

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of the Application of GC)
Pivotal, LLC for a Certificate of Public) DOCKET NO. 11-2539-01
Convenience and Necessity to Provide)
Resold and Facilities-Based Local Exchange) REPORT AND ORDER
Services within the State of Utah)

ISSUED: April 20, 2011

SYNOPSIS

By this Report and Order, the Public Service Commission of Utah (Commission) converts this matter to an informally adjudicated matter. Additionally, the Commission grants the request (Application) of GC Pivotal, 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 verified Application on March 14, 2011, seeking a Certificate to compete as a telecommunications corporation and to compete in providing interexchange and public local exchange telecommunications services in Utah.

The Application contained detailed information regarding the technical, financial, and managerial resources and abilities of the Applicant to provide the public telecommunications services for which it applied. The Applicant's Secretary and Treasurer, Richard Garner, verified the contents of the Application and its exhibits.

On March 30, 2011, the Division of Public Utilities (Division) filed a memorandum recommending approval of the Application. The Division specifically

recommended 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.

The Division also commented that given the type of filing, and with the information submitted by the Company, there would be no opposition to the Division's recommendation nor to the Application. It recommended the Commission adjudicate this Application informally per Utah Administrative Code R746-110-1. Together with its recommendation, it submitted the affidavit of Ronald Slusher, utility technical consultant, in support of its recommendation for approval of the Application and for informal adjudication.

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

FINDINGS OF FACT

1. This matter can be reasonably expected to be unopposed and uncontested. There were no intervenors and no opposition to the Application.
2. The Applicant has filed in support of its Application sworn statements and other supporting documents and has made its *prima facie* case in support of the Application.
3. Applicant is qualified to do business in Utah.
4. Applicant requests the Commission grant a Certificate authorizing it to provide public telecommunications services within Utah.
5. 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.

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6. Applicant will utilize its managerial expertise to support its Utah operations.
7. Applicant has sufficient technical resources and abilities to provide the public telecommunication services for which it has applied.
8. 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.
9. Applicant has sufficient financial resources and abilities to provide the public telecommunications services for which it has applied.
10. In its provision of intrastate services, Applicant will be subject to competition from other certified telecommunications services providers.
11. 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.
12. Applicant has applied for exemptions from the requirements of various procedures of the Utah Code and the Commission's Rules and Regulations.
13. Applicant will not require customer deposits or offer any prepaid services in Utah.
14. Applicant has also applied for waivers from the \$100,000 bond.

CONCLUSIONS OF LAW

1. This matter should be adjudicated informally, without a hearing.
2. 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.

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3. 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.
4. 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. 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.
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 orders as follows:

- a. This Application shall be adjudicated informally;
- b. The Applicant is hereby granted the Certificate attached hereto as Exhibit A, which Exhibit is incorporated by reference into this Order, as if set forth here;

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- c. 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, as if set forth here;
- d. The reporting requirements in Exhibit B shall be binding upon Applicant until modified by the Commission;
- e. Applicant shall be exempt from certain provisions of the Utah Code and the Commission's Rules and Regulations, as set forth in Exhibit B;
- f. The bond requirement is waived.
- g. Any person may file a protest prior to this order's effective date (20 days from its issuance) and, if the Commission finds the protest to be meritorious, the effective date shall be suspended pending further proceedings. Otherwise this order shall take effect 20 days from its issuance.

DATED at Salt Lake City, Utah, this 20th day of April, 2011.

/s/ Ted Boyer, Chairman

/s/ Ric Campbell, Commissioner

/s/ Ron Allen, Commissioner

Attest:

/s/ Julie Orchard
Commission Secretary
G#71978

EXHIBIT A

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

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Pivotal, LLC for a Certificate of Public)	<u>DOCKET NO. 11-2539-01</u>
Convenience and Necessity to Provide)	
Resold and Facilities-Based Local Exchange)	<u>CERTIFICATE NO. 2539</u>
Services within the State of Utah)	
)	

ISSUED: April 20, 2011

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 GC Pivotal, 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 20th day of April, 2011.

/s/ Ted Boyer, Chairman

/s/ Ric Campbell, Commissioner

/s/ Ron Allen, Commissioner

Attest:

/s/ Julie Orchard
Commission Secretary

EXHIBIT B

I. Annual Report: GC Pivotal, 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

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:

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 or 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
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:

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

¹ This 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.

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.