



State of Utah
Department of Commerce
Division of Public Utilities

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March 3, 2005

TO: PUBLIC SERVICE COMMISSION

FROM: DIVISION OF PUBLIC UTILITIES

Irene Rees, Director
Wes Huntsman, Manager, Telecommunications
Peggy Egbert, Technical Consultant
Bart Croxford, Utility Analyst

Re: Application of PAETEC Communications, Inc. for a certificate authorizing it to provide local exchange services in Docket No. 04-2441-01

Recommendation (approval):

The Division has reviewed the technical, managerial, and financial abilities of the Applicant and has found that the Applicant has provided the necessary information to fulfill the requirements as stated in the existing Commission rules. It believes that the public interest will be promoted by recommending that the Commission allow the Applicant 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 has adequate provisions exist to protect customer deposits or other customer liabilities.

Although it is not an issue at the present time, the Division further recommends that the certificate be limited to local exchanges with more than 5,000 access lines that are owned or controlled by incumbent local exchange carriers ("ILECs") with more than 30,000 access lines. Rural ILECs have not objected to this application because they would not be affected unless the Applicant intended to serve in their territories. If the Applicant decides to serve in the rural ILECs' territory, a hearing may be necessary before the Commission, pursuant to Section 251(f)(1) of the Telecommunications Act of 1996.

Issues:

PAETEC Communications, Inc. ("Applicant") filed an application for a certificate of public convenience and necessity ("CPCN") on August 16, 2004. The Division reviewed

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the application and found the following:

The Applicant plans to operate as a provider of facilities-based local exchange telecommunications services in Qwest Communications' service territories in Utah (see Attachment).

According to financial statements attested to be accurate, objective, and with integrity by Keith M. Wilson, Executive Vice President and Chief Financial Officer, the Applicant has a positive net worth and has sufficient working capital. The Applicant's five-year projection of operations also shows that it should have sufficient cash to fund operations, assuming the forecast is fairly accurate.

The Applicant has admitted that the FCC has lodged an informal slamming complaint against the Applicant based on insufficient information in the letter of authorization. The Applicant states that its primary focus is on businesses that would utilize a T1 for service and, therefore, does not solicit customers through telemarketing or similar tactics that have the potential to result in unauthorized switching of local service customers. In addition, the Applicant's policy is to obtain a signed letter authorization from any new customer prior to providing service.

Summaries of professional experience and education of its managerial personnel demonstrate that the Applicant has considerable experience in the telecommunications industry. It is currently authorized to provide local exchange service in Massachusetts, New Jersey, New York, Pennsylvania, Maryland, Rhode Island, Florida, New Hampshire, Connecticut, Illinois, California, the District of Columbia, Delaware, Virginia, Texas, Ohio, Nevada, North Carolina, Vermont, Louisiana, Georgia, Colorado, and Michigan.

The Applicant requests that the \$100,000 bond requirement be waived because it believes that it has adequate provisions to protect customer deposits or other customer liabilities.

The Applicant asserts that approval of this application will serve the public interest "by creating greater competition in the local exchange marketplace, and the high-speed data market in particular."

Attachment

cc: Larissa A. Herbowy, PAETEC Communications
Stephen Mecham, Callister, Nebeker & McCullough
Division of Public Utilities
Michael Ginsberg, Assistant Attorney General
Committee of Consumer Services