



On August 31, 2011 the Division of Public Utilities (the “Division”) submitted a recommendation to approve the application. Pursuant to Utah Admin. Code R746-349-7(A)(2), the Commission issued a public notice of the application on September 9, 2011, allowing for the submission of comments by any interested party regarding the application. No objections were received.

Pursuant to Utah Admin. Code R746-349-7(A)(2), the administrative law judge of the Commission held a hearing on September 28, 2011. No one appeared at the hearing objecting to the application. Brett Ferenchek and Kimberly Bennett, Counsel for the Applicants, appeared telephonically along with Jeanne Sherrer, Chris Roesser, and William Haas. Dahnelle Burton-Lee, Assistant Attorney General, appeared for the Division, and she was accompanied by Bill Duncan, Assistant Director for the Division.

Mr. Ferenchek is an attorney licensed to practice in a foreign state. He made an oral motion at the hearing, asking to be admitted as *pro hac vice*, and the ALJ granted the motion.<sup>1</sup> The Commission finds that requiring the Applicants to retain local counsel for this uncontested, unopposed matter for just a short hearing would work a hardship for the Applicants. Similarly, requiring Applicants to retain local counsel would run counter to the policy expressed in Utah Code Ann. § 54-8b-1.1 to allow flexible and reduced regulation for telecommunications corporations and public telecommunications services. See Utah Code Ann. § 54-8b-1.1(4) (2010).

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<sup>1</sup> Utah Admin. Code R746-100-6 permits a licensed attorney in a foreign state to represent a party before the Commission when engaging local counsel “would impose an unreasonable financial or other hardship upon the party.” Utah Admin. Code R746-100-6(B).

The ALJ took administrative notice of both the application and recommendation filed by the Division recommending approval. Mr. Duncan was sworn in and his testimony received regarding the recommendation.

Under Utah Admin. Code R746-349-7, “[i]f no objection to the proposed transaction is submitted in any filed comments or reply comments, the Commission will presume that approval of the transaction is in the public interest and use the information contained in the application and accompanying documents as evidence to support a Commission order.” Utah Admin. Code R746-349-7(A)(3). Because there is no objection to the granting of the application, the Commission thus presumes the application for approval of indirect transfer of control is in the public interest.

ORDER

For the foregoing reasons, the Commission approves the indirect transfer of control of PAETEC Regulated Entities to Windstream.

DATED at Salt Lake City, Utah, this 24<sup>th</sup> day of October, 2011.

/s/ Melanie A. Reif  
Administrative Law Judge

DOCKET NOS. 11-2441-01 and 11-2249-01

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Approved and confirmed this 24<sup>th</sup> day of October, 2011, as the Report and Order issued by 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#210865

Notice of Opportunity for Agency Review or Rehearing

Pursuant to Utah Code Ann. §§ 63G-4-301 and 54-7-15, a party may seek agency review or rehearing of this order 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, 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 Utah Code Ann. §§ 63G-4-401, 63G-4-403, and the Utah Rules of Appellate Procedure.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 24<sup>th</sup> day of October, 2011, a true and correct copy of the foregoing REPORT AND ORDER, was delivered upon the following as indicated below:

By U.S. Mail:

Kimberly K. Bennett  
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Administrative Assistant