



March 25, 2015

Via Email: psc@utah.com

Utah Department of Commerce
Division of Public Utilities
Telecommunications Section
Heber Wells Building 4th Floor
160 East 300 South
Salt Lake City, UT 84111

RE: Petition to Commission for a Certificate of Public Convenience and Necessity filed by Clear Rate Communications, Inc.

Dear Chairman Allen:

Enclosed for the Commission's review is an original plus seven copies of Clear Rate Communications, Inc.'s Application for a Certificate of Public Convenience and Necessity to provide/resell local exchange and interexchange services in the State of Utah, as well as the \$100.00 application fee. This is an original petition filed by Clear Rate Communications, Inc.

Clear Rate respectfully requests confidential treatment of the information supplied in **Exhibits C, D, and E** as this information is highly confidential and proprietary.

If you have questions or require additional information, please contact me directly at (248) 556-9522 or via email: mroose@clearrate.com.

Sincerely,
Clear Rate Communications, Inc.

/s/ Michelle A. Roose
Michelle A. Roose
General Counsel, Legal & Regulatory Affairs

Michelle A. Roose
General Counsel, Legal & Regulatory Affairs
555 S. Old Woodward Avenue, Suite 600
Birmingham, MI 48009
(248) 556-9522

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of the Application)
of **CLEAR RATE COMMUNICATIONS, INC.**,)
for a Certificate of Public Convenience and) Docket No. _____
Necessity to Provide/Resell Local Exchange and)
Interexchange Services in the State of Utah.)

Clear Rate Communications, Inc. (“Clear Rate” or “Applicant”), by its undersigned counsel and pursuant to the Commission’s Rules of Practice and Procedure (Utah Admin. Code R746-100), Section 63-46b-3 of the Utah Administrative Code, Sections 54-8b-1.1, *et seq.*, of the Utah Code and the Telecommunications Act of 1996 (“1996 Act”), 47 U.S.C. §§ 151, *et seq.*, hereby applies to the Utah Public Service Commission for a certificate of public convenience and necessity authorizing Applicant to operate as a reseller/provider of local exchange and interexchange services in the State of Utah.

Clear Rate also intends to provide intrastate interexchange services within and throughout the State of Utah.

In support of its application, Clear Rate provides the following information pursuant to Utah Admin Code R746-349:

1. Applicant’s legal name is Clear Rate Communications, Inc. Applicant will be conducting business in Utah under the name “Clear Rate Communications, Inc.” and/or “Clear Rate Communications”. Applicant may be reached at its principal place of business:

Clear Rate Communications, Inc.
555 S. Old Woodward Avenue
Suite 600
Birmingham, MI 48009
Main phone number: (248) 556-4500

Fax number: (248) 556-4501
Toll free number: (877) 877-4799
Email: legal@clearrate.com
Utah Business Entity Number: 9336993-0111

Clear Rate Communications, Inc. is a Michigan corporation organized on April 4, 2001 under the laws of Michigan. A copy of Clear Rate's Articles of Incorporation is attached hereto as **Exhibit A**.

2. Correspondence or communications pertaining to this Application should be directed to:

Michelle A. Roose
General Counsel, Legal & Regulatory Affairs
555 S. Old Woodward, Suite 600
Birmingham, MI 48009
Telephone: (248) 556-9522
Facsimile: (248) 556-9982

3. Questions concerning the ongoing operations of Applicant following certification should be directed to:

Michelle A. Roose
General Counsel, Legal & Regulatory Affairs
555 S. Old Woodward, Suite 600
Birmingham, MI 48009
Telephone: (248) 556-9522
Facsimile: (248) 556-9982

4. Applicant's registered agent in the State of Utah is:

Corporation Service Company
10 East South Temple
Suite 850
Salt Lake City, UT 84133

5. Clear Rate's toll-free number for customer inquiries is 1-877-877-4799. Applicant's designated representative for responding to consumer complaint inquiries by the public is:

Paul Sorenson
Customer Care Supervisor
555 S. Old Woodward, Suite 600
Birmingham, MI 48009
Telephone: (248) 556-9507
Facsimile: (248) 556-9981
Email: complaints@clearrate.com

6. R746-349-(A)(3). Facilities to be used. Clear Rate intends to deploy its own switching platform and will, as business demands, deploy certain of these facilities in collocated sites throughout Utah. Other than gateway switching platforms to be deployed, Clear Rate does not currently own property in the State of Utah and has no plans for construction of voice or data transport facilities in Utah. Initially, Clear Rate proposes to provide local exchange service, operating as a switch-based reseller of the Incumbent Local Exchange Carriers' (ILEC) facilities and/or as a reseller of the facilities of other certificated Competitive Local Exchange Carriers (CLEC). As a switch-based reseller of ILEC and/or CLECs facilities, Clear Rate will rely on its facilities-based underlying carrier(s) for the operation and maintenance of the local exchange network. Clear Rate will then purchase unbundled network elements from the ILEC and/or lease facilities and network from other CLECs.

7. R746-349-3(A)(4). Services to be offered. Clear Rate seeks authority to provide all forms of resold local exchange services, which will allow customers to originate and terminate local calls to other customers served by Clear Rate as well as customers served by all authorized local exchange carriers. Clear Rate will also provide switched access services to interexchange carriers, which will allow Clear Rate's customers to originate and terminate intrastate and interstate calls to and from customers of all interexchange carriers. Clear Rate seeks to provide resold local exchange services to business and residential customers in Qwest Communication's service territories as well as interexchange services (intraLATA and interLATA) throughout the

State of Utah. Resale authority is sought for the entire state for interexchange services and for Qwest's service territory for local exchange services.

Clear Rate specifically seeks authority to resell Qwest's, other incumbent LECs and authorized CLECs' local exchange services and IXCs' interexchange services to business and residential customers throughout the State of Utah. Clear Rate intends to resell both local exchange services and switched and dedicated interexchange carrier services.

7. (a) R746-349-3(A)(4)(a). Classes of customers. Clear Rate will be serving residential and small business customers.

7. (b) R746-349-3(A)(4)(b). Location of service. Clear Rate will provide service to and from all points in Utah.¹

7. (c) R746-349(A)(4)(c). Types of service. Local exchange services will include but will not be limited to the following: (i) local exchange access services to single-line and multi-line customers (including basic access lines, direct inward-outward PBX trunk service, Centrex services, and ISDN and DSL); and (ii) local exchange usage services to customers of Clear Rate's end-user access line services. Clear Rate intends to offer both inbound and outbound intraLATA services. This will be accomplished primarily through the resale of the facilities of ILECs and/or CLECs. Applicant's services will be available on a full-time basis – 24 hours a day, seven days a week.

8. R746-349-3(A)(5). Access to standard services. Clear Rate will provide access to ordinary intraLATA and interLATA message toll calling, operator services, directory assistance, directory listings, and emergency services such as 911 and E911 either through its own operations

¹ Clear Rate currently does plan to provide local exchange services in the service areas of small or rural local exchange ("LECs") as defined by the Telecommunications Act of 1996.

or by purchasing those services from ILECs, certificated CLECs, and other companies specializing in providing these services on a competitive basis.

9. R746-349-3(A)(7) – (8). Professional experience and education of managerial personnel and personnel responsible for Utah operations. Applicant’s officers are as follows:

Officers:

Thane Namy, Chief Executive Officer

Sam Namy, Chief Financial Officer

Descriptions of the extensive telecommunications and managerial experience of Applicant’s officers are attached hereto as **Exhibit B**.

10. R746-349-3(A)(1), R746-349-3(A)(9) – (11). Financial abilities. Clear Rate is financially qualified to provide local exchange telecommunications services in Utah. In particular, Clear Rate has access to the financing and capital necessary to conduct its telecommunications operations as specified in this application.

10. (a) R746-349-3(A)(9). Chart of accounts. Clear Rate’s chart of accounts including account numbers, names, and brief descriptions is attached hereto as **Exhibit C**.

10. (b) R746-349-3(A)(10)(a) – (b). Balance sheet. Applicant’s balance sheet prepared according to Generally Accepted Accounting Principles (“GAAP”) and a letter from management attesting to the accuracy, integrity, and objectivity of the balance sheet and attesting that the balance sheet was prepared in accordance with GAAP are attached hereto as **Exhibit D**. In accordance with R746-349-3(A)(11)(a), this balance sheet shows that Clear Rate has a positive net worth.

10. (c) R746-349-3(A)(11)(c), R746-349-3(A)(2). Bond requirement. Clear Rate respectfully requests that the Commission grant a waiver from the requirement that Clear Rate

show proof of a bond in the amount of \$100,000 in order to protect customer deposits or other liabilities. Clear Rate only requires deposits in the limited circumstance of dispatching repair technicians. Furthermore, as demonstrated by its financial statements, Applicant has adequate financial resources to cover any liabilities should they exist. If at some time in the future, Clear Rate decides to collect deposits from all Utah customers, Clear Rate will comply with all applicable Utah laws and Commission rules and regulations.

11. R746-349-3(A)(12). Five-year projection of expected operations.

11. (a) R746-349-3(A)(12)(a). Income and cash flow statements. Please find attached as **Exhibit E** a five-year projection of expected operations including *pro forma* income statements and *pro forma* cash flow statements. The Applicant is focusing on a particularly niche market within the State of Utah, and believes it can provide services to this market segment as a switch-based reseller. Accordingly, as demonstrated in its five-year projection of expected operations in the State of Utah, Applicant does not anticipate making significant capital expenditures in order to serve the identified market.

11. (b) R746-349-3(A)(12)(b). Types of technology to be deployed. Clear Rate will install state-of-the-art telecommunications gateway switching equipment. Applicant will lease existing local fiber-optic network infrastructure to provide trunking facilities to the ILEC and/or one or more CLECs. The Applicant anticipates the fiber-optic network infrastructure it utilizes will connect Clear Rate's network to major ILEC central offices and customers in the central business district and outlying areas of business concentrations in each market. Clear Rate's network will also be connected to an ILEC tandem switch and certain IXC points of presence ("POPs"). As each customer is obtained, service will be provisioned by leasing unbundled loops or other facilities (*e.g.*, T1s) from the ILEC to connect the end user to Clear Rate's network.

11. (c) R746-349(A)(12)(c). Maps of facilities locations. As stated in Paragraph 6 above, Clear Rate does not own property in the State of Utah and does not plan to construct any facilities in the state. Clear Rate will provide local exchange services through resale or unbundled interconnection with the Incumbent Local Exchange Carrier. Clear Rate will, if the Commission so desires, notify the Commission if such plans change.

12. R746-349-3(A)(6), R746-349-3(A)(13). Implementation and schedule. Clear Rate intends to initiate its operations in Utah upon receipt of authority and execution of an interconnection agreement with Qwest. Clear Rate will enter into negotiations with Qwest Communications for a region wide interconnection/commercial agreement as soon as the Commission approves Applicant's application to operate as a local exchange telecommunications service provider in the State of Utah.

13. R746-349-3(A)(1), R746-349-3(A)(14). Technical and managerial abilities. Clear Rate's officers have the necessary managerial and technical resources and qualifications necessary to execute its business plan, to provide its proposed telecommunications services, and to operate and maintain Clear Rate's facilities, over which such services will be deployed. Clear Rate's management team has more than 18 years' experience in telecommunications.

Clear Rate has 2 other pending applications to provide interexchange telecommunications and/or local exchanges services in Iowa and Oregon. Presently, Clear Rate provides local exchange services in the states of California, Florida, Illinois, Indiana, Massachusetts, Michigan, Minnesota, New York, Ohio, Pennsylvania, Texas, Virginia, Washington, and West Virginia. Clear Rate has not been refused certification in any state, nor has it had a permit, license, or certificate revoked by any state.

14. R746-349-3(A)(1), R746-349-3(A)(15). Public interest. Clear Rate is an innovative company that has deployed a variety of innovative marketing approaches. Clear Rate is precisely the kind of innovative start-up envisioned by Congress when they enacted the 1996 Telecommunications Act. Approval of Clear Rate's application will serve the public interest by creating greater competition in the local exchange marketplace for both business and residential customers. Applicant anticipates that its proposed service will provide its subscribers with better quality services and enhanced user features and will increase consumer choice through Applicant's reliable service offerings. The public convenience and necessity, therefore, will be served by the issuance of a Certificate of Public Convenience and Necessity to Applicant authorizing it to provide the services described in this application.

15. R746-349-3(A)(16). Authority to conduct business. A copy of Clear Rate's certificate of good standing from the Michigan Secretary of State is attached hereto and **Exhibit F**.

16. R746-349-3(A)(17) – (18). Unauthorized switching, solicitation of new customers, and prevention of unauthorized switching. Clear Rate has not been the subject of a formal complaint or investigation regarding the unauthorized switching ("slamming") of any customer, but for one civil action filed by the West Virginia Attorney General which has been dismissed and specifically focused on Clear Rate's "carrier access fee." Any informal complaints that were filed were timely responded to and promptly addressed by Clear Rate's Customer Care Department. Clear Rate will comply with Utah law and the Federal Communications Commission's regulations regarding solicitation and authorization for preferred carrier changes. Clear Rate has implemented policies and procedures respecting the solicitation of new customers and has anti-slamming

measures in place and routinely uses third party verification to verify carrier change requests in accordance with federal and state requirements.

17. Waivers and Regulatory Compliance. Clear Rate requests the Commission grant it a waiver of those regulatory requirements which are not applicable to competitive local service providers such as Clear Rate. Such rules are not appropriate or necessary for competitive providers and constitute an economic barrier to entry into the local exchange market. In addition, Clear Rate requests a temporary waiver of the requirement to file a tariff until Applicant has entered into a Commission-approved interconnection agreement that enables it to provide basic local exchange service. Specifically, Clear Rate requests the following standard waivers that are routinely granted to competitive providers in Utah:

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

Waivers of Regulations:

- R746-340-2(D) -- Uniform System of Accounts
- R746-340-2(E)(1) -- Tariff filings required
- R746-340-2(E)(2) -- Exchange Maps
- R746-344 -- Rate case filing requirements
- R746-401 -- Reporting of construction, acquisition and disposition of assets
- R746-405 -- Tariff formats

Clear Rate requests that it be exempt from record keeping regulations that require a carrier to maintain its financial records in conformance with the Uniform System of Accounts (“USOA”). The USOA was developed by the FCC as a means of regulating telecommunications companies subject to rate-based regulation.

As a competitive carrier, Clear Rate maintains its books of accounts in accordance with Generally Accepted Accounting Principles (“GAAP”). Neither the FCC, nor this Commission, have required Clear Rate to maintain its records under the USOA for purposes of Clear Rate’s inter-exchange operations. Thus, Clear Rate does not possess the detailed cost data required by USOA, nor does it maintain detailed records on a state-specific basis. As a competitive provider, Clear Rate’s network operations are integrated to achieve maximum efficiency. Having to maintain records pertaining specifically to its Utah local service operations would place a severe burden on Clear Rate.

Moreover, Clear Rate asserts that because it utilizes GAAP, the Commission will have reliable means by which to evaluate Clear Rate’s operations and assess its financial fitness. A Chart of Accounts is provided in **Exhibit C**. Therefore, Clear Rate hereby requests an exemption from the USOA requirements.

Clear Rate requests that it not be required to publish local exchange directories. Clear Rate will make arrangements with the incumbent LECs whereby the names of Clear Rate’s customers will be included in the directories published by the incumbent LECs. LEC directories will also be modified to include Clear Rate’s customer service number. These directories will be distributed to Clear Rate’s customers. This approach is entirely reasonable and will have a direct benefit to the customers of both Clear Rate and the incumbent LECs since customers will have to refer to only one directory for a universal listing of customer information. It would be an unnecessary burden on Clear Rate to require that it publish and distribute its own directory to all customers located within each exchange area, particularly since nearly all of these customers will be customers of the incumbent LECs. It is more efficient for Clear Rate to simply include its limited customer list in the existing directories of the incumbent LECs.

WHEREFORE, Clear Rate respectfully requests that the Utah Public Service Commission: (1) issue a Certificate of Public Convenience and Necessity authorizing Clear Rate to operate as a reseller/provider of local exchange and interexchange services in the State of Utah; (2) grant the waivers requested in this Application; and (3) grant such other relief as it deems necessary and appropriate.

Respectfully Submitted,

/s/ Michelle A. Roose

Michelle A. Roose

General Counsel, Legal & Regulatory Affairs

Clear Rate Communications, Inc.

Dated: March 31, 2015

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 31st day of March, 2015, a true and correct copy of the foregoing Application and accompanying statements, exhibits, attachments and other ancillary and supporting documents filed therewith were served upon the following as indicated below:

By Electronic Mail:

dpudatarequest@utah.gov

By US Mail:

Utah Department of Commerce
Department of Public Utilities
Telecommunications Section
Heber Wells Building 4th Floor
160 East 300 South
Salt Lake City, Utah 84111

/s/ Michelle A. Roose
Michelle A. Roose
555 S. Old Woodward Avenue
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