

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of the Application of XYN Communications of Utah, LLC for a Certificate of Public Convenience and Necessity to Provide Facilities-Based, Resold Local Exchange and Access Telecommunications Services in the State of Utah	<u>DOCKET NO. 16-2588-01</u> <u>REPORT AND ORDER</u>
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ISSUED: April 26, 2016

SYNOPSIS

The Commission approves the application of XYN Communications of Utah, LLC (XYN) for a Certificate of Public Convenience and Necessity and authorizes XYN to provide facilities-based and resold local exchange and access telecommunications services within Utah.

PROCEDURAL HISTORY

On March 17, 2016, XYN filed this application, seeking a certificate of public convenience and necessity (Certificate) for authority to provide facilities-based and resold local exchange and access telecommunications services within Utah. The application provided detailed information regarding the technical, financial, and managerial resources and abilities of XYN to provide the public telecommunications services it seeks to offer. In addition, XYN requested that the \$100,000 bond requirement set forth in Utah Administrative Code R746-349-3(A)(2) be waived, as XYN will not require customer deposits or prepayments.

On April 7, 2016, the Division of Public Utilities (Division) filed a memorandum recommending approval of the application. In its memorandum, the Division noted the following:

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1. Approval of XYN's application will promote the public interest by creating and enhancing competition and expanding customer service options. Additionally, approving the application will expand the availability of innovative, high quality, reliable, and competitively-priced telecommunications services in the State of Utah.
2. XYN intends to provide a full range of telecommunications services to business customers within the service area of CenturyLink Communications, Inc.
3. XYN intends to provide directory assistance, directory listings, and emergency 911 and E911 services, either directly or through one or more underlying carriers.
4. XYN has a positive net worth and ample working capital.
5. XYN has never been investigated for unauthorized switching or any other illegal activity.

On April 26, 2016, the Commission held a hearing in this docket. Leon Nowalsky appeared telephonically on behalf of XYN, accompanied by Shawn Sims, XYN manager and CEO. Justin Jetter, Utah Assistant Attorney General, appeared on behalf of the Division, accompanied by Ron Slusher, utility analyst. According to the testimony given at hearing, the parties agree that approval of the application is in the public interest and that it is permissible and appropriate to waive the \$100,000 bond requirement.

In light of the foregoing, the Commission enters the following Findings of Fact, Conclusions of Law, and Order.

FINDINGS OF FACT

1. There are no intervenors in this docket. There has been no opposition to the application.
2. XYN has filed documentation containing sufficient information to support the application.
3. XYN has demonstrated that it is qualified to do business in Utah.
4. XYN proposes to provide public telecommunications services within the service area of CenturyLink Communications, Inc.
5. XYN will utilize its managerial expertise to support its Utah operations.
6. XYN has sufficient technical resources and abilities to provide the public telecommunications services it proposes to offer.
7. XYN has a positive net worth and ample working capital for its Utah operations.
8. In providing intrastate services, XYN will be subject to competition from other certified telecommunications service providers.
9. XYN'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. XYN will not require customer deposits or offer any prepaid services in Utah.

CONCLUSIONS OF LAW

1. XYN meets each of the statutory requirements of Utah Code Ann. §§ 54-8b-1.1 *et seq.* for the requested Certificate.
2. XYN's request to be exempted from the \$100,000 bond requirement is in accord with Commission practice and is in the public interest.

3. Issuance of the requested Certificate to provide public telecommunications 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.

ORDER

In light of the Findings and Conclusions set forth above, the Commission ORDERS:

- a. XYN Communications of Utah, LLC is granted the Certificate attached as Exhibit A, which exhibit is incorporated by reference into this Order as if fully set forth.
- b. XYN's Certificate is subject to the limitations stated therein.
- c. XYN shall provide annual reports to the Commission and to the Division. XYN shall meet with the Division to determine what information is required in order for the Division to exercise its statutory obligations.
- d. Within 30 days of the effective date of this order, XYN shall file in this docket a notice:
 - i. affirming that it has met with the Division as required herein; and
 - ii. listing the information that XYN will file with the Division in each annual report.
- e. XYN is exempted from the \$100,000 bond requirement set forth in Utah Administrative Code R746-349-3(A)(2).

Any person may file a protest in regard to this Order within 20 days from the date of issuance. 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 the signature date below.

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DATED at Salt Lake City, Utah, April 26, 2016.

/s/ Jennie T. Jonsson
Administrative Law Judge

Approved and confirmed April 26, 2016 as the Order of the Public Service Commission
of Utah.

/s/ Thad LeVar, Chair

/s/ David R. Clark, Commissioner

/s/ Jordan A. White, Commissioner

Attest:

/s/ Gary L. Widerburg
Commission Secretary
DW#275435

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.

EXHIBIT A

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

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ISSUED: April 26, 2016

The Public Service Commission of Utah, pursuant to Utah Code Ann. § 54-8b-2.1, issues a Certificate of Public Convenience and Necessity authorizing XYN Communications of Utah, LLC to provide public telecommunications services within the State of Utah. XYN Communications of Utah, LLC may not operate in any area with fewer than 5,000 access lines that is served by an incumbent local exchange carrier that has fewer than 30,000 total access lines.

DATED at Salt Lake City, Utah, April 26, 2016.

/s/ Thad LeVar, Chair

/s/ David R. Clark, Commissioner

/s/ Jordan A. White, Commissioner

Attest:

/s/ Gary L. Widerburg
Commission Secretary

CERTIFICATE OF SERVICE

I CERTIFY that on April 26, 2016, a true and correct copy of the foregoing was served upon the following as indicated below:

By U.S. Mail:

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