

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

Application of Arcadian Infracom 1, LLC for a Certificate of Public Convenience and Necessity to Provide Interexchange Telecommunications Services within the State of Utah	<u>DOCKET NO. 20-2623-01</u> <u>REPORT AND ORDER</u>
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ISSUED: November 19, 2020

SYNOPSIS

The Public Service Commission (PSC) approves the application of Arcadian Infracom 1, LLC (“Arcadian”) for a Certificate of Public Convenience and Necessity (CPCN) and authorizes Arcadian to provide telecommunications services within Utah.

PROCEDURAL HISTORY

On September 22, 2020, Arcadian filed an application, seeking a CPCN for authority to provide telecommunications services within Utah (“Application”). The Application provides technical, financial, and managerial resources, and other information showing Arcadian is able to provide the public telecommunications services it seeks to offer.

On September 23, 2020, the PSC issued a Notice of Filing and Comment Period (“Notice”), requesting that interested parties file comments by October 22, 2020, and reply comments by November 6, 2020.

On October 22, 2020, the Division of Public Utilities (DPU) filed a Motion for Extension of Time to File Action Request Response and Amend Schedule (“Motion”). On October 23, 2020, the PSC issued an Order Granting Motion and Amended Notice of Comment Period (“Amended Notice”), amending the comment deadline to October 29, 2020, and the reply comment deadline to November 13, 2020, consistent with the Motion. The Amended Notice also

stated that the PSC would adjudicate the docket informally and without a hearing if no opposition is filed. *See* Utah Code Ann. § 54-8b-3(1)(b). No opposition was filed; therefore, the PSC will adjudicate this docket informally.

On October 30, 2020, DPU filed a memorandum recommending approval of the Application, and no comments or reply comments were filed. DPU states it reviewed the technical, managerial, and financial abilities of Arcadian and found, to the extent the PSC finds that Arcadian is requesting to offer a regulated service, it has provided the necessary information to fulfill the requirements as stated in the existing PSC rules. DPU concludes that granting a CPCN to Arcadian as requested and under the same terms and conditions granted in other CPCNs, will promote the public interest. In its memorandum, DPU emphasized the following representations made by Arcadian:

1. Arcadian is a registered foreign corporation within the State of Utah, with its corporate headquarters located at 4579 Laclede Avenue, #341, St. Louis, MO 63108.
2. Arcadian is a subsidiary of Arcadian Infracom, Inc, which was granted a CPCN by the PSC May 7, 2020 in Docket No. 20-2616-01.
3. Arcadian does not currently own facilities or property in Utah, but expects to construct facilities to provide its service offerings upon receiving a CPCN; however, the timing and location will depend largely on customer demand.
4. Arcadian intends to begin negotiations with CenturyLink for an interconnection/commercial agreement immediately upon receiving a CPCN from the PSC to operate as a local exchange telecommunications service provider in Utah.

5. Arcadian will not be providing traditional switched local exchange services within Utah. Therefore, Arcadian will not have any interaction with emergency services such as 911 or enhanced 911, operator services, directory assistance, and telecommunications relay services.
6. Summaries of professional experience and education of its managerial personnel demonstrate that Arcadian has considerable experience in the telecommunications industry.
7. According to financial statements attested to be accurate, objective, and with integrity by Brandon D. Porter, General Counsel & Assistant Secretary, Arcadian has a positive net worth and has ample working capital.
8. Arcadian requests that the \$100,000 bond requirement be waived because it will not require customer deposits or prepayments of any kind.
9. Although it plans to in the future, Arcadian does not currently provide services in any other state similar to the services Arcadian intends to provide in Utah. Arcadian is in the process of applying or already has applied for certificates of convenience and necessity in nearby states, including Arizona, California, Colorado, New Mexico, and Texas.
10. Arcadian claims that it has never had any complaints nor has any investigation against it or any of its affiliates involving unauthorized switching (slamming) or any other illegal activities. Arcadian also states that it has implemented policies and procedures concerning solicitation of new customers. These policies require that customers sign a contract authorizing Arcadian to provide telecommunications services.

In addition, in response to the PSC's request for an opinion of whether a CPCN was necessary for the services Arcadian seeks to provide, DPU states as follows:

The Commission has requested a recommendation from the Division regarding whether a CPCN is applicable or needed for interexchange service. After further discussion with Arcadian, the Division learned its initial assumption that Arcadian would offer internet service was incorrect.

Arcadian seeks authority to offer interexchange telecommunication facilities and light wave connections but is not intending to offer internet protocol service. Rather the service is solely the light wave signal transmission on a fiber line. The service is therefore protocol agnostic and may be used for a variety of services including, for example, TDM phone service if the customer so chooses. However, the application states that it does not intend to directly offer any switched exchange service to customers. The customer would be responsible for choosing the protocol to use.

Under Utah Code [Ann. § 54-4-25(1)] 'a... telephone corporation... may not establish, or begin construction of a line, route, plant, or system... without having first obtained from the commission a [CPCN].' A 'telephone corporation' is defined as 'any corporation or person... who owns, controls, operates, manages, or resells a public telecommunications service as defined in § 54-8b-2.' [Utah Code Ann. § 54-2-1(32).] Public telecommunications service is defined as 'the two-way transmission of signs, signals, writing, images, sounds, messages, data, or other information of any nature by wire, radio, lightwaves, or other electromagnetic means offered to the public generally. [Utah Code Ann. § 54-8b-2(18).] However, telephone corporation 'does not mean a corporation, partnership or firm providing... internet service; or resold intrastate toll service.'

The offering of protocol agnostic transmission of light waves is one of the categories of service that is defined as a public telecommunications service. Additionally, Arcadian has represented to the Division that it will offer service to the public generally to the extent that it reaches agreements with customers for those services. The service is therefore likely to fall within the category of public telecommunications and Arcadian will be a telephone corporation under Utah law and required to seek a CPCN.¹

¹ DPU Action Request Response, Docket No. 20-2623-01, October 30, 2020, at p. 4.

In light of the history and background referenced above, the PSC enters the following Findings of Fact, Conclusions of Law, and Order.

FINDINGS OF FACT

1. There are no intervenors in this docket and no one opposes the Application.
2. Arcadian filed documentation containing sufficient information to support the Application.
3. Arcadian demonstrated it is qualified to do business in Utah.
4. Arcadian seeks to deploy dark and lit fiber networks to provide public telecommunications services to enterprise customers. Arcadian builds dark fiber networks and lit fiber-based intrastate and interstate telecommunications facilities for the purpose of providing point-to-point high capacity transport services. Arcadian also intends to provide resold intrastate and interstate access services on other service provider's networks for point-to-point services if building the same facilities is not an option. As such, Arcadian seeks authority to provide point-to-point, private line, non-switched transport services within the CenturyLink service territory in Utah.
5. Arcadian will use its managerial expertise to support its Utah operations.
6. Arcadian has sufficient technical resources and abilities to provide the public telecommunications services it proposes to offer.
7. Arcadian has a positive net worth and sufficient working capital for its Utah operations.
8. Arcadian's service offerings will provide customers with a wider range of choice in meeting their telecommunications needs and will foster competition in the marketplace.

CONCLUSIONS OF LAW

1. Arcadian intends to provide “local exchange services or other public telecommunications services” as the terms are defined in Utah Code Ann. § 54-8b-2.1 which require a CPCN.
2. Arcadian meets the statutory requirements in Utah Code Ann. §§ 54-8b-2.1 *et seq.* for the requested CPCN.
3. A CPCN will allow Arcadian to offer the services it proposes to provide.
4. Issuance of the requested CPCN to provide local exchange services or public telecommunications services as described in the Application and as defined in Section 54-8b-2.1, is consistent 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. Arcadian is granted the CPCN attached as Exhibit A, incorporated by reference into this Order.
- b. Arcadian’s CPCN is subject to the limitations stated therein.

Any person may protest this Order within 20 days from the date of the Order. 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.

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DATED at Salt Lake City, Utah, November 19, 2020.

/s/ Thad LeVar, Chair

/s/ David R. Clark, Commissioner

/s/ Ron Allen, Commissioner

Attest:

/s/ Gary L. Widerburg

PSC Secretary

DW#316471

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 30 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 Arcadian Infracom 1, LLC for a Certificate of Public Convenience and Necessity to Provide Interexchange Telecommunications Services within the State of Utah	<p><u>DOCKET NO. 20-2623-01</u></p> <p><u>CERTIFICATE 2623</u></p>
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ISSUED: November 19, 2020

The Public Service Commission of Utah, pursuant to Utah Code Ann. § 54-8b-2.1, issues a Certificate of Public Convenience and Necessity authorizing ARCADIAN INFRACOM 1, LLC to provide public telecommunications services within the State of Utah. ARCADIAN INFRACOM 1, 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, 2020.

/s/ Thad LeVar, Chair

/s/ David R. Clark, Commissioner

/s/ Ron Allen, Commissioner

Attest:

/s/ Gary L. Widerburg
PSC Secretary

CERTIFICATE OF SERVICE

I CERTIFY that on November 19, 2020, a true and correct copy of the foregoing was served upon the following as indicated below:

By Email:

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