Therefore, the Commission hereby requests a written response, clarifying this matter, within 20 days of the date of this order." Order, issued February 15, 2012, at 3.

The 20-day response deadline expired on March 6, 2012, and Wholesale filed no response.

ORDER

Because Wholesale did not attend the scheduling conference and did not file a response as requested, Wholesale's application for a CPCN is hereby denied. The denial is without prejudice; therefore, Wholesale may re-file its application if it so desires. If it does so, it shall specify each of the exchanges it intends to serve.

DATED at Salt Lake City, Utah, this 9th day of March, 2012.

/s/ Melanie A. Reif
Administrative Law Judge

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Approved and confirmed this 9th day of March, 2012, as the Order Denying Applicant for “CPCN” of the Public Service Commission of Utah.

/s/ Ted Boyer, Chairman

/s/ Ric Campbell, Commissioner

/s/ Ron Allen, Commissioner

Attest:

/s/ Gary L. Widerburg
Commission Secretary

D#218140

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 9th day of March, 2012, a true and correct copy of the foregoing Order Denying Applicant for “CPCN” was served upon the following as indicated below:

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