

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of the Application of Central Utah Telephone, Inc., for an Order Approving the Acquisition of the Stock of Central Utah Telephone, Inc., by Lynch Telephone Corporation X)

DOCKET NO. 00-040-01
REPORT AND ORDER

ISSUED: April 16, 2001

SYNOPSIS

The proposed acquisition of Stock in Central Utah Telephone, Inc., by Lynch Telephone Corporation X, having been stipulated to by the these two parties and by the Division and Committee, and this Stipulation appearing to adequately protect the public interest, the Commission hereby approves the stock acquisition as in the public interest.

By The Commission:

PROCEDURAL HISTORY

This matter was initiated on November 21, 2000, by Joint Application of Central Utah Telephone, Inc. (Central), and Lynch Telephone Corporation X (Lynch), seeking an Order from the Public Service Commission of Utah (Commission) approving the acquisition of the stock of Central by Lynch. Notices of the proposed acquisition, of the opportunity to intervene, and of the Commission's hearings scheduled in this Docket, were published twice in papers of general distribution in Salt Lake City, Wendover, Provo, and Mt. Pleasant, Utah, in January 2001. Thereafter, only Beehive Telephone Company (Beehive) moved to intervene and was granted intervention on February 16, 2001. The Order Granting Intervention, however, specifically prohibited Beehive from re-litigating issues that were the subject of a final, non-appealable Order in Docket 99-049-65. On March 6, 2001, Central, Lynch, the Division of Public Utilities (Division), and the Committee of Consumer Services (Committee), filed a stipulation (Stipulation) settling all contested issues among these parties. On March 21, 2001, at the hour of 9:00 a.m., the Commission held an evidentiary hearing in this Docket, 00-040-01, to consider this matter. Stanley K. Stoll and Jerry D. Fenn of Blackburn & Stoll, L.C., appeared for Central. Brian W. Burnett of Callister, Nebeker & McCullough appeared for Lynch.

Kent L. Walgren, Assistant Attorney General, appeared for the Division. Douglas Tingey, Assistant Attorney General, appeared for the Committee. Alan L. Smith appeared for the intervenor Beehive. Based on the record in this Docket, the pre-filed testimony of the parties, the Stipulation, and the evidence at the hearing of this matter, the Commission makes the following findings of fact and conclusions of law.

FINDINGS OF FACT

1. The Joint Applicants, Central and Lynch, request Commission approval of the acquisition of all Central stock by Lynch. Central and Lynch agreed upon the purchase price for the stock as a result of arms-length negotiations. The terms of the acquisition of stock are fair, just, and reasonable. As a consequence of the acquisition of stock, Central will become a wholly-owned subsidiary of Lynch.
2. The telephone plant, and other assets associated with the provision of telephone service, will continue to be owned and operated by Central and its wholly-owned subsidiaries Skyline Telecom and Bear Lake Communications, Inc. Operations of Central and its subsidiaries will continue under the direction of the current management team. Lynch will,

concurrent with the closing of the transaction, enter into employment agreements with Central's management team that provide for their continued employment for not less than five years. Customers will continue to receive their telephone service from these customers and, from the customers' perspective, this will be a seamless transaction. Central will maintain a strong local presence with headquarters remaining in Fairview, Utah.

3. The Division conducted an investigation into the proposed transaction. Division staff contacted regulatory staffs in the states in which the other 11 telephone companies, owned by Lynch's parent, Lynch Interactive Corporation (Lynch Interactive), do business. The Division found that Lynch Interactive and these 11 telephone companies are generally regarded as well operated, and have an excellent reputation with regulatory agencies. Following its investigation, including at least three sets of Data Requests and several meetings with the Joint Applicants, the Division entered into the Stipulation recommending approval of the acquisition of the stock. The Division concluded that the transaction was in the public interest as all customers will be better off as a result of this transaction. Moreover, the Division found no detriment arising from this transaction. The Committee, thereafter, also entered into the Stipulation and supported the proposed transaction.

4. The acquisition of the stock, of Central by Lynch, provides many benefits and positive impacts to the citizens and subscribers of Central. No negative impacts were identified on the record. Lynch, and its parent Lynch Interactive, will provide regulatory, financial, and strategic expertise to Central. Lynch and Lynch Interactive have the business, technical, management, and operating experience to assure the continuation of quality telecommunications services. The transaction should improve Central's access to capital. The transaction may also allow Central to combine resources with other telephone companies controlled by Lynch Interactive, to acquire equipment or services at discounted prices.

5. The Commission further adopts the representations and statements contained in the Stipulation, which is annexed hereto and incorporated herein by this reference, as additional findings of fact.

6. Based on the foregoing, the acquisition of Central's stock by Lynch is in the public interest and is approved.

CONCLUSIONS OF LAW

1. The Commission has subject matter jurisdiction in this Docket.
2. It is in the public interest to approve the Stipulation entered into in this docket, described herein, and attached hereto.
3. The acquisition of the stock, of Central by Lynch, is in the public interest.
4. This acquisition of stock does not affect the Commission's ability to regulate Central.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED, that:

1. The Stipulation is hereby approved. Parties must comply with the terms of the Stipulation.
2. The proposed acquisition of the stock of Central by Lynch, as set forth in the Application and Stipulation, be, and the same hereby is, approved as being in the public interest, effective the date of this Order.
3. Pursuant to Section 63-46b-13, Utah Code Ann. (2000), any person aggrieved by this Order may petition the Commission in writing for review within 20 days of the date of this Order. Pursuant to Section 54-7-15, Utah Code Ann. (2000), failure to file such a request will result in the forfeiture of the right to appeal to the Utah Supreme Court. If the Commission fails to issue an order within 20 days after the filing of such a request, the request shall be considered denied.

DATED at Salt Lake City, Utah this 16th day of April, 2001.

/s/ Stephen F. Mecham, Chairman

/s/ Constance B. White, Commissioner

/s/ Richard M. Campbell, Commissioner

Attest:

/s/ Julie Orchard

Commission Secretary

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of the Application of Central Utah Telephone, Inc.
for an Order Approving the Acquisition of the Stock of Central
Utah Telephone, Inc. by Lynch Telephone Corporation X

DOCKET NO. 00-040-01
**STIPULATION OF JOINT APPLICANTS,
DIVISION OF PUBLIC UTILITIES AND
COMMITTEE OF CONSUMER SERVICES**

Joint Applicants, Central Utah Telephone, Inc. ("Central Utah"), on behalf of itself and its wholly-owned subsidiaries, Skyline Telecom ("Skyline") and Bear Lake Communications, Inc. ("Bear Lake"), and Lynch Telephone Corporation X ("Lynch") (jointly, the "Applicants"), Utah Division of Public Utilities ("Division") and the Committee of Consumer Services ("Committee") hereby stipulate that the Public Service Commission of Utah ("Commission") should approve Lynch's acquisition of Central Utah's stock as set forth in the Joint Application subject to the following agreements, provisions and conditions. Applicants and the Division are sometimes referred to collectively as "Parties" and individually as "Party".

1. The stock purchase, referred to in this docket, will not affect the applicability, if any, of rules and regulations of the Commission to the Applicants.
2. The stock purchase shall not impact the Commission's ability to regulate Central Utah, Skyline and Bear Lake.
3. The stock purchase shall not affect Applicants' maintenance of accounting, data and personnel records.
4. Applicants shall provide the Commission and the Division, or their authorized agents, reasonable access to their books, records and their employees, officers and agents on matters relevant to and within the jurisdiction of the Commission.
5. Applicants shall make appropriate employees, officers and agents available to testify before the Commission, to provide information relevant to matters within the jurisdiction of the Commission.
6. Applicants agree that no customers of Central Utah, Bear Lake or Skyline will be worse off as a direct result of the stock purchase. This includes, without limitation, no negative impacts on any rates charged or the quality of service provided to new or existing customers as a direct result of the stock purchase. If, on balance, customers are ultimately found by the Commission to be worse off, Applicants stipulate that an appropriate remedy may be implemented consistent with then existing law.
7. Beginning with the second full calendar quarter after the stock purchase transaction has closed and continuing for a period of one year, Applicants agree to provide the Division and the Committee quarterly reports summarizing all customer complaints, service orders and trouble reports for Central Utah, Bear Lake and Skyline. The reports shall be in a format to be worked out between Applicants and the Division.

8. Central Utah, Bear Lake and Skyline agree and commit to make investments based upon and consistent with the service needs of the subscribers and sound business practices.

9. Applicants agree and commit that the cost of capital as reflected in the rates of Central Utah, Bear Lake and Skyline shall not be adversely affected by the stock purchase. The Parties to the Stipulation agree that the determination of the cost of capital shall be based on the risk attendant to the regulated operations of Central Utah, Bear Lake and Skyline. Any declines in the credit rating of Central Utah, Bear Lake and Skyline caused by the stock purchase shall be quantified by Central Utah, Bear Lake and Skyline in any future earnings analysis, or rate base/rate of return case and adjusted as if such declines did not occur. In the event of an increase in the cost of capital directly relating to the stock purchase, the Parties agree and commit to the use of any imputed or hypothetical capital structure in any future earnings analysis, or rate base/rate of return case, if necessary, to reflect the cost of capital of Central Utah, Bear Lake and Skyline, as the case may be, without the effects of the stock purchase.

10. Applicants shall not charge any of the following expenses to the above the line regulatory accounts of Applicants or to any other regulated Utah utility:

a. Stock purchase transaction costs including, but not limited to, the fees and expenses of financial advisors, consultants or lawyers and filing fees.

b. Acquisition adjustments, transaction premiums or goodwill amortization arising from the proposed transaction.

11. Central Utah and its subsidiaries shall not allow any of their affiliates to obtain credit under any arrangement that would permit a creditor, upon default, to have recourse to any of the Utah regulated assets of Central Utah and its subsidiaries. For purposes of this paragraph, the term "affiliate" shall not include any subsidiary of Central Utah, nor shall that term include any entity that is controlled or owned by Central Utah.

12. The Parties agree that this Stipulation represents a resolution among them of the matters in this proceeding included within this Stipulation. As such, all discussions, evidence or conduct relating to this Stipulation are privileged and confidential.

13. This Stipulation shall not become effective unless and until (1) the Commission enters a final order approving this Stipulation and (2) the stock purchase transaction between Applicants has closed. In the event the Commission rejects all or any portion of this Stipulation as resolving the issues included within this Stipulation, or imposes additional conditions with respect to such issues, each Party reserves the right to withdraw from this Stipulation. In such case, no Party to this Stipulation shall be bound or prejudiced by the terms of this Stipulation, and each Party shall be entitled to seek reconsideration of the Commission order, to file any testimony it chooses, to cross-examine witnesses, and in general to put on such case as it deems appropriate. If this Stipulation does not become effective according to its terms, it shall be null and void unless otherwise agreed to by the Parties.

14. Except to the extent expressly stated in this Stipulation, nothing in this Stipulation shall be (1) cited or construed as precedent or as indicative of the Parties' positions on a resolved issue, or (2) asserted or deemed to mean that a Party agreed with or adopted another Party's legal or factual assertions in this or any other proceeding, including those before the Commission, the state courts of Utah or of any other state, the federal courts of the United States of America, or the Federal Communications Commission. The limitation in this paragraph shall not apply to any proceeding to enforce the terms of this Stipulation or any Commission order adopting this Stipulation.

15. The Parties acknowledge that this Stipulation is the product of negotiations and compromise and shall not be construed against any Party on the basis that it was the drafter of any or all portions of this Stipulation. This Stipulation constitutes the Parties' entire agreement on all matters set forth herein, and it supersedes any and all prior oral and written understandings or agreements on such matters that previously existed or occurred in this proceeding, and no such prior understanding or agreement or related representations shall be relied upon by the Parties. By entering into the Stipulation, the Parties intend that the Commission exercise only that authority contained in applicable laws.

16. Each Party shall take all actions necessary and appropriate to enable it to carry out this Stipulation, including, providing witnesses and argument in support of the approval by the Commission of the Stipulation.

DATED: April 18, 2001.

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