

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of the Request for Agency)
Action of Carbon/Emery Telcom, Inc., v.) DOCKET NO. 12-2302-01
8x8, Inc.)
) ORDER GRANTING MOTION FOR AN
) ATTORNEY LICENSED IN A FOREIGN
) STATE TO REPRESENT 8X8, INC.
)

ISSUED: October 2, 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 place 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 8 X 8 also challenges the jurisdiction of the

¹ See Email from Ronald W. Del Sesto, Jr., Counsel for 8 X 8, Inc., to Commission (Aug. 31, 2012; 12:08 PM, MST). A copy of this email was posted to the Commission’s Web site on August 31, 2012 and may be viewed at: <http://www.psc.utah.gov/utilities/telecom/telecomindx/2012/12230201indx.html>.

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.²

On September 5, 2012, the Commission issued an order requesting briefing on the jurisdictional issue. See Notice of Request for Agency Action and Order Requiring Further Briefing, issued September 5, 2012. Pursuant to the order, briefs were due in this docket on September 20, 2012 (i.e., 15 days from the order), and responsive briefs and further responses to the initial request for agency action are due on October 9, 2012 (i.e., 30 days from the order).

On September 18, 2012, pursuant to Utah Admin. Code R746-100-6(B), 8 X 8 filed a motion for an attorney licensed in a foreign state to represent 8 X 8. See Motion for an Attorney Licensed in a Foreign State to Represent 8X8, Inc., filed September 18, 2012. 8 X 8 asserts, in part, “that requiring the company to retain local counsel, who would then have to consult with 8x8’s long-standing regulatory counsel, imposes an unreasonable burden and a financial hardship on the company.” Id. at 2, ¶ 6. In addition, although 8 X 8 does not specifically argue this point, the briefing deadlines referred to above could make seeking local counsel burdensome for 8 X 8.

The Utah Administrative Code recognizes that “[u]pon motion, reasonable notice to each party, and opportunity to be heard, the Commission may allow an attorney licensed in a foreign state to represent a party in an individual matter based upon a showing that local representation would impose an unreasonable financial or other hardship upon the party.” Utah Admin. Code R746-100-6(B).

² See id.

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ORDER

For the reasons identified in 8 X 8's motion, and for other good cause appearing, the motion is granted.

DATED at Salt Lake City, Utah, this 2nd day of October, 2012.

/s/ Melanie A. Reif
Administrative Law Judge

Approved and confirmed this 2nd day of October, 2012, as the Order Granting Motion for an Attorney Licensed in a Foreign State to Represent 8x8, Inc. 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#234533

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 2nd day of October, 2012, a true and correct copy of the foregoing Report and Order was served upon the following as indicated below:

By Electronic Mail:

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