

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of the Interconnection)
Agreement between Qwest Corporation and) DOCKET NO. 11-049-31
IPDataStream, LLC) DOCKET NO. 11-049-33
) ORDER REJECTING
) INTERCONNECTION AGREEMENT
)

ISSUED: August 8, 2011

SYNOPSIS

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

By The Commission:

On June 2, 2011, Qwest Corporation (Qwest) filed a proposed interconnection agreement with IPDataStream, LLC pursuant to 47 U.S.C. § 252(e)(1), and Utah Code Ann. § 54-8b-2.2.(1)(d). The Commission asked the Division of Public Utilities to review the matter and the Division filed its memorandum on June 9, 2011. It recommended rejecting the agreement. The Division found IPDataStream, LLC has not acquired a CPCN from the Commission and is not authorized to operate in Utah.

Section 47 U.S.C. § 252(e)(1), provides the basis upon which the Commission rejects the interconnection agreement. It states

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 Company's lack of a CPCN is the dispositive factor in the Commission's decision to reject the interconnection 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); Utah Code Ann. § 54-8b-2.1.* As of the date of this Order, the Company does not possess a CPCN in Utah. The Commission concludes that the interconnection agreement is discriminatory as it would discriminate against all other telecommunications carriers that have complied with Utah law and obtained their certificates to provide the services their certificates authorize within their designated areas. As such, approving the interconnection agreement would be inconsistent with the public interest, convenience and necessity, as it would provide IPDataStream, LLC with a benefit to which only certificated carriers are entitled.

ORDER

1. The interconnection agreement is rejected;
2. The rejection is without prejudice. If and when IPDataStream, LLC obtains a CPCN, the interconnection agreement may be resubmitted for Commission review;
3. Pursuant to Sections 63G-4-301 and 54-7-15 of the Utah Code, an aggrieved party may request agency review or rehearing of this Order by filing a written request with the Commission within 30 days after the issuance of this Order. Responses to a request for agency review or rehearing must be filed within 15 days of the filing of the request for review or rehearing. If the Commission does not grant a

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request for review or rehearing within 20 days after the filing of the request, it is deemed denied. Judicial review of the Commission's final agency action may be obtained by filing a petition for review with the Utah Supreme Court within 30 days after final agency action. Any petition for review must comply with the requirements of Sections 63G-4-401 and 63G-4-403 of the Utah Code and Utah Rules of Appellate Procedure.

DATED at Salt Lake City, Utah, this 8th day of August, 2011.

/s/ Ruben H. Arredondo
Administrative Law Judge

Approved and confirmed this 8th day of August, 2011, as the Order Rejecting Interconnection Agreement of the Public Service Commission of Utah.

/s/ Ted Boyer, Chairman

/s/ Ric Campbell, Commissioner

/s/ Ron Allen, Commissioner

Attest:

/s/ Julie Orchard
Commission Secretary
D#208746