

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of the Wireline Adoption)
Interconnection Agreement between Qwest) DOCKET NO. 10-049-17
Corporation and Triarch Marketing, Inc.) REPORT AND ORDER REJECTING
d/b/a Triarch Communications) INTERCONNECTION AGREEMENT
)

ISSUED: May 26, 2010

SYNOPSIS

The proposed interconnection agreement involved an entity that does not possess a Certificate of Public Convenience and Necessity (CPCN) and therefore defective and against the public interest, convenience, and necessity. It was rejected.

By The Commission:

On May 17, 2010, Qwest Corporation (Qwest) and Triarch Marketing, Inc. d.b.a. Triarch Communications (Company) filed an interconnection agreement (Agreement) with the Commission. The Commission asked the Division of Public Utilities (Division), to review the matter and the Division filed its Memorandum on May 18, 2010, recommending rejection of the Agreement. The Division found that the Company “has not filed for a CPCN and does not have permission from the Commission to serve within the State of Utah” *Recommendation*, p.1.

Section 252(e)(2), 47 U.S.C., provides the basis upon which we may reject a negotiated interconnection agreement. That section, in part, provides:

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 the Company 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, the Company 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 the Company 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 is rejected;
2. The rejection is without prejudice, permitting the Agreement to be resubmitted when the company has received authorization to provide telecommunications services within Utah.
3. Pursuant to Utah Code § 63G-4-301 and 54-7-15, an aggrieved party may request agency review or rehearing of this Order.

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DATED at Salt Lake City, Utah, this 26th day of May, 2010.

/s/ Ted Boyer, Chairman

/s/ Ric Campbell, Commissioner

/s/ Ron Allen, Commissioner

Attest:

/s/ Julie Orchard
Commission Secretary
G#66841