

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

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Joint Application of Crown Castle Fiber LLC, Crown Castle NG West LLC, and NewPath Networks, LLC for (1) Approval of a Pro Forma Consolidation, (2) Approval for the Crown Castle NG West LLC Certificate to be Transferred to Crown Castle Fiber LLC or, in the Alternative, Issuance of a New Certificate, and (3) Exemption from Utah Code Ann. § 54-8b-18 and Commission Rule R746-349-5

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DOCKET NOS. 18-2445-01, 18-2512-01,  
and 18-2608-01

REPORT AND ORDER

ISSUED: October 29, 2018

SYNOPSIS

The Public Service Commission (“PSC”) approves the Joint Application of Crown Castle Fiber LLC (“CCF”), Crown Castle NG West LLC (“CCNG”), and NewPath Networks, LLC (“NPN,” and collectively with CCF and CCNG, “Applicants”) for (1) Approval of a *Pro Forma* Consolidation, (2) Approval for the Crown Castle NG West LLC Certificate to be Transferred to Crown Castle Fiber LLC or, in the Alternative, Issuance of a New Certificate, and (3) Exemption from Utah Code Ann. § 54-8b-18 and Commission Rule R746-349-5 (“Application”).

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On August 24, 2018, Applicants filed their Application, requesting informal adjudication of their Application pursuant to R746-349-7. The Application seeks approval of a transaction whereby CCF will acquire the assets of CCNG and NPN, including the Certificate of Public Convenience and Necessity (“CPCN”) that CCNG presently holds. As an alternative to transferring the CPCN, the Application asks a new certificate be issued to CCF. The Application seeks waiver of the following statutory and administrative requirements: (i) waiver of the 20-day tentative period for orders issued in informally adjudicated proceedings pursuant to Utah Admin. Code R746-110-2; (ii) waiver of Utah Code Ann. § 54-8b-18 and Utah Admin. Code R746-349-5 to allow CCF to serve the consolidating entities’ customers, who are wholesale and enterprise customers receiving service pursuant to individually negotiated contracts, without obtaining the

authorization and verification the statute and rule otherwise require; and (iii) waiver of the bonding requirement otherwise imposed under Utah Admin. Code R746-349-3.

On September 13, 2018, the PSC issued a Notice of Filing and Comment Period, allowing any interested party to submit comments with respect to the Application no later than September 28, 2018 with reply comments due on or before October 12, 2018.

On September 19, 2018, the Division of Public Utilities (“DPU”) filed a memorandum (“DPU’s Memo”), the only comments the PSC received on the Application. The DPU represents it has reviewed the technical, managerial, and financial information the Applicants provided and that the DPU believes the Applicants provided all information the PSC’s rules require. The DPU concludes granting the Application will promote the public interest and that the PSC should issue a Certificate of Public Convenience and Necessity (“CPCN”) to CCF under the same terms and conditions the PSC has allowed in other CPCNs. The DPU further recommends the PSC waive the \$100,000 bond requirement because CCF will not require customer deposits or prepayments of any kind.

The DPU emphasized the following of Applicants’ representations:

1. CCF seeks statewide authority except within exchange areas with fewer than 5,000 access lines that are owned or controlled by an incumbent local exchange carrier with fewer than 30,000 total access lines. *See* Utah Code Ann. § 54-8b-2.1(3)-(4).
2. Applicants’ managerial personnel have considerable experience in the telecommunications industry as reflected in their summaries of professional experience and education.

3. CCF intends to provide a full range of telecommunications services to business customers in CenturyLink's exchanges statewide in Utah, consistent with the exchange maps CenturyLink has on file with the PSC.
4. Applicants have a positive net worth and ample working capital.
5. Applicants have never been investigated for unauthorized switching or any other illegal activity.

On September 28, 2018, Applicants filed a Response to the DPU's Memo. The Response clarifies the following points: (i) Applicants are not requesting cancellation of any CPCN issued to one of the entities being consolidated into CCF until the merger transaction closes and a CPCN has been issued to CCF; (ii) Applicants reiterate their request for a waiver of the authorization and verification requirements otherwise applicable under Utah Code Ann. § 54-8b-18 and Utah Admin. Code R746-349-5, an issue the DPU did not address in its memorandum; (iii) CCF's legal name does not contain a comma; and (iv) CCF's corporate headquarters address.

On October 19, 2018, the PSC issued a Supplemental Action Request, asking the DPU to review and make a recommendation regarding Applicants' request for a waiver of Utah Code Ann. § 54-8b-18 and Utah Admin. Code R746-349-5. The DPU filed a supplemental memorandum on October 23, 2018, representing the DPU "agrees [with Applicants] that obtaining an authorization from the affected customers would be too burdensome." The DPU noted Applicants "will be sending out notifications to [their] customers, stating that there will be a change in their telecommunication provider because of an intra-corporate consolidation," and

the notifications will explain to customers the consolidation “will have no impact on [their] services or [their] rates, and all rights and obligations under the agreements between [them] and [their] current provider will continue unaffected.”

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

#### FINDINGS OF FACT

1. No party has sought intervention in this docket, the DPU provided the only comments to the Application, and no opposition has been voiced to the Application.
2. Applicants have filed documentation containing sufficient information to support the Application.
3. CCF has demonstrated it is qualified to do business in Utah.
4. CCF will utilize its managerial expertise to support its Utah operations.
5. CCF will have sufficient technical resources and abilities to provide the public telecommunications services it proposes to offer.
6. Applicants have a positive net worth and sufficient working capital for CCF’s Utah operations.
7. CCF is subject to effective competition.
8. CCF will not require customer deposits or offer any prepaid services in Utah.
9. CCF’s request to be exempted from the \$100,000 bond requirement is in accord with PSC practice and is in the public interest.

10. Good cause exists to support CCF's request to be exempted from the ordinarily imposed 20-day tentative period applicable to orders issued on informal adjudication, and waiving the 20-day tentative period, in this instance, is in the public interest.
11. So long as customers' terms and rates are not affected by the transaction and customers receive notification of this fact from Applicants, good cause exists to waive the otherwise applicable authorization and verification requirements, and waiver of these requirements is in the public interest.

#### CONCLUSIONS OF LAW

1. CCF meets each of the statutory requirements of Utah Code Ann. § 54-8b-1.1 *et seq.* for the requested CPCN.
2. Issuance of a CPCN to CCF for the purpose of providing 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 PSC ORDERS:

- a. CCF is granted the CPCN attached as Exhibit A, which exhibit is incorporated by reference into this Order as if fully set forth.
- b. CCF's CPCN is subject to the limitations stated therein.
- c. CCF is exempted from the \$100,000 bond requirement set forth in Utah Admin. Code R746-349-3(A)(2).

- d. This order and the attached CPCN are exempted from the otherwise applicable 20-day tentative period pursuant to Utah Admin. Code R746-110-2, and this order shall be a final order immediately upon issuance.
- e. With respect to authorizations and notifications that Applicants would be required to obtain pursuant to Utah Code Ann. § 54-8b-18 and Utah Admin. Code R746-349-5 as a result of the intra-corporate transaction that is the subject of their Application, Applicants are exempted from obtaining the otherwise required authorizations and verifications. This exemption applies only to authorizations and verifications that would be necessary only as a consequence of the intra-corporate consolidation and no other circumstances. This exemption is also conditioned on Applicants fulfilling the assurances made in their Application that they will provide all customers with written notice of the consolidation and that it will not affect their rates or terms.

DATED at Salt Lake City, Utah, October 29, 2018.

/s/ Michael J. Hammer  
Presiding Officer

Approved and confirmed October 29, 2018 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  
PSC Secretary  
DW#305264

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 PSC 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 PSC 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 PSC'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 -

<p>Joint Application of Crown Castle Fiber LLC, Crown Castle NG West LLC, and NewPath Networks, LLC for (1) Approval of a Pro Forma Consolidation, (2) Approval for the Crown Castle NG West LLC Certificate to Be Transferred to Crown Castle Fiber LLC or, in the Alternative, Issuance of a New Certificate, and (2) Exemption from Utah Code Ann § 54-8b-18 and Commission Rule R746-349-5</p>	<p><u>DOCKET NOS. 18-2445-01, 18-2512-01, and 18-2608-01</u></p> <p><u>CERTIFICATE 2608</u></p>
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ISSUED: October 29, 2018

The Public Service Commission of Utah, pursuant to Utah Code Ann. § 54-8b-2.1, issues a Certificate of Public Convenience and Necessity authorizing CROWN CASTLE FIBER LLC to provide public telecommunications services within the State of Utah. CROWN CASTLE FIBER 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, October 29, 2018.

/s/ Thad LeVar, Chair

/s/ David R. Clark, Commissioner

/s/ Jordan A. White, Commissioner

Attest:

/s/ Gary L. Widerburg  
PSC Secretary  
DW#305264



CERTIFICATE OF SERVICE

I CERTIFY that on October 29, 2018, a true and correct copy of the foregoing was served upon the following as indicated below:

By Electronic-Mail:

William J. Evans ([bevans@parsonsbehle.com](mailto:bevans@parsonsbehle.com))  
Parsons Behle & Latimer

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Administrative Assistant