

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of the Application of)
IPDataStream, LLC, for a Certificate of) DOCKET NO. 11-2542-01
Public Convenience and Necessity to)
Provide Resold and Facilities-Based Local)
Exchange and Interexchange) REPORT AND ORDER
Telecommunications Services)

ISSUED: September 29, 2011

SYNOPSIS

By this Report and Order, the Commission converts this matter to an informally adjudicated matter. Additionally, the Commission approves the application of IPDataStream, LLC for a Certificate of Public Convenience and Necessity 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.

By The Commission:

PROCEDURAL HISTORY

IPDataStream, LLC (“Applicant”) filed its verified application on June 22, 2011, seeking a certificate of public convenience and necessity (“Certificate”) to compete as a telecommunications corporation providing interexchange and local exchange telecommunication services in Utah. The application contains detailed information regarding the technical, financial, and managerial resources and abilities of the Applicant to provide the public telecommunication services it seeks to offer.

On July 7, 2011, the Division of Public Utilities (“Division”) filed a memorandum recommending approval of the application. The Division has reviewed verified financial

statements showing Applicant to have a positive net worth and to have ample working capital. The Division believes Applicant's management team has adequate experience in the telecommunications industry. The Division reports Applicant is registered to do business in this state and intends to resell a broad range of local telecommunication services through the use of Qwest facilities. Applicant represents it will negotiate with Qwest for an interconnection agreement immediately upon receiving the requested Certificate. Applicant, according to the Division, does not plan to construct any facilities in the state but will install certain equipment, e.g., switches, necessary to serve customers in existing structures.

As noted in the Division's memorandum, Applicant asserts approval of its application will serve the public interest, enhance competition, and expand customer options. According to Applicant, it has never had any complaints or been investigated for unauthorized switching (slamming) or any other illegal activities. Applicant states it has implemented policies and procedures governing solicitation of new customers that require each new customer to sign a contract authorizing Applicant to provide telecommunication services. The Division recommends the Commission waive the requirement that Applicant file proof of a \$100,000 bond, because the Applicant will not require customer deposits or prepayments of any kind.

Given the type of filing and the information submitted by the Company, the Division expects no opposition to the Division's recommendation or to the application. The Division recommends the Commission adjudicate this Application informally per Utah Administrative Code R746-110-1. Together with its recommendation, the Division submitted

the affidavit of Ronald Slusher, utility technical consultant, in support of its recommendation for approval of the application and for informal adjudication.

In light of the foregoing, the Commission 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 are no intervenors and no opposition to the application.
2. Applicant has filed sworn statements and other supporting documents containing the necessary information in support of the application.
3. Applicant has demonstrated it is qualified to do business in Utah.
4. Applicant requests the Commission grant the Certificate authorizing it to provide public telecommunications services within Utah.
5. Applicant proposes to 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.
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 it desires to offer.
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.

DOCKET NO. 11-2542-01

- 4 -

9. In providing intrastate services, Applicant will be subject to competition from other certified telecommunications service providers.
10. Applicant's service offerings will provide customers with a wider range of choice in meeting their telecommunications needs and will support the development of competition.
11. Applicant will not require customer deposits or offer any prepaid services in Utah.
12. Applicant has applied for waiver of 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 Utah Code Ann. §§ 54-8b-1.1 *et seq.* for the requested Certificate.
3. The requested exemption from the bond requirement of Utah Code Ann. § 54-8b-2.1 is reasonable, in accord with Commission practice, and in the public interest.
4. Issuance of the requested Certificate to provide public telecommunication services, as described in the application, is in accord with the legislative policy set forth in Utah Code Ann. §§ 54-8b-1.1 *et seq.*, and is in the public interest.
5. 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, in light of the Findings and Conclusions above, hereby

ORDERS:

- a. The application shall be adjudicated informally;
- b. 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;
- 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.

DOCKET NO. 11-2542-01

- 6 -

DATED at Salt Lake City, Utah this 29th day of September, 2011.

/s/ Ted Boyer, Chairman

/s/ Ric Campbell, Commissioner

/s/ Ron Allen, Commissioner

Attest:

/s/ Julie Orchard
Commission Secretary
D#210423

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.

EXHIBIT A

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of the Application of
IPDataStream, LLC, for a Certificate of
Public Convenience and Necessity to Provide
Resold and Facilities-Based Local Exchange
and Interexchange Telecommunications
Services

DOCKET NO. 11-2542-01

CERTIFICATE 2542

ISSUED: September 29, 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 IPDataStream, LLC to provide public telecommunication services within the State of Utah, excluding those local exchanges of less than 5,000 access lines that are owned or controlled by an incumbent telephone corporation with fewer than 30,000 access lines in the state.

DATED at Salt Lake City, Utah, this 29th day of September, 2011.

/s/ Ted Boyer, Chairman

/s/ Ric Campbell, Commissioner

/s/ Ron Allen, Commissioner

Attest:

/s/ Julie Orchard
Commission Secretary

EXHIBIT B

I. Annual Report: IPDataStream, 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 shall be reported by geographic area, to the extent feasible.

B. Annual Expenses and Estimated Taxes attributed to operations in the State of Utah.

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.

- C. **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.
- D. **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.
- E. **Number of Access Lines in Service** by geographic area, segregated between business and residential customers.
- F. **Number of Messages and Minutes of Services** for measured services billed to end users.
- G. **List of Officers and Responsible Contact Personnel** updated annually.
- H. **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 shall 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:

DOCKET NO. 11-2542-01

- 10 -

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 of 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 |

¹This regulation is waived only until the Commission establishes Lifeline rules that may include Grantee or until it begins to provide residential local exchange service.

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 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 the foregoing requirements impact competitive entry or impact effective competition, they will be subject to the rule making requirements of Utah Code Ann. § 54-8b-2.2. In such case, the provisions set forth herein shall be superseded by any such rule adopted by the Commission.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 16th day of September, 2011, a true and correct copy of the foregoing REPORT AND ORDER, was served upon the following as indicated below:

By U.S. Mail:

IPDataStream, LLC
4000 SE International Way, Suite F204
Milwaukie, OR 97222

By Hand-Delivery:

Division of Public Utilities
160 East 300 South, 4th Floor
Salt Lake City, UT 84111

Office of Consumer Services
160 East 300 South, 2nd Floor
Salt Lake City, UT 84111

By Electronic-Mail:

Torrie Hughes
thughes@ipdatastream.com

Administrative Assistant