



The State commission may only reject - (A) an agreement (or any portion thereof) adopted by negotiation under subsection (a) if it finds that - (i) the agreement (or portion thereof) discriminates against a telecommunications carrier not a party to the agreement; or (ii) the implementation of such agreement or portion is not consistent with the public interest, convenience, and necessity. . . .”

The fact that Greenfly is not certificated to provide services as a public utility within Utah is dispositive in our consideration of this Agreement. Utah law is clear that entities which provide public telecommunication services are public utilities subject to the provisions of Utah’s public utility laws. *See Utah Code Ann. §54-2-1(16)(a), 25(a), and Utah Code Ann. 54-8b-2.1.* As of the date of this Order, Greenfly has not been granted a certificate to provide public telecommunications services in Utah.

In this context, we conclude that the Agreement must be rejected as “not consistent with the public interest, convenience, and necessity” in attempting to position Greenfly to provide public telecommunication services in the State of Utah without a certificate. We conclude that it would also “discriminate against [all other] telecommunications carrier[s] not a party to the Agreement” that have complied with Utah law and obtained their certificates to provide the services their certificates authorize and within the areas designated.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED, that:

1. The Agreement submitted March 25, 2009 is rejected;
2. The rejection is without prejudice, permitting the Agreement to be resubmitted

when Greenfly has received authorization to provide telecommunications services within Utah.

DOCKET NO. 09-049-16

-3-

3. Pursuant to Utah Code § 63G-4-301 and 54-7-15, an aggrieved party may request agency review or rehearing of this Order.

DATED at Salt Lake City, Utah, this 11<sup>th</sup> day of May, 2009.

/s/ Ted Boyer, Chairman

/s/ Ric Campbell, Commissioner

/s/ Ron Allen, Commissioner

Attest:

/s/ Julie Orchard  
Commission Secretary  
G#61824