

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of the Application of)
Wholesale Carrier Services, Inc. for a) DOCKET NO. 11-2545-01
Certificate of Public Convenience and)
Necessity to Provide Resold and Facilities-) ORDER REQUIRING FURTHER
Based Local Exchange Services within the) ACTION FROM APPLICANT
State of Utah) BEFORE APPLICATION FOR
) “CPCN” CAN BE CONSIDERED
) FURTHER BY THE COMMISSION
)

ISSUED: February 15, 2012

By The Commission:

BACKGROUND

On November 22, 2011, Wholesale Carrier Services, Inc. (“Wholesale”) filed an application for a certificate of public convenience and necessity (“CPCN”) to provide resold facilities-based local exchange services within the State of Utah. See Application, filed November 22, 2011. On December 12, 2011, the Commission issued an action request to the Division of Public Utilities (“Division”) on Wholesale’s application.

While the Division’s action request was pending, the Utah Rural Telecom Association (“URTA”), on behalf of itself and URTA members, petitioned the Commission for intervention on January 6, 2012. See Petition, filed January 6, 2012. URTA’s petition explains that it is seeking intervention because “[Wholesale’s] application does not indicate it is seeking its certificate only in those areas with more than 5,000 access lines. Therefore, URTA’s interest in this proceeding is [Wholesale’s] potential entry into a Frontier exchange with fewer than 5,000 access lines.” Id. at 2. URTA’s petition to intervene was granted on January 27, 2012. See Order Granting Intervention, issued January 27, 2012.

On January 9, 2012, the Division of Public Utilities (“Division”) filed a recommendation to approve Wholesale’s application. See Division Recommendation, filed January 9, 2012. The Division’s recommendation states, in part: “The Applicant seeks statewide authority except within exchange areas with less than 5,000 access lines that are owned or controlled by an ILEC [Incumbent Local Exchange Carrier] with fewer than 30,000 total access lines in accordance with Utah Code Ann. § 54-8b-2.1(3) and (4).”

On January 30, 2012, the Office of Consumer Services (“Office”) filed a response noting there could be a conflict in the information submitted by the Division and the actual service area sought to be served by Wholesale. See Office Response, filed January 30, 2012. The Office explained that it had served a discovery request upon Wholesale in order to clarify certain parts of Wholesale’s application. See id. at 2. Specifically, “[t]he Office asked [Wholesale] if it intended to serve in Frontier’s service territory with less than 5,000 access lines (which would be in areas other than the Moab exchange).” Id. Wholesale responded, “Yes.” Id. “The Office also asked if [Wholesale] intended to serve the entire Frontier service territory or only those areas with greater than 5,000 access lines.” Id. Wholesale responded that it intends to serve the “entire” Frontier service territory. Id. Based on the foregoing, the Office recommends the Commission not approve a CPCN until Wholesale clarifies its application on this issue.

On February 9, 2012, a scheduling conference was conducted by the administrative law judge for the Commission. The scheduling conference was duly noticed on February 2, 2012. As stated in the notice of scheduling conference, “[t]he purpose of this scheduling conference is to determine the scope of the hearing, particularly in light of the conflicting information submitted by the [Division] and the [Office] related to the scope of the

service area in which the applicant seeks to serve. Parties should also come prepared to discuss the schedule for the case, including the hearing date, filing dates for testimony or prehearing motion, and a cut-off date of intervention of interested parties.” Notice of Scheduling Conference, filed February 2, 2012, at 1. Wholesale did not attend the scheduling conference but several other interested parties were present. Given that Wholesale did not attend the scheduling conference and has not otherwise responded to the Commission, clarification is still needed regarding Wholesale’s application and, more specifically, where Wholesale intends to serve within the State.

STATEMENT OF LAW

Utah Code Ann. § 54-8b-2.1(3)(c) (2010) states: “[a]n intervening incumbent telephone corporation serving few than 30,000 access lines in the state may petition the commission to exclude from an application filed pursuant to Subsection (1) any local exchange with fewer than 5,000 access lines that is owned or controlled by the intervening incumbent telephone corporation. Upon finding that the action is consistent with the public interest. The commission shall order that the application exclude such local exchange.”

ORDER

Because it is unclear what service area Wholesale seeks to serve, it is necessary for Wholesale to amend its application. Therefore, the Commission hereby requests a written response, clarifying this matter, within 20 days of the date of this order.

DATED at Salt Lake City, Utah, this 15th day of February, 2012.

/s/ Melanie A. Reif
Administrative Law Judge

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Approved and confirmed this 15th day of February, 2012, as the Report and Order of the Public Service Commission of Utah.

/s/ Ted Boyer, Chairman

/s/ Ric Campbell, Commissioner

/s/ Ron Allen, Commissioner

Attest:

/s/ Gary L. Widerburg
Commission Secretary
D#215649

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 15th day of February, 2012, a true and correct copy of the foregoing ORDER REQUIRING FURTHER ACTION FROM APPLICANT BEFORE APPLICATION FOR "CPCN" CAN BE CONSIDERED FURTHER BY THE COMMISSION, was served upon the following as indicated below:

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