

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

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Application of EarthGrid PBC for a Certificate of Public Convenience and Necessity to Provide Resold and Facilities-Based Public Telecommunications Services within the State of Utah	<u>DOCKET NO. 21-2631-01</u> <u>REPORT AND ORDER</u>
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ISSUED: February 1, 2022

SYNOPSIS

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

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PROCEDURAL HISTORY

On August 18, 2021, EarthGrid filed an application seeking a CPCN for authority to operate as a provider of resold and facilities-based public telecommunications services within Utah.

On October 12, 2021, EarthGrid filed an amended application (as amended, “Application”) seeking a CPCN for authority to operate as a provider of facilities-based and resold local exchange, access, and interexchange public telecommunications services within Utah. The Application provides information required by Utah Code Ann. § 54-8b-2.1 and Utah Admin. Code R746-349-3 regarding EarthGrid’s ability to provide the public telecommunications services it seeks to offer.

On August 20, 2021, the PSC issued a Notice of Filing and Comment Period (“Notice”), which initially set deadlines of September 17, 2021, and October 4, 2021, for comments and

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reply comments, respectively, which were later amended to November 12, 2021 for comments, and November 29, 2021 for reply comments.

On December 9, 2021, the PSC issued a supplementary action request to the Division of Public Utilities (DPU). The Notice stated that if no opposition is filed, the PSC will adjudicate the docket informally and without a hearing under Utah Code Ann. § 54-8b-3(1)(b). No opposition was filed to the Application; accordingly, the PSC will adjudicate this docket informally.

DPU filed comments on September 10, 2021, November 1, 2021, and January 6, 2022. After initially recommending that the PSC deny EarthGrid's initial application, DPU states that it supports EarthGrid's Application. DPU states it reviewed the technical, managerial, and financial abilities of EarthGrid and found EarthGrid provided the necessary information to fulfill the requirements under the PSC's rules. The DPU concludes granting a CPCN to EarthGrid as requested and under the same terms and conditions granted in other CPCNs will promote the public interest. DPU states that based on history, a filing of this type and with the information submitted by EarthGrid will generate no objections or opposition; therefore, DPU requests the docket be adjudicated informally. In making its recommendation, DPU emphasized the following representations made by EarthGrid:

1. In accordance with competitive entry requirements described in Utah Code Ann. § 54-8b-2.1(3)-(4), EarthGrid 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 (ILEC) with fewer than 30,000 total access lines.

2. EarthGrid states that it does not initially intend to offer standard local exchange services. Instead, it states that it will initially offer lit and dark fiber transmission facilities to business subscribers who may use the fiber for various communications needs, including internet transport and wireless backhaul services.
3. EarthGrid states that in the future, if it offers a standard local exchange service offering, it would provide access to ordinary intraLATA and interLATA message toll calling, operator services, directory assistance, directory listings, and emergency services through interconnection and contractual arrangements with the underlying local exchange carrier.
4. EarthGrid states that it intends to acquire, lease, and construct conduit, handholes, fiber optic cable, and supporting equipment and facilities in Utah to provide services to the public. EarthGrid states that it plans to install new conduits and may, in some cases, over-size its underground infrastructure to allow other utility and/or telecommunications providers to lease space from its conduits and/or tunnels underground.
5. EarthGrid states that it anticipates offering services as soon as reasonably practical after receiving approval of its Application.
6. EarthGrid provides summaries of the professional experience and education of its managerial personnel.<sup>1</sup>
7. EarthGrid states it has a positive net worth and ample working capital to support its operations in Utah.

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<sup>1</sup> According to DPU, the summaries show that EarthGrid has considerable experience in the telecommunications industry.

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8. EarthGrid submitted proof of a bond in the amount of \$100,000 for customer deposits or other customer and state fund liabilities.
9. EarthGrid is currently authorized to provide intrastate telecommunications service in California, Idaho, and Nevada.
10. EarthGrid asserts that it has never had any complaints nor has any investigation been undertaken against it or any of its affiliates involving unauthorized switching, which is sometimes known as slamming, or any other illegal activities.
11. EarthGrid asserts that approval of its Application will serve the public interest in that it will create and enhance competition and expand customer service options. It further argues that approving its Application will expand the availability of innovative, high quality, reliable, and competitively priced telecommunications services in Utah.

Based on the PSC's review of the Application, EarthGrid's representations, and DPU's comments and recommendations, and considering there is no opposition, 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. EarthGrid filed documentation containing sufficient information to support the Application.
3. EarthGrid is a start-up company as that term is used in Utah Admin. Code R746-349-3(10)(c).
4. EarthGrid demonstrated it is qualified to do business in Utah.

5. EarthGrid proposes to provide public telecommunications services primarily within the service area of CenturyLink as explained in this order and the Application.
6. EarthGrid will use its managerial expertise to support its Utah operations.
7. EarthGrid has sufficient technical resources and abilities to provide the public telecommunications services it proposes to offer.
8. EarthGrid reports a positive net worth and access to sufficient working capital for its Utah operations.
9. EarthGrid'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. EarthGrid meets the statutory requirements of Utah Code Ann. §§ 54-8b-1.1 *et seq.* and related rules for the requested CPCN.<sup>2</sup>

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<sup>2</sup> While EarthGrid did not provide financial statements as specifically required under R746-349-3(A)(10), we find several mitigating factors support our conclusion that the financial information provided sufficiently supports its Application. First, EarthGrid is a start-up company and comprehensive financial statements do not exist. Second, EarthGrid does not have a traditional "parent" company that would have its own consolidated financial statements that could be submitted in support of the Application. Instead, EarthGrid, as a start-up company, provided (1) its balance sheet as of December 10, 2020; (2) a letter demonstrating its organizational structure and a general overview of its and its related companies' financial status; and (3) a related company's consolidated financial statements for years ended December 31, 2019 and 2020 with a Report of Independent Auditors which includes an attestation required by R746-349-3(A)(10)(c). We observe that EarthGrid submitted its Application August 18, 2021, explaining why its filing only included a balance sheet for year-end 2020. EarthGrid did not yet have financial information for 2021 for an independent auditor to prepare a report for EarthGrid similar to the report the auditors prepared for its related company. We consider that the letter showing EarthGrid's and related companies' financial information, demonstrates that EarthGrid has access to robust finances and working capital. We further consider that EarthGrid does not initially intend to offer standard local exchange services. Instead, it will initially offer lit and dark fiber transmission facilities to business subscribers who may use the fiber for various communications needs, including internet transport and wireless backhaul services. On this basis, we conclude that the financial information submitted sufficiently meets our requirements for a start-up company.

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2. Issuance of the requested CPCN to provide public telecommunications services as described in the Application 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 PSC's Findings and Conclusions, the PSC ORDERS:

- a. EarthGrid is granted the CPCN attached as Exhibit A, incorporated by reference into this Order.
- b. EarthGrid'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.

DATED at Salt Lake City, Utah, February 1, 2022.

/s/ Thad LeVar, Chair

/s/ David R. Clark, Commissioner

/s/ Ron Allen, Commissioner

Attest:

/s/ Gary L. Widerburg  
PSC Secretary  
DW#322167

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 EarthGrid PBC for a Certificate of Public Convenience and Necessity to Provide Resold and Facilities-Based Public Telecommunications Services within the State of Utah	<p><u>DOCKET NO. 21-2631-01</u></p> <p><u>CERTIFICATE 2631</u></p>
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ISSUED: February 1, 2022

The Public Service Commission of Utah, pursuant to Utah Code Ann. § 54-8b-2.1, issues a Certificate of Public Convenience and Necessity authorizing EARTHGRID PBC to provide public telecommunications services within the State of Utah. EARTHGRID PBC 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, February 1, 2022.

/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 February 1, 2022, a true and correct copy of the foregoing was served upon the following as indicated below:

By Email:

Scott Lane, COO ([scott@EarthGrid.io](mailto:scott@EarthGrid.io))  
Troy Helming, CEO ([scott@EarthGrid.io](mailto:scott@EarthGrid.io))  
EarthGrid

Patricia Schmid ([pschmid@agutah.gov](mailto:pschmid@agutah.gov))  
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Office of Consumer Services

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Administrative Assistant