

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of the Notice of DYNAMIC)
TELCOM ENGINEERING, LLC, dba)
LIGHTSPEED TELECOM Name Change to)
LIGHTSOURCE TELECOM, LLC, and)
Transfer of Control to LIGHTSOURCE)
TELCOM I, LLC)

DOCKET NO. 01-2342-01

REPORT AND ORDER

ISSUED: February 27, 2001

SYNOPSIS

No detriment to the public interest appearing, the Commission approved the proposed certificate transfer, subject to certain conditions.

Appearances:

Bradley R. Cahoon For Petitioners

By The Commission:

PROCEDURAL HISTORY

On January 2, 2001, the above-named entities filed a document which we propose to treat as an application for transfer of operating authority. The matter was referred for review and recommendation to the Division of Public Utilities, Utah Department of Commerce (DPU), which filed a recommendation for approval February 7, 2001. The Administrative Law Judge, having been fully advised in the matter now enters the following Report, containing proposed findings of fact, conclusions of law, and the Order based thereon.

FINDINGS OF FACT

1. Dynamic Telcom Engineering, LLC, dba LightSpeed Telecom, is a telephone corporation, as defined by Utah Law, certificated by this Commission.
2. LightSource Telecom I, LLC, is an Ohio-domiciled limited liability company qualified to do business in Utah. It is a wholly-owned subsidiary of Dynamic Telcom Engineering.
3. Details of the business restructuring and rationale for the authority transfer are set forth in the DPU memorandum which is annexed hereto and incorporated herein by this reference as Appendix A.

DISCUSSION

While there appears to be no detriment to the public interest emanating from the proposed transfer, certain language in the cover letter from legal counsel causes us concern, to wit:

.....Commission approval is not required to complete the transfer of control of the Certificate to LightSource I.....Because.....the company acquiring the Certificate.....is not a public utility.....

The statutes cited by counsel apply to acquisition of other entities by a certificated utility or acquisition of a certificated utility by other entities. They do not apply to transfer of operating authority itself. The Commission always has the obligation to assure that any entity acquiring a certificate, whether by original application or by transfer, is qualified to hold the same. Further, the entity accepting the certificate, by that act, concedes that it intends to, and does, hold itself out as a public utility as defined by the Utah statutes.

On the understanding then, that the proposed transferee is and will operate as a public utility, albeit a limited one as a Competing Local Exchange Carrier (CLEC) under the Utah statutes, we perceive no reason not to approve the transfer here sought.

CONCLUSIONS OF LAW

The transfer should be approved, subject to the transferee's acknowledgment of its obligations as a certificate holder.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED, that:

- The transfer of Certificate No. 2342 to LightSource Telecom, LLC, be, and it is, approved, on all the conditions set forth in the original grant, and on the understanding that said transferee thereby undertakes all the obligations of a Competing Local Exchange Carrier under Utah law.
- This Order shall be effective TEN (10) DAYS after the date of its issuance, during which time the Transferee may decline the transfer if it does not wish to assume the aforesaid obligations; otherwise it will be assumed that the Transferee does accept such status and such obligations.
- The records of the Commission be amended to show the Transferee as holder of Certificate of Convenience and Necessity No. 2342.
- Any person aggrieved by this Order may petition the Commission for review within 20 days of the date of this Order. Failure so to do will forfeit the right to appeal to the Utah Supreme Court.

Dated at Salt Lake City, Utah, this 27th day of February, 2001

/s/ A. Robert Thurman
Administrative Law Judge

Approved and Confirmed this 27th day of February, 2001, as the Report and Order of the Public Service Commission of Utah.

/s/ Stephen F. Mecham, Chairman

/s/ Constance B. White, Commissioner

/s/ Clark D. Jones, Commissioner

Attest:

/s/ Julie Orchard
Commission Secretary

APPENDIX A

[DIVISION LETTERHEAD]

February 5, 2001

TO: PUBLIC SERVICE COMMISSION

FROM: DIVISION OF PUBLIC UTILITIES

Ric Campbell, Director
Ingo Henningsen, Manager, Telecommunications
Judith Hooper, Rate Analyst
Bart Croxford, Regulatory Analyst

Re: Petition of Dynamic Telcom Engineering, LLC dba LightSpeed Telecom to Change Name to LightSource, LLC and Transfer Control to LightSource Telecom I, LLC in Docket No. 01-2342-01

Issues:

Dynamic Telcom Engineering, LLC dba LightSpeed Telecom ("LightSpeed") filed a petition with the Commission to change its name to LightSource Telecom, LLC ("LightSource") and transfer control of its Certificate No. 2342 to its wholly-owned subsidiary, LightSource I on January 2, 2001. The Commission approved LightSpeed's Certificate on November 24, 2000 in Docket No. 00-23420-01.

LightSource is a limited liability company organized under the laws of Ohio and is authorized to do business in Utah. LightSource I is a wholly-owned subsidiary of LightSource and is also authorized to do business in Utah. Both companies share the same managers, officers and directors. The Applicant asserts that the transfer of LightSpeed's certificate to LightSource I is part of its long-range plans aimed at expanding the services that will be available to LightSource I's future customers and increasing organizational and operational efficiencies.

After the transfer of the certificate, LightSource I will assume all of the obligations, privileges, rights and responsibilities associated with the certificate. LightSource I will be subject in all respects to the authority of the Commission. All of the conditions and statements made by LightSpeed in its application for authority in Docket No. 00-2342-01 will be assumed by LightSource I upon transfer of the certificate. Both entities share the same managerial and technical skills and the financial statements are one and the same. Furthermore, LightSource will fully fund the operations of its subsidiary, LightSource I and intends to provide the capital investments and resources for LightSource I's Utah operations.

The Applicant claims that the contemplated transfer of control is in the public interest because, after the transfer, "LightSource I will be equipped to compete in the market and will be able to improve overall efficiency. Over time, as LightSource I begins to offer its services to Utah consumers, these consumers will benefit from increased competition, an increase in the number of available services and lower prices."

Recommendation:

The Division believes that the information that LightSpeed has provided is sufficient for the Division to recommend approval and should be considered under R746-110, which permits uncontested matters to be adjudicated informally.

cc: Bradley R. Cahoon, Snell & Willmer
Division of Public Utilities
Michael Ginsberg, Assistant Attorney General
Committee of Consumer Services