
Application of CNS Networks LLC for a Certificate of Public Convenience and Necessity to Provide Facilities-Based Public Telecommunications Services within the State of Utah	<u>DOCKET NO. 23-2640-01</u>
	<u>ORDER</u>

ISSUED: April 21, 2023

SYNOPSIS

The Public Service Commission (PSC) approves the Application of CNS Networks LLC (“CNS”) for a Certificate of Public Convenience and Necessity (CPCN) and authorizes CNS to provide telecommunications services within Utah.

PROCEDURAL HISTORY

On February 23, 2023, CNS filed an application seeking a CPCN for authority to operate as a provider of facilities-based intrastate public telecommunications services in the State of Utah (“Application”). The Application provides information required by Utah Code Ann. § 54-8b-2.1 and Utah Admin. Code R746-349-3 regarding CNS’s ability to provide the public telecommunications services it seeks to offer.

On February 24, 2023, the PSC issued a Notice of Filing and Comment Period (“Notice”), which set deadlines of March 27, 2023, and April 11, 2023, for comments and reply comments, respectively. The Notice further stated that if no opposition to the Application was filed, the PSC may adjudicate the docket informally and without a hearing under Utah Code Ann. § 54-8b-3(1)(b). No opposition was filed; accordingly, the PSC will adjudicate this docket informally.

DPU filed comments on March 7, 2023, recommending that the PSC approve CNS's Application. DPU states it reviewed the technical, managerial, and financial abilities of CNS and found CNS provided the necessary information to fulfill the requirements under the PSC's rules. The DPU concludes granting a CPCN to CNS as requested and under the same terms and conditions granted in other CPCNs will promote the public interest. DPU recommends that the \$100,000 bond be waived on the basis that CNS will not require customer deposits or prepayments of any kind. DPU states that based on history, a filing of this type and with the information submitted by CNS will generate no objections or opposition; therefore, DPU requests the PSC adjudicate the docket informally.

In making its recommendation, DPU discussed various assertions and representations made by CNS in the Application, such as:

1. In accordance with competitive entry requirements described in Utah Code Ann. § 54-8b-2.1(3)-(4), CNS seeks statewide authority to provide point-to-point telecommunications services, but states that it will not provide local exchange service 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.
2. CNS is a national end-to-end provider of design, engineering, construction, and maintenance services to broadband providers. CNS will primarily provide point-to-point telecommunications services such as private line and similar

services to wholesale customers (e.g., other carriers and providers) and enterprise customers.

3. CNS does not currently intend to offer voice service or Internet access service. However, CNS's facilities will be capable of transmitting communications of any nature, and CNS expects that some of its customers will use the facilities to provide regulated voice or data communications services and that other customers will use the facilities to provision Internet access service or other unregulated services. CNS therefore requests the PSC grant it a CPCN.
4. CNS does not currently own or lease facilities in Utah but plans to construct facilities to provide its services. CNS proposes to build a fiber-based network in Utah and plans to construct facilities connecting to its customers' locations. CNS will provide services primarily using its own facilities, including fiber optic cable and other equipment and facilities, to originate, terminate, and amplify signals.
5. CNS will start offering services in Utah as soon as reasonably practicable after it has obtained approval of its Application and completed the construction of its network.
6. CNS provides summaries of the professional experience and education of its managerial personnel showing CNS has considerable experience in the telecommunications industry.

7. CNS's financial statements filed with the Application show it has a positive net worth and ample working capital.
8. CNS requests that the \$100,000 bond requirement be waived because it will not require customer deposits or prepayments of any kind.¹
9. CNS is currently authorized to provide intrastate telecommunications services in Colorado, Nevada, New Mexico, Minnesota, Ohio, Oregon, and Wisconsin, but does not provide intrastate telecommunications services in any state.
10. CNS represents 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. CNS also states that it has implemented policies and procedures concerning solicitation of new customers and will comply with all applicable laws and regulations to prevent the unauthorized switching of local service customers by itself, its employees, or agents.
11. CNS asserts that approval of its Application will serve the public interest by increasing competition in the provision of telecommunications services in Utah.

¹ CNS also requests a waiver of Utah Admin. Code R746-349-3(1)(i), which requires Applicant to file a "chart of accounts that includes account numbers, names[,] and brief descriptions." CNS represents it seeks this waiver because it will utilize Generally Accepted Accounting Principles to track its Utah revenue for financial reporting purposes.

Based on the PSC's review of the Application, CNS's representations, and DPU's comments and recommendation, 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. CNS filed documentation containing sufficient information to support the Application.
3. CNS demonstrated it is qualified to do business in Utah.
4. CNS proposes to provide point-to-point telecommunications services throughout the state, but does not request authority to provide local exchange service 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. CNS will use its managerial expertise to support its Utah operations.
6. CNS has sufficient technical resources and abilities to provide the public telecommunications services it proposes to offer.
7. CNS reports a positive net worth and access to sufficient working capital for its Utah operations.
8. CNS'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. CNS meets the statutory requirements of Utah Code Ann. § 54-8b-2.1 and related rules for the requested CPCN.
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 and is in the public interest.
3. Given that CNS will not require customer deposits and has demonstrated that it has access to sufficient working capital, adequate provisions exist to protect customer deposits or other customer and state fund liabilities under Utah Admin. Code R746-349-3(1)(b).

ORDER

Based on the foregoing Findings and Conclusions, the PSC ORDERS:

- a. CNS is granted the CPCN attached as Exhibit A, incorporated by reference into this Order.
- b. CNS's CPCN is subject to the limitations stated in its CPCN.
- c. The requirement stated in Utah Admin. Code R746-349-3(1)(b) that an applicant submit proof of a bond in the amount of \$100,000 is waived.
- d. The requirement stated in Utah Admin. Code R746-349-3(1)(i) that an applicant file a chart of accounts is waived.

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 PSC will suspend the effective date of

this Order pending further proceedings. Otherwise, this Order takes effect 20 days from the signature date below.

DATED at Salt Lake City, Utah, April 21, 2023.

/s/ Thad LeVar, Chair

/s/ David R. Clark, Commissioner

Attest:

/s/ Gary L. Widerburg
PSC Secretary
DW#327699

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.

EXHIBIT A

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

Application of CNS Networks LLC for a Certificate of Public Convenience and Necessity to Provide Facilities-Based Public Telecommunications Services within the State of Utah	<u>DOCKET NO. 23-2640-01</u> <u>CERTIFICATE 2640</u>
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ISSUED: April 21, 2023

The Public Service Commission of Utah, pursuant to Utah Code Ann. § 54-8b-2.1, issues a Certificate of Public Convenience and Necessity authorizing CNS NETWORKS LLC to provide public telecommunications services within the State of Utah. CNS NETWORKS LLC may not provide local exchange service 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 21, 2023.

/s/ Thad LeVar, Chair

/s/ David R. Clark, Commissioner

Attest:

/s/ Gary L. Widerburg
PSC Secretary

CERTIFICATE OF SERVICE

I CERTIFY that on April 21, 2023, a true and correct copy of the foregoing was served upon the following as indicated below:

By Email:

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