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In the Matter of the Application for a )  
Certificate of Public Convenience and )  
Necessity of Comtel Telcom Assets LP )  
and Joint Notice of Asset Transfer )  
)

DOCKET NO. 05-2463-01

REPORT AND ORDER

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ISSUED: January 27, 2006

SYNOPSIS

By this Report and Order, the Public Service Commission of Utah (the “Commission”) grants the request of Comtel Telcom Assets LP (“Comtel”) for a Certificate of Public Convenience and Necessity (“Certificate”) authorizing Comtel to provide public telecommunications services within the State of Utah, excluding those local exchanges having fewer than 5,000 access lines of an incumbent telephone corporation with fewer than 30,000 access lines in the state. The Commission also finds Comtel’s proposed acquisition of certain assets of VarTec Telecom, Inc., Excel Telecommunications, Inc., and VarTec Solutions, Inc. (the “VarTec Companies”) to be in the public interest and approves the same. The Commission, having considered the record in this proceeding and the applicable law, hereby makes, adopts, and enters the following Report and Order.

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By the Commission:

PROCEDURAL HISTORY

On December 14, 2005, VarTec Telecom, Inc. (“VarTec”), pursuant to Utah Code Annotated §54-8b-1.1 *et. seq.*, and Title 63, Chapter 46b of the Utah Administrative Procedures Act, filed a Joint Application for Consent to Transfer Assets and Application for a Certificate of Public Convenience and Necessity (“Application”) on behalf of Comtel Telcom Assets LP (“Comtel”) and VarTec, Excel Telecommunications, Inc. (“Excel”), and VarTec Solutions, Inc. (“VarTec Solutions”) (collectively, the “VarTec Companies”) (together with Comtel, the “Applicants”) seeking Commission approval of a Certificate of Public Convenience and Necessity (“Certificate”) for Comtel to provide facilities based and resold local exchange and exchange access services in Utah, and approval of the acquisition by Comtel of certain assets of

the VarTec Companies. On January 12, 2006, the Division of Public Utilities (“Division”) filed a memorandum recommending approval of the Application.

The Division notes Comtel is a limited partnership organized under the laws of the state of Texas. VarTec and Excel are corporations organized under the laws of the state of Texas and currently hold Certificates granted by the Commission on January 3, 2002 in Docket No. 01-2377-01 and March 17, 1997 in Docket No. 96-2214-01, respectively. Comtel plans to provide local exchange service to customers in the Qwest exchange areas and currently does not plan to provide local exchange service in areas of Utah that are served by small or rural local exchange carriers.

According to the Application, the VarTec Companies are currently operating under Chapter 11 bankruptcy protection. On July 25, 2005, the VarTec Companies entered into an asset purchase agreement (“APA”) with Comtel Investments to acquire substantially all of the assets of the VarTec Companies, including all telecommunications equipment, customer accounts and records, business records and licenses and permits. The bankruptcy court approved the APA on July 27, 2005, and, on August 1, 2005, Comtel Investments assigned its rights and obligations under the APA to Comtel. Once the proposed transaction is completed, the residential and commercial customers previously served by the VarTec Companies will continue to receive services without interruption from Comtel.

Comtel states that neither it nor any of its officers or affiliates have been involved in complaints or investigations of unauthorized switching (“slamming”), or other illegal activities within any jurisdiction. It states that it will maintain existing policies established by the VarTec Companies to prevent unauthorized switching that include verbal third-party verifications and written letters of authorization of requests for service. Comtel also asserts that

approval of the Application will serve the public interest “by enabling the seamless continuation of telecommunications services to the VarTec Companies’ existing Utah customers. By allowing Comtel to assume control of the VarTec Companies’ assets and to obtain the necessary authorizations to provide telecommunications services in Utah, existing customers will have access to the services they enjoy today as well as the potential for expanded service offerings going forward.”

The Applicants intend to provide any required customer notice of the transfer of assets within the appropriate notice period, taking into account all relevant state and federal notification and consent requirements. However, out of an abundance of caution, Comtel requests a waiver from any applicable anti-slamming regulations that may be considered to have been violated by the proposed transfer of assets being made without the specific authorization and verification of each affected customer since it would be impractical and burdensome to obtain the specific authorization of each customer to effect the proposed transaction. Comtel notes affected customers would not experience any change in the quality and scope of their services, and because of Applicants’ efforts to make invoicing procedures, customer service and all other matters involving customers absolutely seamless, the notice correspondence will be sufficient to serve the public interest. The notice correspondence will describe the transaction in terms that are easy to understand and ensures that customers are made aware of all their service options going forward, along with other content as may be required.

The Division agrees with Comtel’s contention that specific authorization and verification of each affected customer would be impractical and burdensome and recommends the Commission grant a waiver from anti-slamming regulations for the transfer of customers from the VarTec Companies to Comtel.

Since there appears to be no meritorious opposition, and Applicants have made out a *prima facie* case in support of the Application, there appears to be no reason to convene an evidentiary hearing on the matter. Accordingly, the Commission, having been fully advised in the premises, enters the following Report, containing Findings of Fact, Conclusions of Law, and the Order based thereon.

FINDINGS OF FACT

1. Comtel is qualified to do business in Utah.
2. Comtel 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.
3. Comtel is proposing to provide public telecommunication services in the state of Utah, excluding 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.
4. Comtel will utilize its managerial and technical expertise to support its Utah operations.
5. Comtel has sufficient technical resources and abilities to provide the public telecommunications services for which it has applied for a Certificate.
6. Comtel has sufficient managerial resources and abilities to provide the public telecommunications services for which it has applied for a Certificate.
7. Comtel 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. Comtel 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, Comtel will be subject to competition from other certified telecommunications services providers.
10. Comtel's service offerings will provide customers with a wider range of choices in meeting their telecommunications needs and will support the development of competition.
11. The issuance of a Certificate to Comtel to provide public telecommunications services is in the public interest.
12. The reporting requirements in Exhibit B attached hereto are in the public interest and are binding upon Comtel until modified by the Commission.
13. Comtel has applied for exemptions from the requirements of various procedures of the Utah Code and the Commission's Rules and Regulations.
14. 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 accord with Commission practice and is in the public interest.
15. The proposed transfer of assets will create administrative efficiencies, minimize the possibility of customer confusion, promote continuity of services, and offer a full range of services under a single company name.
16. Following the transfer of assets, Comtel will continue to have the technical, financial, and managerial expertise to provide public telecommunications services in Utah.

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. Comtel 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. Comtel 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 Comtel 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.
5. Pursuant to *Utah Code Ann.* § 54-4-28, the proposed transfer of assets is in the public interest.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED as follows:

1. This matter be, and it is, converted to an informal proceeding pursuant to §63-46b-4(3), UCA 1953, as amended.
2. The Commission hereby grants Comtel the Certificate attached hereto as Exhibit A, and, by this reference, made a part of this Report and Order.
3. Comtel 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.

4. Comtel is exempt from certain provisions of the Utah Code and the Commission's Rules and Regulations, as set forth in Exhibit B.

5. As Comtel does not propose to take customer deposits nor provide pre-paid services, the Commission's bond requirement is waived.

6. The proposed transfer of assets from the VarTec Companies to Comtel is approved.

7. Provided Comtel and the VarTec Companies provide customers all applicable notices required by state and federal statute and regulation, Comtel is granted a waiver from Commission anti-slamming regulations for the transfer of customers from the VarTec Companies to Comtel.

This Report and Order constitutes final agency action in these dockets. Pursuant to *Utah Code Ann.* §§ 63-46b-12 and 54-7-15, agency review or rehearing of this order may be obtained 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.* §§ 63-46b-14, 63-46b-16 and the Utah Rules of Appellate Procedure.

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DATED at Salt Lake City, Utah, this 27<sup>th</sup> day of January, 2006.

/s/ Ric Campbell, Chairman

/s/ Ted Boyer, Commissioner

/s/ Ron Allen, Commissioner

Attest:

/s/ Julie Orchard  
Commission Secretary  
G#47445

**EXHIBIT A**

In the Matter of the Application for a )  
Certificate of Public Convenience and )  
Necessity of Comtel Telcom Assets LP )  
and Joint Notice of Asset Transfer )  
)

DOCKET NO. 05-2463-01

CERTIFICATE

ISSUED: January 27, 2006

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 Comtel Telecom, Inc. (“Grantee”) 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 27<sup>th</sup> day of January, 2006.

/s/ Ric Campbell, Chairman

/s/ Ted Boyer, Commissioner

/s/ Ron Allen, Commissioner

Attest:

/s/ Julie Orchard  
Commission Secretary

**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 <sup>1</sup>
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:

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<sup>1</sup>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.

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 rule making 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.