

September 4, 2003

Utah Public Service Commission  
Heber Wells Building, Fourth Floor  
160 East 300 South  
Salt Lake City, Utah 84114

Dear Commissioners:

This letter is in response to a discussion with certain staff of the Utah Department of Commerce, Division of Public Utilities (“DPU”) that took place on August 28, 2003 concerning the application for a certificate of public convenience and necessity (“CPCN”) filed by Broadweave Networks of Utah, LLC (“Broadweave”). Mr. Ingo Henningson of the DPU informed our office that the DPU intended to send a memorandum to the Utah Public Service Commission (the “Commission”) recommending that the Commission hold a hearing to determine whether Broadweave was required to “open its network” to competitors. Mr. Henningson informed us that he and his colleagues at the DPU believed that Broadweave had an obligation to do so.

The DPU’s intended actions are outside the scope of § 54-8b-2.1 of the Telecommunications Act of 1995 (the “Act”), which states, in part:

The Commission shall issue a certificate to the applying telecommunications corporation if the commission determines that the applicant has sufficient technical, financial, and managerial resources and abilities to provide the telecommunications services applied for; and the issuance of the certificate to the applicant is in the public interest.

Utah Code Ann. § 54-8b-2.1 (1995). The only showing that Broadweave or any other competitor must make under the Act is that it has sufficient technical, financial, and managerial resources and abilities to provide the telecommunications services applied for; and that the issuance of a CPCN is in the public interest. During prior discussions with the DPU regarding Broadweave’s application for a CPCN, we were informed that as far as the DPU was concerned, Broadweave had met its burden of showing that it had sufficient technical, financial, and managerial resources and abilities to provide the public telecommunications services applied for and that the issuance

of a CPCN to Broadweave was in the public interest. However, Mr. Henningson informed us that the DPU would have to discuss the application with Qwest prior to recommending approval of a CPCN. We informed the DPU that it was not required to inform Qwest of its decision to send a recommendation to the Commission for either approval or denial of Broadweave's application because Qwest, as well as other carriers, would have an opportunity to voice any concerns pertaining to the application during the twenty (20) day notice period the Commission grants all carriers prior to a CPCN becoming effective.

In addition, holding a hearing to decide whether Broadweave must "open its network" prior to granting it a CPCN would be discriminatory because the Commission has never required any other company in the same position to go through such a hearing. The Commission's determination of whether Broadweave should open its network to Qwest or any other carrier must be preceded by a determination of whether current law requires companies like Broadweave to do so. Our position is that the issue has yet to be decided. In fact, Broadweave can make a compelling case that current law does not require that it open its network to Qwest or any other carrier. Moreover, a CPCN application proceeding is not the appropriate forum to decide an issue that will have ramifications that will impact not only Broadweave but many other carriers as well. Accordingly, a single company should not bear the burden of making a case for itself as well as for all other companies that are similarly situated. This matter should be addressed in a forum where other carriers will have shared responsibility to make their case and equal opportunities to be heard. Finally, it is not in the public interest to hold a hearing about the foregoing issues prior to granting a CPCN because doing so will further delay the provisioning of telecommunications services to Broadweave's prospective customers who need or will need services within a short period of time.

For the reasons set forth above, we respectfully request that the Commission either approve Broadweave's application for a CPCN, or remand the application to the DPU to request that the DPU make a recommendation to either approve or deny the application based on the factors outlined in § 54-8b-2.1 of the Act. Please feel free to call our office if you have any questions.

Sincerely,

Yvonne R. Hogle

YRH:kt

cc: Mr. Stephen H. Christensen  
Jerold G. Oldroyd, Esq.