

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

Application of Commnet Rural America, LLC for a Certificate of Public Convenience and Necessity to Provide Resold and Facilities-Based Telecommunications Services within the State of Utah	<u>DOCKET NO. 19-2613-01</u> <u>REPORT AND ORDER</u>
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ISSUED: November 19, 2019

SYNOPSIS

The Public Service Commission (PSC) approves the application of Commnet Rural America, LLC (“Commnet”) for a Certificate of Public Convenience and Necessity (CPCN) and authorizes Commnet to provide telecommunications services within Utah.

PROCEDURAL HISTORY

On June 17, 2019, Commnet filed an Application for a Certificate of Public Convenience and Necessity to Provide Resold and Facilities-Based Telecommunications Services within the State of Utah (“Application”). In the Application, Commnet requests the PSC waive the \$100,000 bond requirement set forth in Utah Admin. Code R746-349-3(A)(2), as Commnet will not require customer deposits. The Application provides detailed information regarding the technical, financial, and managerial resources and abilities of Commnet to provide the public telecommunications services it seeks to offer.

On June 20, 2019, the PSC issued a Notice of Filing and Comment Period (“Notice”), which set a comment deadline of July 17, 2019, and a reply comment deadline of August 1, 2019. The Notice further stated that if no comment is filed in opposition to the Application, the

PSC will adjudicate this docket informally and without hearing. *See* Utah Code Ann. § 54-8b-3.

No party opposes the application.¹ Therefore, the PSC will adjudicate this docket informally.

On June 25, 2019, the Division of Public Utilities (DPU) filed a memorandum recommending approval of the application and waiver of the bond based on Commnet's representations it will not require customer deposits or prepayments of any kind. The DPU states it has reviewed the technical, managerial, and financial abilities of Commnet and has found it has provided the necessary information to fulfill the requirements under the PSC's rules. The DPU believes granting Commnet a CPCN, under the same terms and conditions allowed in other CPCNs, will promote the public interest. In its memorandum, the DPU emphasized the following of Commnet's representations:

1. Approval of this application will expand the availability of innovative, high quality, reliable and competitively-priced telecommunications services in the State of Utah.
2. Commnet seeks statewide authority so that it may expand into other services as market conditions warrant and as additional service areas become open to competition.
3. Commnet does not plan to provide switched voice services or dial-tone and will not provide such services to residential customers. Instead, it will primarily provide services to other carriers on a wholesale basis.
4. Commnet does not currently own property in Utah and does not plan to construct any facilities in the state. Commnet will provide its point-to-point transport services through a

¹ As discussed below, a third-party initially objected to the Application absent certain clarifying language in the CPCN to which Commnet subsequently stipulated.

combination of deploying its own network and facilities, and using services leased from a variety of existing carriers and other suppliers.

5. Commnet has not yet determined a schedule for deployment of facilities in Utah, but it intends to begin operations by end of year 2019.
6. Commnet will not provide access to standard intraLATA and interLATA message toll calling, operator services, directory assistance, directory listings, or emergency services such as 911 and E911 through its own operations.
7. Commnet does not plan to operate an office in Utah but will manage its Utah operations from its existing offices in Arkansas, Colorado, Georgia, and Massachusetts.
8. Commnet has the managerial and technical qualifications necessary to provide the proposed services in Utah. Summaries of professional experience and education of its managerial personnel demonstrate that Commnet has considerable experience in the telecommunications industry.
9. Commnet has a positive net worth and ample working capital.
10. Commnet claims that it has never had any complaints nor has any investigation been undertaken against it or any of its affiliates involving unauthorized switching (slamming) or any other illegal activities.

On July 17, 2019, the Utah Rural Telecom Association (URTA) filed comments conditionally opposing the Application. Specifically, URTA represented that “[t]o the extent the CPCN sought by Commnet ... includes the standard limitation” providing the applicant “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,” URTA does not oppose the Application. (Comments of URTA at 3.) However, in the event Commnet seeks authority to provide public telecommunications services statewide, including rural exchanges with fewer than 5,000 access lines that are owned or controlled by an incumbent local exchange carrier serving fewer than 30,000 access lines, URTA opposes the Application and requests formal adjudication of the docket.

As Commnet had not yet responded to URTA’s comments or otherwise filed a reply in support of its Application, the PSC issued a Notice on September 4, 2019 stating it would take no further action in the docket until and unless Commnet files a request the PSC grant the Application and offers its position on URTA’s proposed limitation.

On November 1, 2019, Commnet filed reply comments requesting the PSC grant the Application and representing it does not object to the inclusion of the limitation identified in URTA’s comments.

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 opposed the Application as supplemented with URTA’s clarifying language.
2. Commnet has filed documentation containing sufficient information to support the Application.
3. Commnet has demonstrated it is qualified to do business in Utah.

4. Commnet proposes to provide public telecommunications services within the service area of certain local exchange carriers as explained in this order and the Application but not 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.
5. Commnet will utilize its managerial expertise to support its Utah operations.
6. Commnet has sufficient technical resources and abilities to provide the public telecommunications services it proposes to offer.
7. Commnet has a positive net worth and sufficient working capital for its Utah operations.
8. Commnet's service offerings will provide customers with a wider range of choice in meeting their telecommunications needs and will foster competition in the marketplace.
9. Commnet will not require customer deposits or offer any prepaid or end use services in Utah.

CONCLUSIONS OF LAW

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

- a. Commnet is granted the CPCN attached as Exhibit A, which exhibit is incorporated by reference into this Order as if fully set forth.
- b. Commnet's CPCN is subject to the limitations stated therein.
- c. Commnet 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 PSC 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.

DATED at Salt Lake City, Utah, November 19, 2019.

/s/ Thad LeVar, Chair

/s/ David R. Clark, Commissioner

/s/ Jordan A. White, Commissioner

Attest:

/s/ Gary L. Widerburg
PSC Secretary
DW#311168

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.

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EXHIBIT A

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

Application of Commnet Rural America, LLC for a Certificate of Public Convenience and Necessity to Provide Resold and Facilities- Based Telecommunications Services within the State of Utah	<u>DOCKET NO. 19-2613-01</u> <u>CERTIFICATE 2613</u>
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ISSUED: November 19, 2019

The Public Service Commission of Utah, pursuant to Utah Code Ann. § 54-8b-2.1, issues a Certificate of Public Convenience and Necessity authorizing Commnet Rural America, LLC to provide public telecommunications services within the State of Utah. Commnet Rural America, 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, November 19, 2019.

/s/ Thad LeVar, Chair

/s/ David R. Clark, Commissioner

/s/ Jordan A. White, Commissioner

Attest:

/s/ Gary L. Widerburg
PSC Secretary

CERTIFICATE OF SERVICE

I CERTIFY that on November 19, 2019, a true and correct copy of the foregoing was served upon the following as indicated below:

By Email:

Rohan Ranaraja (Rranaraja@atni.com)
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Commnet Rural America, LLC

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