

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of the Joint
Application of TNCI Operating
Company, LLC, Assignee, and Trans
National Communications
International, Inc., Assignor, for
Approval of TNCI Operating Company,
LLC, to Acquire Customers and Certain
Assets of Trans National
Communications International, Inc.;
and Application of TNCI Operating
Company, LLC, for a Certificate of
Public Convenience and Necessity

Docket No. 13-2431-01

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HEARING PROCEEDINGS  
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TAKEN AT: Public Service Commission
Hearing Room 451
160 East 300 South
Salt Lake City, Utah

DATE: Monday, July 1, 2013

TIME: 9:04 a.m.

REPORTED BY: Scott M. Knight, RPR

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APPEARANCES

ADMINISTRATIVE LAW JUDGE: MELANIE A. REIF

FOR DIVISION OF PUBLIC UTILITIES:

JUSTIN C. JETTER, ESQ.,

ASSISTANT ATTORNEY GENERAL

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Fifth Floor

Salt Lake City, Utah 84114

FOR TNCI OPERATING COMPANY, LLC:

BRETT P. FERENCHAK, ESQ.,

(Appearing Telephonically)

BINGHAM McCUTCHEN

2020 K Street NW

Washington, D.C. 20006

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Hearing Proceedings

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July 1, 2013

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PROCEEDINGS

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THE HEARING OFFICER: Good morning everyone.

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I'm Melanie Reif, and I am the administrative law judge for the

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Utah Public Service Commission. And this morning is the

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hearing which is duly noted in this docket, Docket 13-2431-01.

8

This particular docket is entitled In the Matter of

9

the Joint Application of TNCI Operating, LLC, Assignee, and

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Trans National Communications International, Inc., Assignor for

11

Approval of TNCI Operating Company, LLC, to Acquire

12

Customers and Certain Assets of Trans National

13

Communications International, Inc.; and Application of TNCI

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Operating Company for a Certificate of Public Convenience and

15

Necessity.

16

Let's start by taking appearances, please, starting

17

with you, Mr. Ferenchak.

18

MR. FERENCHAK: Thank you, your Honor. My

19

name is Brett Ferenchak; Bingham McCutchen. And my address

20

is 202 [sic] K Street NW, Washington, D.C. 20006. And I am

21

counsel for TNCI Operating Company, LLC.

22

THE HEARING OFFICER: Do you wish to identify

23

those who are also with you on the line?

24

MR. FERENCHAK: Yes. We have Jeff Compton,

25

and he is CEO and president of TNCI Operating Company, LLC.

1 And we also have Peter Helms, and he is vice president,
2 industry carrier relations for TNCI Operating Company.

3 THE HEARING OFFICER: And do you intend to call
4 Messrs. Compton and Helms in this proceeding, Mr. Ferenchak?

5 MR. FERENCHAK: They're primarily here to
6 answer any questions you may have. I was planning on asking
7 one question to update kind of the joint application.

8 THE HEARING OFFICER: Okay. Very good. Let's
9 continue with appearances, please.

10 MR. JETTER: This is Justin Jetter representing the
11 Utah Division of Public Utilities. And with me is Ron Slusher
12 also with the Division of Utilities.

13 THE HEARING OFFICER: Okay. Thank you. And
14 again, welcome, everyone.

15 Mr. Ferenchak, as I understand it, you are seeking
16 two requests from the Commission. In part you're requesting
17 permission to acquire certain customers and assets of Trans
18 National Communications International, Inc., and you're also
19 requesting a certificate of public convenience and necessity.
20 Whichever order you would like to go, I would like to hear from
21 you on both of those issues.

22 And I know your application is--is drafted in the way
23 that you're requesting to have the certificate transferred;
24 however, the analysis is the same regardless. And so I would
25 like to hear from you about the aspects of the application

1 concerning what would be--what would allow you to enter a
2 competitive entry under the--under the statute allowing the
3 CPCN to be granted.

4 MR. FERENCHAK: Sure, your Honor. I think first,
5 I'm not sure if--did we already complete the pro hac vice
6 motion?

7 THE HEARING OFFICER: We haven't addressed
8 that. And since you raise that issue, I'm understanding you are
9 requesting to be admitted pro hac vice.

10 And is there any objection to the motion?

11 MR. JETTER: Division has no objection.

12 THE HEARING OFFICER: Okay. Mr. Ferenchak,
13 your motion is granted, and with the caveat that for future
14 reference, we do have a link on the website which has some
15 detailed instructions on how to request pro hac vice admission.
16 And if you wish to take care of that in advance next time, the
17 Commission would ask that you do so. And your motion is
18 granted.

19 MR. FERENCHAK: Thank you, your Honor.

20 I guess getting back to your original question, TNCI
21 Operating Company is seeking approval to acquire the
22 customers and assets of Trans National Communications
23 International, Inc., through a sale pursuant to the Section 363 of
24 the United States Bankruptcy Code. We--as part of that,
25 currently TNCI Operating Company does not have a certificate,

1 so we would--we've requested that TNCI Operating Company be
2 granted a certificate as part of this asset transfer. And to the
3 extent necessary, we would also ask for waiver of the slamming
4 requirements, to the extent that they're, I guess, different from
5 the FCC's requirements.

6 In the application, TNCI Operating Company has
7 provided information that is typically required for a new
8 certificate: provided information about its address, customer
9 service contact information, facilities to be used, as well as its, I
10 guess, professional, technical, and managerial and financial
11 qualifications to provide service upon completion of the
12 transaction.

13 The TNCI Operating Company has also requested a
14 waiver of the bond requirement because there--they will not
15 request Utah customers to provide a--a deposit.

16 Through the application and the exhibits we
17 provided, the--TNCI Operating Company believes that it has
18 satisfied the requirements under the rules and is requesting that
19 the Commission grant a certificate so that it can--we can begin
20 providing service to the customers of Trans National
21 Communications International, Inc.

22 There is one update that I guess I can make to the
23 application with regard to the current operating authority that
24 TNCI Operating Company has in other states. In the
25 application, I believe we mention that the authority was only in

1 four states. And since filing the application, TNCI Operating
2 Company has been granted local and interexchange authority in
3 a number of other states, and I can list those for you: Alabama,
4 Colorado, the District of Columbia, Florida, Georgia, Indiana,
5 Kentucky, Louisiana, Massachusetts, Michigan, Minnesota,
6 Mississippi, Missouri, Montana, Nebraska, New Hampshire, New
7 Jersey, New Mexico, New York, North Carolina, North Dakota,
8 Oregon, Pennsylvania, Rhode Island, South Dakota, Texas,
9 Vermont, Washington, West Virginia, and Wisconsin.

10 And TNCI Operating Company is currently actually
11 providing intrastate services in 25 of these states to the former
12 customers of Trans National Communications International, Inc.

13 I--at this time, I don't have anything additional to
14 add, but I, as well as our two witnesses, are available for any
15 questions you may have.

16 THE HEARING OFFICER: Mr. Ferenchak-- Mr.
17 Ferenchak, thank you for that background. It would be the
18 Commission's preference to have a witness or witnesses on file
19 that testify to the accuracy and are available for any questions
20 from the Commission as well as from the Division. Is there a
21 particular person who you wish to call to--

22 MR. FERENCHAK: It--yes, your Honor. I think
23 we'd call Jeff Compton, president and CEO of Trans--TNCI
24 Operating Company.

25 THE HEARING OFFICER: Okay. And for--

1 for procedure, it might be helpful if you do a little bit of
2 background with him as far as establishing some of the things
3 that you've already established and--and clarifying that in fact
4 the standards that you purport to be met are-- are--are met per
5 his testimony, if that's the way that you wish to proceed.

6 But before we go that route, I need to swear in Mr.
7 Compton. And it is a bit awkward because he's not here.

8 But Mr. Compton, are you on the line?

9 MR. COMPTON: Yes, I am.

10 THE HEARING OFFICER: And could you please
11 raise your right hand?

12 MR. COMPTON: Yes.

13 THE HEARING OFFICER: And do you swear that
14 the testimony you're about to give is the truth?

15 MR. COMPTON: Yes, I do.

16 THE HEARING OFFICER: Okay. Thank you.

17 Mr. Ferenchak, you may proceed if you wish. And
18 when you're finished, Mr. Compton will be open for any
19 questions from the Division or the Commission.

20 JEFF COMPTON, being first duly sworn, was
21 examined and testified as follows:

22 EXAMINATION

23 BY-MR.FERENCHAK:

24 Q. Thank you. Mr. Compton, would you please state
25 your name, position, and business address?

1 A. Yes. My name is Jeff Compton. I'm CEO and
2 president of TNCI Operating Company, LLC. Our business
3 address is 114 East Haley Street, Santa Barbara, California
4 93101.

5 Q. And would you briefly describe your responsibilities
6 and background?

7 A. Yes. My responsibilities as president and CEO of
8 TNCI Operating Company is to manage day-to-day
9 responsibilities that--that support our staff to properly serve our
10 customers, and invoice, to manage customer care, to manage
11 the network and trouble report, and regulatory and contract
12 compliance.

13 Q. Thank you.

14 A. My--oh, go ahead. Did you want me to cover some
15 background? I'm sorry.

16 Q. That's fine. Yes, please.

17 A. I've been in the telephone business about 18 years.
18 I spent about the first eight and a half years in the network side
19 of the business. I built telecommunication switching sites, put
20 fiber and copper in the ground to build networks. I built
21 colocation facilities and network presence around the country. I
22 worked in provisioning and migration to properly provision
23 customer lines.

24 I worked in customer care and managed sales
25 teams and departments. I have managed regulatory and

1 industry relations as long as revenue assurance and contract
2 management and administration within phone companies. I've
3 worked for four different competitive local exchange carriers in
4 addition to the one that I'm currently managing. I am also
5 president and CEO of Blue Casa Telephone, a competitive local
6 exchange carrier based in California providing service to
7 residential and small business customers.

8 Q. Thank you. And have you reviewed and seen a
9 copy of the application that was filed for TNCI Operating
10 Company?

11 A. Yes, I have.

12 Q. And aside from--are there any changes or updates
13 that need to be made to that joint application?

14 A. The only change or--or update would be the update
15 that I believe was already read into the record updating where
16 we are currently operating or authorized to offer interexchange
17 telephone service.

18 Q. Thank you. And based on the information provided
19 on--in the application and--and your knowledge, does TNCI
20 Operating Company have the financial, managerial, and
21 technical abilities to provide local exchange and interexchange
22 service in Utah?

23 A. Yes, absolutely.

24 Q. And would you give a little bit of background about
25 the extent of TNCI Operating Company's current operations?

1 A. Sure. TNCI Operating Company hired about 42 of
2 the existing Trans National Communications International, Inc.,
3 operational employees at the start of our operation in May. And
4 those customers currently reside in the same offices that they
5 did at the time of our acquisition. They perform essentially the
6 same function, to allow us to continue to offer the unique
7 services that our customers are--need to operate their business.
8 And we're able to fulfill both our contractual and regulatory
9 requirements substantially because of them, augmented by the
10 staff of Blue Casa Telephone Company.

11 Q. Thank you. And would you clarify the type of
12 customers that TNCI Operating Company provides service to?

13 A. Yes. TNCI Operating Company provides services
14 to small, medium, and enterprise-class business customers. So
15 from the pretty small to the very, very large businesses and
16 corporations.

17 Q. And no residential customers?

18 A. No residential customers.

19 Q. And what types of services will TNCI Operating
20 Company provide in Utah?

21 A. Essentially the same services: the small, medium,
22 and enterprise-class customers.

23 Q. So, for instance, local and long distance services,
24 data--voice and data services, private line, frame relay, those
25 types of services?

1 A. Correct.

2 MR. FERENCHAK: I think at this time, your Honor,
3 I don't have any additional questions. Turn--turn the questions
4 over to you or staff.

5 THE HEARING OFFICER: Thank you, Mr.
6 Ferenchak. And thank you, Mr. Compton, for your testimony.

7 Mr. Jetter, do you have any questions for Mr.
8 Compton?

9 MR. JETTER: I have no questions, your Honor.

10 THE HEARING OFFICER: All right. Thank you.
11 Just a couple of questions for you, Mr. Compton, from the
12 Commission.

13 EXAMINATION

14 BY-THE HEARING OFFICER:

15 Q. Is it your opinion that issuance of a certificate of
16 public convenience and necessity is in the public interest?

17 A. Yes, it is. Trans National Communications
18 International was insolvent, and continuing to operate and serve
19 its customers and fulfill its contractual and regulatory
20 responsibilities, therefore, became impossible. And there are
21 many companies across the country and in specifically Utah that
22 rely on the services for their economic viability and continue to
23 function. So it very much serves in the public interest to allow
24 us to continue to serve those customers.

25 Q. Thank you. With respect to your request to obtain

1 customers and assets of Trans National--
2 and just for convenience and brevity, I won't list the entire
3 name--there's reference in the application that not only are you
4 requesting to obtain the customers but also assets. Can you
5 give a brief overview of what assets other than customers that
6 you've already discussed that you are obtaining from Trans
7 National?

8 A. Yes. Trans National Communications International
9 has telecommunications switching equipment in both Los
10 Angeles, California, and Reston, Virginia. They have computer
11 access in the state of Massachusetts, as well as desks, file
12 cabinets, and other office furniture and equipment. And those
13 are the assets that we are also acquiring.

14 Q. Okay. One aspect of the application that was
15 highlighted by your counsel was that a waiver of the federal
16 slamming regulation is being requested. If you're able to speak
17 to that issue, do you understand why that request is being
18 made? Because there's something about the way that you
19 operate that makes that law inapplicable? Please help me
20 understand that.

21 MR. FERENCHAK: Your Honor, if I may clarify.

22 THE HEARING OFFICER: Sure.

23 MR. FERENCHAK: We--the application was not
24 asking for a waiver of the FCC slamming rules but rather any
25 Utah rules that--that, you know, may not match with the FCC

1 slamming rules. The company has complied with the FCC
2 slamming rules with regard to customer-based transfers.

3 BY THE HEARING OFFICER:

4 Q. Okay. And Mr. Compton, back to you, please. Is
5 it--is it indeed the case that you will not be requiring customers
6 in Utah to place a deposit?

7 A. Yes, that is correct. We do not require
8 prepayments or deposits.

9 Q. Okay. And that would be the reason why you're
10 requesting the bond waiver?

11 A. Yes, that is correct.

12 HEARING OFFICER: Okay. All right. Thank you
13 for your clarification. I don't have any further questions.

14 Mr. Ferenchak, did you wish to call any further
15 witness?

16 MR. FERENCHAK: No, your Honor.

17 THE HEARING OFFICER: Okay. Mr. Jetter?

18 MR. JETTER: Thank you, your Honor. The
19 Division would like to call our expert witness, Ron Slusher.

20 THE HEARING OFFICER: Thank you. Is your
21 microphone on?

22 MR. JETTER: The light is on. I don't know if it's--

23 THE HEARING OFFICER: I'm just not hearing you
24 very well. Maybe speak right into the microphone. That might
25 help out a little bit.

1 MR. JETTER: Is this better?

2 THE HEARING OFFICER: That's much better.

3 Thank you very much.

4 Mr. Slusher.

5 MR. SLUSHER: Yeah.

6 HEARING OFFICER: Would you please raise your
7 right hand? And do you swear that the testimony you're about
8 to give is the truth?

9 MR. SLUSHER: I do.

10 THE HEARING OFFICER: Thank you.

11 RON SLUSHER, being first duly sworn, was
12 examined and testified as follows:

13 EXAMINATION

14 BY-MR.JETTER:

15 Q. Mr. Slusher, would you please state your name and
16 occupation for the record?

17 A. Name is Ron Slusher. I'm a utility technical
18 consultant for the Division of Public Utilities.

19 Q. Thank you, Mr. Slusher. Mr. Slusher, have you
20 reviewed the application and the filings made by the applicant
21 throughout this docket?

22 A. I have.

23 Q. And have you prepared a memo as well as an
24 amended memo filed by the Division of Public Utilities in this
25 docket?

1 A. Yes, I did.

2 Q. And do the recommendations made in those memos
3 remain accurately reflecting the Division's positions?

4 A. They do.

5 Q. Do you believe that approval by the Commission of
6 the application, both for the transfer of control as well as the
7 transfer of the CPCN and--
8 excuse me--the waiver of the provisions of the Utah slamming
9 rule that differ from the FCC's--
10 approval of all of those would be just, reasonable, and in the
11 public interest?

12 A. Yes.

13 Q. Thank you. Do you have any updates or changes
14 you'd like to make to anything that the Division has filed?

15 A. No, no updates or changes.

16 Q. And finally, are you aware of any opposition from
17 any other party to approval of this?

18 A. Have not heard of any.

19 MR. JETTER: Thank you. I have no further
20 questions.

21 THE HEARING OFFICER: Thank you, Mr. Jetter.
22 Mr. Ferenchak, do you have any questions for the
23 witness, Mr. Ron Slusher?

24 MR. FERENCHAK: No, your Honor.

25 THE HEARING OFFICER: Mr. Slusher, just a

1 couple of questions, please.

2 EXAMINATION

3 BY-THE HEARING OFFICER:

4 Q. With respect to the application for this CPCN which
5 the company has requested, is it the Division's position that the
6 company has established the technical ability, manager--
7 managerial experience, and financial ability required for such a
8 certificate?

9 A. Yes.

10 Q. And is it the Division's position that issuance of a
11 certificate to the applicant is in the public interest?

12 A. Yes.

13 Q. With respect to the slamming issue that was raised
14 by Mr. Ferenchak and which you just a moment or so ago
15 addressed, could you help me understand the nature of the
16 request to have that waived and why or why not the Division
17 supports that?

18 A. Off the top of my head, with not having a book in
19 front of me, there--it seems like there's two or three different
20 rules that the FCC applies that are different from the state
21 regulations. And it's pretty standard that the telephone
22 companies applying for a CPCN request--that those be waived.
23 I--I can't address in full detail now what they are exactly, but it's
24 pretty standard that they ask for a waiver on those one or two
25 different rules.

1 Q. Would it be accurate to say that the FCC rule is
2 inclusive enough that any concern that the Division would have
3 about slamming would be addressed by the FCC rule?

4 A. Yes.

5 Q. Okay. And with respect to the waiver of the
6 deposit, is it the Division's understanding that there will be no
7 customer deposits or prepayment of any kind?

8 A. That is correct. That was filed in their application.

9 Q. Okay. Have you received any communication from
10 anyone concerning this pending application?

11 A. I have not.

12 HEARING OFFICER: Okay. I have no further
13 questions, Mr. Slusher.

14 Mr. Ferenchak, do you have any follow-up
15 questions for Mr. Slusher?

16 MR. FERENCHAK: No, your Honor.

17 THE HEARING OFFICER: Okay. Is there anyone
18 here today who wishes to object or make a statement
19 concerning the application pending before the Commission?

20 Hearing none, we will be adjourned. However,
21 before we adjourn, I just wanted to ask if there are any
22 questions before we do so. Mr. Ferenchak, do you have any
23 questions before we adjourn today?

24 MR. FERENCHAK: No, your Honor.

25 THE HEARING OFFICER: Okay. All right. Thank

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you all for being here. And for those of you who are joining us
by the telephone, thank you.

The hearing will be adjourned and decision will be
forthcoming. Thank you again.

(Proceedings adjourned at 9:33 a.m.)

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CERTIFICATE

This is to certify that the foregoing proceedings were taken before me, SCOTT M. KNIGHT, a Registered Professional Reporter and Notary Public in and for the State of Utah, residing at South Jordan, Utah;

That the proceedings were reported by me in stenotype and thereafter caused by me to be transcribed into typewriting, and that a full, true, and correct transcription of said proceedings so taken and transcribed is set forth in the foregoing pages, inclusive.

I further certify that I am not of kin or otherwise associated with any of the parties to said cause of action, and that I am not interested in the event thereof.

Scott M. Knight, RPR

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