- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of the Request for Agency Action of Carbon/Emery Telcom, Inc. v. 8x8, Inc.	)))))))	DOCKET NO. 12-2302-01 NOTICE OF REQUEST FOR AGENCY ACTION AND ORDER REQUIRING FURTHER BRIEFING

ISSUED: September 5, 2012

By The Commission:

BACKGROUND

On July 18, 2012, Carbon/Emery Telcom, Inc. ("Carbon/Emery Telcom") filed a request for agency action against 8 X 8, Inc. ("8 X 8"), asserting "[u]pon information and belief" 8 X 8 is providing telecom services within the state of Utah which require a certificate of public convenience and necessity and places 8 X 8 under Commission jurisdiction. See Request for Agency Action, filed July 18, 2012. In response to the Commission's action request, the Division of Public Utilities ("Division") filed a memo on August 16, 2012, recommending the Commission schedule a technical conference for this docket "to further educate the parties on the nature of the services being offered." Division Memo, filed August 16, 2012.

Upon receiving the Division's recommendation, the Commission attempted to schedule a technical conference in this docket. In response to the Commission's proposed date for a technical conference, respondent 8 X 8 requested clarification regarding the alleged customer located in Price, Carbon County, Utah.[1] Without this information, 8 X 8 asserts it cannot provide meaningful input at a technical conference.[2]

---

[1] See Email from Ronald W. Del Sesto, Jr., Counsel for 8 X 8, Inc., to Commission (Aug. 31, 2012; 12:08 PM, MST).

[2] See id.

8 X 8 also challenges the jurisdiction of the Commission to hear this matter because 8 X 8 is an exclusive "VoIP" provider, which it asserts the Commission is preempted from regulating under federal and state law.[3]

The Commission agrees that jurisdiction cannot be presupposed. The federal and state laws cited by 8 X 8 raise serious questions about whether the Commission has jurisdiction in this docket. Further factual allegations and briefing are needed to facilitate the Commission's consideration of the question of jurisdiction.

ORDER

Based on the positions asserted by 8 X 8, and for other good cause appearing, further proceedings are required to provide Carbon/Emery Telcom, 8 X 8, and any other interested parties an opportunity to brief the jurisdictional issue. In their briefs, Carbon/Emery Telcom and 8 X 8 should recite the specific facts each alleges that are relevant to the question of Commission jurisdiction, in addition to discussing the applicable state and federal authorities. Briefs are due within 15 days from this order. Responsive briefs and further responses to the initial request for agency action are due 30 days from this order.

DATED at Salt Lake City, Utah, this 5th day of September, 2012.

/s/ Melanie A. Reif
Administrative Law Judge

---

[3] See id.

Approved and confirmed this 5th day of September, 2012, as the Notice of

Request for Agency Action and Order Requiring Further Briefing 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#233368

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 5th day of September, 2012, a true and correct copy of the foregoing Notice of Request for Agency Action and Order Requiring Further Briefing was served upon the following as indicated below:

By Electronic Mail:

Kira M. Slawson (kslawson@blackburn-stoll.com)
Blackburn & Stoll, LC

Ronald W. Del Sesto, Jr. (r.delsesto@bingham.com)
Bingham

Bryan Martin, CEO (bryan.martin@8x8.com)
8 x 8, Inc.

Patricia Schmid (pschmid@utah.gov)
Justin Jetter (jjetter@utah.gov)
Paul Proctor (pproctor@utah.gov)
Utah Assistant Attorneys General

By Hand-Delivery:

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

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

_____
Administrative Assistant