

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

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In the Matter of the Joint Application of TCG )  
Utah and Teleport Communications America, )  
LLC for Certificate of Public Convenience and )  
Necessity as a Competitive Local Exchange )  
Carrier, and for Informal Adjudication of )  
Merger )  
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DOCKET NO. 12-2558-01

REPORT AND ORDER

ISSUED: November 26, 2012

SYNOPSIS

By this Report and Order, the Commission converts this matter to an informally adjudicated matter. The Commission approves the application of Teleport Communications America, LLC for a CPCN, authorizing applicant to compete as a CLEC within Utah, and for informal adjudication of a merger of TCG Utah into Teleport Communications America, LLC.

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By The Commission:

BACKGROUND

This matter is before the Commission on the Joint Application of TCG Utah (“TCG”) and Teleport Communications America, LLC (“TCA”), (collectively, “AT&T” or “Applicants”) for a Certificate of Public Convenience and Necessity (“CPCN”) as a Competitive Local Exchange Carrier, and for Informal Adjudication of Merger. As AT&T explains in its application, “[t]his is a purely internal transaction to the AT&T family of companies.... [TCG] is currently certificated as a [CLEC].... The Applicants essentially seek to transfer [TCG’s] operations and service to TCA, through merger, and to certificate TCA so that after the proposed merger TCA can provide the same services currently provided by [TCG] in the State of Utah.”

A duly noticed hearing took place in this docket on November 16, 2012.

**I. Application for CPCN**

AT&T filed its application on September 28, 2012, seeking a CPCN for authority to compete as a telecommunications corporation providing facilities-based and resold local exchange, access, and interexchange telecommunications service throughout all of Utah. AT&T requested review and action as soon as possible, or no later than December 31, 2012. The application contains detailed information regarding the technical, financial, and managerial resources and abilities of Applicant to provide the public telecommunication services it seeks to offer.

On October 16, 2012, the Division of Public Utilities (“Division”) filed a memorandum recommending approval of the application. The Division has reviewed the technical, managerial, and financial abilities of TCA and has found that it has provided the necessary information to fulfill the requirements stated in existing Commission rules. The Division also references that Applicant intends to file proof of a \$100,000 bond, which bond was received by the Commission on November 15, 2012.

As the Division’s memorandum further notes, Applicant asserts approval of its application will serve the public interest, create and enhance competition, and expand customer service options. In addition, the Division notes that the approval of this application will expand the availability of innovative, high quality, reliable and competitively-priced telecommunications services in the State of Utah.

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The Division expects the application will be unopposed and uncontested; therefore, the Division recommends the Commission adjudicate this application informally per Utah Administrative Code R746-110-1.

In light of the foregoing, the Commission enters the following Findings of Fact, Conclusions of Law, and Order, with respect to AT&T's application for CPCN.

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 or 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 will utilize its managerial expertise to support its Utah operations.
6. Applicant has sufficient technical resources and abilities to provide the public telecommunication services it desires to offer.
7. 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.
8. In providing intrastate services, Applicant will be subject to competition from other certified telecommunications service providers.

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9. 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.
10. Applicant intends to require customer deposits or offer prepaid services in Utah, and therefore has filed a \$100,000 bond with the Commission.
11. The Commission took administrative notice of both Applicant's application and supplemental filing of proof of its \$100,000 bond requirement, at the hearing held on November 16, 2012. Counsel for AT&T explained that the bond was filed in anticipation of the application being granted.

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 Applicant has not requested a waiver of the \$100,000 bond requirement, because Applicant intends to require customer deposits or offer prepaid services in Utah. Accordingly, Applicant has filed a bond in the requisite amount.
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.

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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 -- CPCN

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 may provide public telecommunications service in Utah, within the CenturyLink service area, and that is the extent to which Applicant is granted authority through this order. If Applicant wants to provide public telecommunications service outside of the CenturyLink service area, Applicant must submit a new application demonstrating that granting Applicant additional service area is in the public interest.
- d. 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;
- e. The reporting requirements in Exhibit B shall be binding upon Applicant until modified by the Commission;

- f. Applicant shall be exempt from certain provisions of the Utah Code and the Commission's Rules and Regulations, as set forth in Exhibit B;
- g. The bond requirement is not waived.
- h. 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.

## **II. Application for Merger**

AT&T also requested approval to merge, as part of its application filed September 28, 2012. The application contains all the information required by Utah Admin. Code R746-349-7(A)(1).

The Division's memorandum referred to above, filed on October 16, 2012, recommends the Commission approve the application. The Division recommends approval of the merger of TCG and TCA, with TCA being the surviving entity.

Pursuant to Utah Admin. Code R746-349-7(A)(2), the Commission issued a public notice of the application on October 18, 2012, allowing the submission of comments by any interested party regarding the application. No comments or objections were received.

In accordance with Utah Admin. Code R746-349-7(A)(2), the Administrative Law Judge for the Commission held a hearing on November 16, 2012. Attorney Roger Moffitt appeared telephonically on behalf of the Applicant, and was accompanied by Sharon Mullin,

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Director of Regulatory in Utah, and Janice Ono, Area Manager. Justin Jetter, Assistant Utah Attorney General, appeared for the Division, and was accompanied by Ron Slusher, Utility Technical Consultant for the Division.

No one appeared at the hearing objecting to the application. The Administrative Law Judge took administrative notice of AT&T's application. Mr. Slusher testified on behalf of the Division that it would be in the public interest to approve the merger.

Under Utah Admin. Code R746-349-7, "[i]f no objection to the proposed transaction is submitted in any filed comments or reply comments, the Commission will presume that approval of the transaction is in the public interest and use the information contained in the application and accompanying documents as evidence to support a Commission order." Utah Admin. Code R746-349-7(A)(3). Because there is no objection to the granting of the application, the Commission thus presumes the application for approval of merger is in the public interest. Moreover, the Division's memorandum and testimony of its witness, Mr. Slusher, provide additional support for approval of the application.

ORDER -- MERGER

For the foregoing reasons, the Commission approves the merger of TCG Utah into Teleport Communications America, LLC.

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DATED at Salt Lake City, Utah this 26<sup>th</sup> day of November, 2012.

/s/ Ted Boyer, Chairman

/s/ Ric Campbell, Commissioner

/s/ Ron Allen, Commissioner

Attest:

/s/ Gary L. Widerburg  
Commission Secretary

DW# 239348

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.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 26<sup>th</sup> day of November, 2012, a true and correct copy of the foregoing REPORT AND ORDER was served upon the following as indicated below:

By Electronic Mail:

Roger Moffitt ([roger.moffitt@att.com](mailto:roger.moffitt@att.com))  
General Attorney  
AT&T Services, Inc.

Sharon Mullin ([slmullin@att.com](mailto:slmullin@att.com))  
Director – Regulatory  
AT&T Services, Inc.

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

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

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Administrative Assistant

**EXHIBIT A**

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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

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In the Matter of the Joint Application of TCG Utah and Teleport Communications America, LLC for Certificate of Public Convenience and Necessity as a Competitive Local Exchange Carrier, and for Informal Adjudication of Merger

DOCKET NO. 12-2558-01

CERTIFICATE 2558

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ISSUED: November 26, 2012

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 Teleport Communications America, LLC to provide public telecommunications service 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 lines in the state.

DATED at Salt Lake City, Utah, this 26<sup>th</sup> day of November, 2012.

/s/ Ted Boyer, Chairman

/s/ Ric Campbell, Commissioner

/s/ Ron Allen, Commissioner

Attest:

/s/ Gary L. Widerburg  
Commission Secretary

**EXHIBIT B**

**I. Annual Report:** AT&T Corp. (“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 shall 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:

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 <sup>1</sup>

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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 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.