

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of the Interconnection)
Agreement between Qwest Corporation) DOCKET NO. 11-049-44
and Wholesale Carrier Services, Inc.) REPORT AND ORDER
)

ISSUED: September 8, 2011

SYNOPSIS

The Interconnection Agreement at issue being defective as involving a non-certificated carrier, the Commission rejects the Interconnection Agreement.

By The Commission:

On August 16, 2011, Qwest Corporation (“Qwest”) filed for approval with the Commission an Interconnection Agreement with Wholesale Carrier Services, Inc. (“Wholesale”). The Commission asked the Division of Public Utilities (the “Division”), to review the matter and the Division filed its Memorandum on August 22, 2011, recommending denial due to Wholesale’s failure to date to obtain a Certificate of Public Convenience and Necessity (“certificate”) to provide services in Utah.

The Commission rejects the Interconnection Agreement submitted herein. Title 47, Section 252(e)(2) of the United States Code provides the basis upon which the Commission may reject a negotiated interconnection agreement. Section 252 provides, in part, that:

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. . . .

47 U.S.C. § 252(e)(2)(A)(i)-(ii).

As of the date of this Order, Wholesale has neither filed for nor received a certificate to provide any public telecommunication services in Utah. Because Wholesale is not certificated to provide services within the state of Utah, that fact is dispositive in the Commission's consideration of this Interconnection Agreement.

Accordingly, the Commission concludes that the Interconnection Agreement must be rejected as "not consistent with the public interest, convenience, and necessity" in attempting to position Wholesale to provide public telecommunication services in the state of Utah without a certificate. Wholesale's failure to comply with these requirements precludes the Commission from approving the Interconnection Agreement. The Commission concludes that the Interconnection Agreement would also "discriminate against [all other] telecommunications carrier[s] not a party to the agreement" that have complied with Utah law and have obtained their certificates to provide the services that Wholesale seeks to provide.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED, that:

The Interconnection Agreement filed herein is rejected. This rejection is without prejudice, permitting the Interconnection Agreement to be resubmitted when Wholesale has remedied the deficiencies noted in this Order.

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Pursuant to *Utah Code Annotated* §§ 63G-4-301 and 54-7-15, agency review or rehearing of this order may be obtained by filing a request for review or rehearing with the Commission within 30 days after the issuance of the 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 fails to grant a request for review or rehearing within 20 days after the filing of a request for review or rehearing, the request 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 *Utah Code Annotated* §§ 63G-4-401, 63G-4-403 and the Utah Rules of Appellate Procedure.

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

/s/ Ted Boyer, Chairman

/s/ Ric Campbell, Commissioner

/s/ Ron Allen, Commissioner

Attest:

/s/ Julie Orchard
Commission Secretary

D#209943