

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of the Petition of Broadband)	
Dynamics, L.L.C., for Authority to Compete)	<u>DOCKET NO. 08-2502-01</u>
as a Telecommunications Corporation and to)	
Offer Public Local Exchange and)	<u>REPORT AND ORDER</u>
Interexchange Telecommunications Services)	
)	

ISSUED: January 21, 2009

SYNOPSIS

By this Report and Order, the Public Service Commission of Utah (Commission) grants the request (Application) of Broadband Dynamics, LLC (Applicant) for a Certificate of Public Convenience and Necessity (Certificate) authorizing Applicant to provide public telecommunications services within 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, having considered the record in this proceeding and the applicable law, hereby makes, adopts, and enters the following Report and Order.

By The Commission:

PROCEDURAL HISTORY

Applicant filed its Application on October 21, 2008, seeking a Certificate to compete as a telecommunications corporation and to compete in providing interexchange and public local exchange telecommunications services in Utah. On December 18, 2008, the Division filed a memorandum recommending approval of the Application, and also specifically recommends the Commission waive the requirement that Applicant file proof of a \$100,000 bond, given that the Applicant will not require customer deposits or prepayments of any kind.

There were no Intervenors and no opposition to the Application. The Applicant has made out its *prima facie* case in support of the Application. Pursuant to Utah Code § 54-2-

25(4)(c), a hearing was held on January 20, 2009 before the Administrative Law Judge of the Commission. Ms. Ruth Mascardo appeared telephonically for the Applicant. Michael Ginsburg, Assistant Attorney General, appeared for the Division. Mrs. Shauna Benvegna-Springer testified for the Division. The Division reaffirmed its position that the Commission approve the Application and no opposition was raised at the hearing.

The Commission, being fully appraised in the matter, enters the following Findings of Fact, Conclusions of Law, and Order.

FINDINGS OF FACT

1. Applicant is qualified to do business in Utah.
2. Applicant requests the Commission grant a Certificate authorizing it to provide public telecommunications services within Utah.
3. Applicant proposes it provide public telecommunication services in 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. Applicant will utilize its managerial expertise to support its Utah operations.
5. Applicant has sufficient technical resources and abilities to provide the public telecommunication services for which it has applied.
6. Applicant 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.

7. Applicant has sufficient financial resources and abilities to provide the public telecommunications services for which it has applied.

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8. In its provision of intrastate services, Applicant will be subject to competition from other certified telecommunications services providers.
9. Applicant's service offerings will provide customers with a wider range of choices in meeting their telecommunications needs and will support the development of competition.
10. Applicant has applied for exemptions from the requirements of various procedures of the Utah Code and the Commission's Rules and Regulations.
11. Applicant will not require customer deposits or offer any prepaid services in Utah.
12. Applicant has also applied for waivers from the \$100,000 bond.

CONCLUSIONS OF LAW

1. Applicant meets each of the statutory requirements of U.C.A. §§ 54-8b-1.1 *et seq* for issuance of a Certificate as a telecommunications corporation.
2. Applicant meets each of the statutory requirements of U.C.A. §§ 54-8b-1.1 *et seq* for authorization to provide the public telecommunications services for which it seeks a Certificate.
3. 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.

4. The grant of waivers, as set forth above, from the provisions of the Utah Code and the Commission's Rules and regulations, is in accord with Commission practice and is in the public interest.

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5. The issuance of a Certificate to the Applicant 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 *et seq.* and is in the public interest.
6. Restricting the Applicant's Certificate to exclude 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 is in the public interest.

ORDER

The Commission, having entered its Findings and Conclusions above, hereby

ORDERS:

- a. The Applicant is hereby granted the Certificate attached hereto as Exhibit A, which Exhibit is incorporated by reference into this Order;
- b. Applicant shall provide reports to the Commission and to the Division as set forth in Exhibit B, which Exhibit is incorporated by reference into this Order;
- c. The reporting requirements in Exhibit B shall be binding upon Applicant until modified by the Commission;
- d. Applicant shall be exempt from certain provisions of the Utah Code and the Commission's Rules and Regulations, as set forth in Exhibit B;
- e. The bond requirement is waived.

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DATED at Salt Lake City, Utah this 21st day of January, 2009.

/s/ Ted Boyer, Chairman

/s/ Ric Campbell, Commissioner

/s/ Ron Allen, Commissioner

Attest:

/s/ Julie Orchard
Commission Secretary
G#60422

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EXHIBIT A

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of the Petition of Broadband Dynamics, LLC for Authority to Compete as a Telecommunication Corporation and to Offer Public Local Exchange and Interexchange Telecommunications Services	<u>DOCKET NO. 08-2502-01</u> <u>CERTIFICATE</u>
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ISSUED: January 21, 2009

By The Commission:

The Public Service Commission of Utah, pursuant to Utah Code Ann. § 54-8b-2.1, hereby issues a Certificate of Public Convenience and Necessity authorizing Broadband Dynamics, LLC to provide public telecommunication services within the State of Utah, excluding those local exchanges of less than 5,000 access lines if incumbent telephone corporations with fewer than 30,000 access lines in the state.

DATED at Salt Lake City, Utah, this 21st day of January, 2009.

/s/ Ted Boyer, Chairman

/s/ Ric Campbell, Commissioner

/s/ Ron Allen, Commissioner

Attest:

/s/ Julie Orchard
Commission Secretary

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EXHIBIT B

I. Annual Report: Broadband Dynamics, LLC (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

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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:

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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 ¹
R746-344	Rate case filing requirements
R746-401	Reporting of construction, acquisition and disposition of assets

¹This 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.

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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- 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.