

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

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In the Matter of the Joint Application of TNCI)
Operating Company LLC, Assignee, and)
Trans National Communications International,)
Inc., Assignor, for Approval of TNCI)
Operating Company LLC to Acquire)
Customers and Certain Assets of Trans)
National Communications International, Inc.;)
and Application of TNCI Operating Company)
LLC for a Certificate of Public Convenience)
and Necessity)
)

DOCKET NO. 13-2431-01

REPORT AND ORDER

ISSUED: July 31, 2013

SYNOPSIS

By this Report and Order, the Commission converts this matter to an informally adjudicated matter. The Commission approves the application of TNCI Operating Company LLC for a Certificate of Public Convenience and Necessity authorizing applicant to compete as a Competitive Local Exchange Carrier within Utah. In addition, the Commission approves the joint application of TNCI Operating Company LLC to acquire customers and certain assets of Trans National Communications International, Inc.

By The Commission:

BACKGROUND

This matter is before the Commission on the application of TNCI Operating Company LLC (“TNCI”) for a Certificate of Public Convenience and Necessity (“CPCN” or “Certificate”) as a Competitive Local Exchange Carrier. As TNCI explains in its application, TNCI seeks to have the CPCN of Trans National Communications International, Inc. (“Trans National”) transferred to TNCI as result of a sale in United States Bankruptcy Court; however, in the event that the Commission determines the Certificate granted to Trans National cannot be

transferred to TNCI, TNCI requests a separate Certificate be granted to TNCI. See Joint Application at 2, filed May 1, 2013.

TNCI and Trans National (collectively, “Applicants”) also seek approval of TNCI to acquire customers and certain assets of Trans National. Applicants filed their petition on May 1, 2013. TNCI and Trans National seek adjudication of their application pursuant to Utah Code Ann. § 54-4-30.¹ Applicants also seek informal adjudication pursuant to Utah Admin. Code R746-110-1.

The Administrative Law Judge for the Commission held a duly-noticed hearing in this docket on July 1, 2013, pursuant to Utah Code Ann. § 54-4-30.²

I. Application for CPCN

TNCI filed its application on May 1, 2013, seeking a CPCN if the Commission determines that the Certificate held by Trans National cannot be transferred to TNCI. The application contains detailed information regarding the technical, financial, and managerial resources and abilities of TNCI to provide public telecommunications services it seeks to offer.

On May 29, 2013, the Division of Public Utilities (the “Division”) filed a memorandum recommending approval of the application. The Division reviewed the technical, managerial, and financial abilities of TNCI and found that it provided the necessary information to fulfill the requirements stated in existing Commission rules. The Division believes TNCI’s management team has adequate experience in the telecommunications industry. The Division reports TNCI seeks authority as a reseller of local exchange services in the service areas of

¹ Utah Code Ann. § 54-4-30 requires consent of the Commission before a public utility may acquire properties of a like utility. “Such consent shall be given only after investigation and hearing and finding that said purchase . . . will be in the public interest.” Utah Code Ann. § 54-4-30 (2010).

² See id.

CenturyLink and any other existing or future local exchange carrier providing service in Utah. TNCI represents it intends to negotiate with CenturyLink for an interconnection agreement. TNCI, according to the Division, does not plan to operate an office within Utah. TNCI represents it intends to provide a full range of telecommunications services to business and enterprise customers in the incumbent, CenturyLink, exchanges statewide in Utah, consistent with the exchange maps CenturyLink has on file with the Commission. At this time, TNCI does not have plans to serve residential customers, but may do so in the future as market conditions warrant.

As noted in the Division's memorandum, TNCI asserts approval of its application will serve the public interest, enhance competition, and expand customer service options. According to TNCI, it has never had any complaints, nor has any investigation been undertaken against it or any of its affiliates involving unauthorized switching (slamming) or any other illegal activities. TNCI states it does not have a written slamming policy, but intends to comply with all applicable laws.

The Division recommends the Commission waive the requirement that TNCI file proof of a \$100,000 bond, because TNCI will not require customer deposits or prepayments of any kind.

The Division expects the application will be unopposed and uncontested; therefore, the Division recommends the Commission adjudicate this application informally per Utah Admin. Code R746-110-1.

In light of the foregoing, the Commission enters the following Findings of Fact, Conclusions of Law, and Order.

FINDINGS OF FACT

1. This matter can be reasonably expected to be unopposed and uncontested. There are no intervenors and no opposition to the application.
2. Applicant has filed sworn statements or other supporting documents containing the necessary information in support of the application.
3. Applicant has demonstrated it is qualified to do business in Utah.
4. Applicant requests the Commission grant the Certificate authorizing it to provide public telecommunications services within Utah.
5. Applicant initially proposes to provide public telecommunications service in Utah, within the CenturyLink service area, and that is the extent to which Applicant is granted authority through this order. If Applicant wants to provide public telecommunications service outside of the CenturyLink service area, Applicant must submit a new application demonstrating that granting Applicant additional service area is in the public interest.
6. Applicant will utilize its managerial expertise to support its Utah operations.
7. Applicant has sufficient technical resources and abilities to provide the public telecommunications services it desires to offer.
8. 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.
9. In providing intrastate services, Applicant will be subject to competition from other certified telecommunications service providers.

DOCKET NO. 13-2431-01

- 5 -

10. Applicant's service offerings will provide customers with a wider range of choice in meeting their telecommunications needs and will support the development of competition.
11. Applicant will not require customer deposits or offer any prepaid services in Utah.
12. Applicant has applied for waiver of the \$100,000 bond.

CONCLUSIONS OF LAW

1. This matter should be adjudicated informally, without a hearing.
2. Applicant meets each of the statutory requirements of Utah Code Ann. §§ 54-8b-1.1 *et seq.* for the requested Certificate.
3. The requested exemption from the \$100,000 bond requirement is in accordance with Commission practice, and is in the public interest.
4. Issuance of the requested Certificate to provide public telecommunications services, as described in the application, is in accordance with the legislative policy set forth in Utah Code Ann. §§ 54-8b-1.1 *et seq.*, and is in the public interest.
5. Restricting the Applicant's Certificate to exclude those exchanges with less than 5,000 access lines that are served by incumbent telephone corporations with fewer than 30,000 access lines in the state is in the public interest.

ORDER -- CPCN

The Commission, in light of the Findings and Conclusions above, ORDERS:

- a. The application shall be adjudicated informally;

- b. Applicant is granted the Certificate attached hereto as Exhibit A, which exhibit is incorporated by reference into this Order, as if set forth here;
- c. Applicant shall provide reports to the Commission and to the Division as set forth in Exhibit B, which exhibit is incorporated by reference into this Order, as if set forth here;
- d. The reporting requirements in Exhibit B shall be binding upon Applicant until modified by the Commission;
- e. Applicant shall be exempt from certain provisions of the Utah Code and the Commission's Rules and Regulations, as set forth in Exhibit B;
- f. The bond requirement is waived;
- g. Any person may file a protest prior to this order's effective date (20 days from its issuance) and, if the Commission finds the protest to be meritorious, the effective date shall be suspended pending further proceedings. Otherwise, this order shall take effect 20 days from its issuance.

II. Application for Approval to Acquire Customers and Certain Assets

TNCI and Trans National also jointly seek Commission approval of TNCI to acquire customers and certain assets of Trans National.

On May 29, 2013, in response to a Commission action request, the Division of Public Utilities (the "Division") submitted a recommendation to approve the application. The Division's memo states: The Division "has reviewed the joint application between . . . TNCI . . . and Trans National . . . and believes that the transfer of control is in the public interest. As a

result of the acquisition . . . TNCI will be able to provide the telecom services that were being provided by Trans National without interruption to the current customers.” Division Memo at 1, filed May 29, 2013.

The Commission issued a public notice of the application and notice of hearing on June 11, 2013, allowing for the submission of comments by any interested party regarding the application. No comments or objections were received.

On July 1, 2013, the Administrative Law Judge (“ALJ”) for the Commission held a hearing, pursuant to Utah Code Ann. § 54-4-30. Brett P. Ferenchak appeared telephonically on behalf of TNCI and was joined telephonically by Jeff Compton, CEO and president of TNCI, and Peter Helms, vice president of TNCI. Mr. Ferenchak moved for *pro hac vice* admission. Justin Jetter, Assistant Utah Attorney General, appeared for the Division, and was accompanied by Ron Slusher, Utility Technical Consultant for the Division. No objection was made to Mr. Ferenchak’s motion for *pro hac vice* admission, and the motion was granted.³

Mr. Ferenchak summarized TNCI’s application as follows: “TNCI . . . is seeking approval to acquire the customers and assets of Trans National . . . through a sale pursuant to . . . Section 363 of the United States Bankruptcy Code.” Transcript of Hearing at 6; lines 20-25.

Mr. Slusher testified on behalf of the Division in support of the application. Mr. Slusher further testified that approval by the Commission of the transfer of control is just, reasonable, and in the public interest. Transcript of Hearing at 17; lines 5-12.

³ The ALJ granted the motion with the caveat that Mr. Ferenchak comply with the Commission’s rule pertaining to *pro hac vice* admission in future filings, as set forth on the Commission’s website. For convenience, the Commission provides the link here for future reference:
<http://www.psc.utah.gov/faq/Pro%20Hac%20Vice%20Notice%20to%20Attorneys%20licensed%20in%20foreign%20state.pdf>.

No one appeared at the hearing objecting to the application.

Under Utah Code Ann. § 54-4-30, a public utility may acquire properties of a like utility with consent and approval of the Commission “only after investigation and hearing and finding that said purchase . . . will be in the public interest.” Utah Code Ann. § 54-4-30 (2010). Based on the Division’s recommendation and testimony, the Commission finds TNCI’s request for approval to acquire customers and certain assets of Trans National will be in the public interest.

ORDER -- APPROVAL TO ACQUIRE CUSTOMERS AND CERTAIN ASSETS

For the foregoing reasons, the Commission approves TNCI’s request to acquire customers and certain assets of Trans National.

DATED at Salt Lake City, Utah this 31st day of July, 2013.

/s/ Ron Allen, Chairman

/s/ David R. Clark, Commissioner

/s/ Thad LeVar, Commissioner

Attest:

/s/ Gary L. Widerburg
Commission Secretary

D#246013

Notice of Opportunity for Agency Review or Rehearing

Pursuant to Utah Code Ann. §§ 63G-4-301 and 54-7-15, a party may seek agency review or rehearing of this order by filing a request for review or rehearing with the Commission within 30 days after the issuance of the order. Responses to a request for agency review or rehearing must be filed within 15 days of the filing of the request for review or rehearing. If the Commission fails to grant a request for review or rehearing within 20 days after the filing of a request for review or rehearing, it is deemed denied. Judicial review of the Commission's final agency action may be obtained by filing a Petition for Review with the Utah Supreme Court within 30 days after final agency action. Any Petition for Review must comply with the requirements of Utah Code Ann. §§ 63G-4-401, 63G-4-403, and the Utah Rules of Appellate Procedure.

EXHIBIT A

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of the Joint Application of TNCI Operating Company LLC, Assignee, and Trans National Communications International, Inc., Assignor, for Approval of TNCI Operating Company LLC to Acquire Customers and Certain Assets of Trans National Communications International, Inc.; and Application of TNCI Operating Company LLC for a Certificate of Public Convenience and Necessity

DOCKET NO. 13-2431-01

CERTIFICATE 2431

ISSUED: July 31, 2013

By The Commission:

The Public Service Commission of Utah, pursuant to Utah Code Ann. § 54-8b-2.1, issues a Certificate of Public Convenience and Necessity authorizing TNCI Operating Company LLC to provide public telecommunications service within the State of Utah, excluding those local exchanges of less than 5,000 access lines that are owned or controlled by an incumbent telephone corporation with fewer than 30,000 lines in the state.

DATED at Salt Lake City, Utah, this 31st day of July, 2013.

/s/ Ron Allen, Chairman

/s/ David R. Clark, Commissioner

/s/ Thad LeVar, Commissioner

Attest:

/s/ Gary L. Widerburg
Commission Secretary

EXHIBIT B

I. Annual Report: TNCI Operating Company LLC (“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 shall 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 shall be reported by geographic area, to the extent feasible.

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

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.

- C. **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.

- D. **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.

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

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

- G. **List of Officers and Responsible Contact Personnel** updated annually.

- H. **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 shall 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

R746-344 Rate case filing requirements

R746-401 Reporting of construction, acquisition and
disposition of assets

R746-405 Tariff formats

R746-600

Accounting for post-retirement benefits

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.

Modification: It is anticipated that, to the extent the foregoing requirements impact competitive entry or impact effective competition, they will be subject to the rule making requirements of Utah Code Ann. § 54-8b-2.2. In such case, the provisions set forth herein shall be superseded by any such rule adopted by the Commission.

CERTIFICATE OF SERVICE

I CERTIFY that on the 31st day of July, 2013, a true and correct copy of the foregoing was delivered upon the following as indicated below:

By Electronic-Mail

Jean L. Kiddoo (jean.kiddoo@bingham.com)
Brett P. Ferenchak (brett.ferenchak@bingham.com)
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Jeffrey Compton (jcompton@bluecasa.com)
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By Hand Delivery

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