



State of Utah
Department of Commerce
Division of Public Utilities

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ACTION REQUEST RESPONSE

To: Public Service Commission

From: Division of Public Utilities

Artie Powell, Director

Brenda Salter, Utility Technical Consultant Supervisor

Ron Slusher, Utility Technical Consultant

Date: October 30, 2020

Re: Docket No. 20-2623-01 - In the Matter of the Application of Arcadian Infracom 1, LLC for a Certificate of Public Convenience and Necessity to Provide Interexchange Telecommunications Services within the State of Utah.

Recommendation (Approve):

The Division of Public Utilities (“Division”) has reviewed the proposed service offerings from Arcadian Infracom 1, LLC (“Arcadian” or “Applicant”) as set forth in its application and recommends that the Public Service Commission (“Commission”) approve the application and grant Arcadian’s requested Certificate of Public Convenience and Necessity (“CPCN”).

The Division has reviewed the technical, managerial, and financial abilities of Arcadian Infracom 1, LLC and has found that, to the extent the Commission finds that it is requesting to offer a regulated service, it has provided the necessary information to fulfill the requirements as stated in the existing Commission rules.

The public interest will be promoted by the Commission granting Arcadian a CPCN as requested under the same terms and conditions allowed in other CPCNs.

The Division also recommends that the \$100,000 bond be waived on the basis that the Applicant will not require customer deposits or prepayments of any kind.

The Division expects that based on history, a filing of this type and with the information submitted by the company will generate no objections or opposition to this recommendation. Therefore, the Division requests that this docket be adjudicated informally in accordance with R746-110-1.

Discussion:

On or about March 19, 2020, Arcadian Infracom 1, LLC filed an application for a CPCN. The Division reviewed the application and found the following:

Arcadian Infracom 1, LLC is a registered foreign corporation within the State of Utah; with its corporate headquarters located at 4579 Laclede Avenue, #341, St. Louis, MO 63108. The Applicant is a subsidiary of Arcadian Infracom, Inc, which was granted a CPCN by the Commission on May 7, 2020 in Docket No. 20-2616-01.

The Applicant does not currently own facilities or property in the State of Utah, but will expect to construct facilities to provide its service offerings upon receiving a Certificate of Public Convenience and Necessity; however, the timing and location(s) of such commencement will depend largely on customer demand.

The Applicant intends to commence negotiations with CenturyLink for an interconnection/commercial agreement immediately upon receiving approval from the Commission to operate as a local exchange telecommunications service provider in the State of Utah.

The Applicant will not be providing traditional switched local exchange services within Utah. Therefore, the Applicant will not have any interaction with emergency services such as 911 or enhanced 911, operator services, directory assistance, and telecommunications relay services.

Summaries of professional experience and education of its managerial personnel demonstrate that the Applicant has considerable experience in the telecommunications industry.

According to financial statements attested to be accurate, objective and with integrity by Brandon D. Porter, General Counsel & Assistant Secretary, Arcadian Infracom 1, LLC has a positive net worth and has ample working capital.

The Applicant requests that the \$100,000 bond requirement be waived because it will not require customer deposits or prepayments of any kind. Although it plans to in the future, the Applicant does not currently provide services in any other state similar to the services the Applicant intends to provide in Utah. The Applicant is in the process of applying or already has applications pending for certificates of convenience and necessity in nearby states, including Arizona, California, Colorado, New Mexico, and Texas.

The Applicant claims that 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. The Applicant also states that it has implemented policies and procedures concerning solicitation of new customers. These policies require that customers sign a contract authorizing the Applicant to provide telecommunications services.

The Commission has requested a recommendation from the Division regarding whether a CPCN is applicable or needed for interexchange service. After further discussion with Arcadian, the Division learned its initial assumption that Arcadian would offer internet service was incorrect. Arcadian seeks authority to offer interexchange telecommunication facilities and light wave connections but is not intending to offer internet protocol service. Rather the service is solely the light wave signal transmission on a fiber line. The service is therefore protocol agnostic and may be used for a variety of services including, for example, TDM phone service if the customer so

chooses. However, the application states that it does not intend to directly offer any switched exchange service to customers. The customer would be responsible for choosing the protocol to use.

Under Utah Code §54-4-25(1) “a... telephone corporation... may not establish, or begin construction of a line, route, plant, or system... without having first obtained from the commission a [CPCN].” A “telephone corporation” is defined as “any corporation or person... who owns, controls, operates, manages, or resells a public telecommunications service as defined in § 54-8b-2.” §54-2-1(32). Public telecommunications service is defined as “the two-way transmission of signs, signals, writing, images, sounds, messages, data, or other information of any nature by wire, radio, lightwaves, or other electromagnetic means offered to the public generally.” § 54-8b-2(18). However, telephone corporation “does not mean a corporation, partnership or firm providing... internet service; or resold intrastate toll service.”

The offering of protocol agnostic transmission of light waves is one of the categories of service that is defined as a public telecommunications service. Additionally, Arcadian has represented to the Division that it will offer service to the public generally to the extent that it reaches agreements with customers for those services. The service is therefore likely to fall within the category of public telecommunications and Arcadian will be a telephone corporation under Utah law and required to seek a CPCN.

The Division further notes that it is not uncommon historically for fiber or other limited service type providers to request a CPCN in the competitive exchanges in Utah for the purposes of access to the public utility easement space and for the benefit of the CPCN when negotiation interconnection agreements with other carriers. Utah Code § 54-3-27 generally provides access for public utilities to the easement spaces dedicated for public utilities to install facilities. Without a CPCN it can be difficult for providers of telecommunication backbone type services to obtain access. Therefore, while interexchange services may not always require a CPCN – particularly when they are offering internet protocol connections, protocol agnostic service such as the service that Arcadian is seeking appears to be within the definition of regulated service and a CPCN would be appropriate.

The Applicant asserts that approval of its application will serve the public interest creating and enhancing competition and expanding customer service options. Additionally, the approval of this application will expand the availability of innovative, high quality, reliable and competitively-priced telecommunications services in the State of Utah.

cc: Thorvald A. Nelson, Holland & Hart LLP
Brandon D. Porter, General Counsel & Assistant Secretary, Arcadian Infracom 1, LLC
Justin Jetter, Assistant Attorney General, State of Utah
Office of Consumer Services, State of Utah