

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

IN THE MATTER OF THE APPLICATION OF)
DIRECT COMMUNICATIONS ROCKLAND, INC.,)
and DIRECT COMMUNICATIONS CEDAR VALLEY,)
LLC, FOR A CERTIFICATE OF PUBLIC)
CONVENIENCE AND NECESSITY ALLOWING)
OPERATION AS AN INDEPENDENT LOCAL)
EXCHANGE CARRIER.)

DOCKET NO. 04-2419-01

ORDER

ISSUED: August 9, 2004

SYNOPSIS

The application of Direct Communications Rockland, Inc. and its subsidiary, Direct Communications Cedar Valley, LLC, meet the statutory and other administrative requirements for issuance of a Certificate of Public Convenience and Necessity. Subject to the conditions explained in the Order, the Commission approves the application.

By The Commission:

PROCEDURAL HISTORY

On January 13, 2004, Direct Communications Rockland, Inc. (DCRI) and its subsidiary, Direct Communications Cedar Valley, LLC (DCCV), filed a petition for a Certificate of Public Convenience and Necessity to operate as an independent local exchange carrier providing telecommunications services primarily within the corporate limits of the City of Eagle Mountain, Utah. The companies (jointly referred to as Direct) applied for a Protective Order governing the production and use of Confidential Information, and the Public Service Commission (Commission) issued its Protective Order on February 20, 2004. Parties to this case are: Direct, The Division of Public Utilities (Division), the Committee of Consumer Services (Committee), Qwest Corporation (Qwest), the Utah Rural Telecom Association (URTA), and Beehive Telephone Company, Inc. (Beehive).

Direct prefiled testimony and exhibits in support of the petition on March 24, 2004, and filed additional prefiled supplemental testimony and revised exhibits May 26, 2004, all of which have been reviewed by the parties. The

parties participated in technical conferences to further review the information presented by Direct. On July 8, 2004, a Stipulation was filed to resolve this case. Parties to the Stipulation are: Direct, the Division, the Committee, Qwest and URTA.

Pursuant to notice, the Commission held a public hearing on Direct's petition at the City Council chambers at the City of Eagle Mountain on July 7, 2004, for the purpose of receiving public testimony. Four public witnesses expressed their support for the sale to Direct, and they encouraged rapid approval by state and federal regulators. An evidentiary hearing on Direct's petition was held on July 8, 2004, at which testimony and evidence was presented by the Division and Direct. The Commission questioned the parties and witnesses regarding various aspects of the Stipulation and the evidence presented.

HISTORY OF TELECOMMUNICATIONS IN THE EAGLE MOUNTAIN AREA

Eagle Mountain City (the City or Eagle Mountain) was incorporated under Utah law as a fifth class city on December 6, 1996, having been privately developed in an area where no community existed before. Prior to 1996, the only existing economic or human activity in the area was agricultural rangeland and dry farming. Within the area that is now encompassed by Eagle Mountain's boundaries there was literally only a handful of homes all located close to Highway 73 on the edge of the City's boundary.

The City is the only significant residential area in Utah County west of Cedar Mountain. Eagle Mountain has a population of approximately 6,093 and has approximately 2,223 telephone subscribers. Other than municipal utility services, there is very little commercial activity within the city boundaries. Residents depend on other cities in Utah County for nearly all services. The nearest community is Saratoga Springs, which is approximately 8 miles from the center of the City.

By a 1997 municipal ordinance, the City created and operates the only municipal telephone utility in Utah. The City financed its telephone system through the sale of revenue bonds in the amount of approximately \$7

million; currently the bonds have a remaining balance of approximately \$5.1 million. As a municipal system, Eagle Mountain is not subject to the regulatory jurisdiction of this Commission.

At the time the City was incorporated (and until the issuance of this Order), Eagle Mountain was located within Qwest's certificated territory. As such, the area is currently within the Qwest Study Area for Utah as that area has been approved by the Federal Communications Commission (FCC). However, due to choices made by the City's original real estate developers, Qwest was never allowed to expand its facilities to serve the area now served by Eagle Mountain. As a result, the area served by the City's telephone system (the area which is the subject of this Order) was never served by Qwest or any other carrier. Therefore the area now served by the City's municipal telephone system was an unserved area since neither Qwest nor any other local exchange company ever served it or had facilities in it.

At the time of the City's initial development, Qwest was willing to extend its service south of Highway 73, in accordance with the terms of its tariff, but the land developers did not choose that option. Subsequent action by the City of Eagle Mountain to organize a municipal utility made it impossible for Qwest to extend service. Currently Qwest serves fewer than 100 subscribers located adjacent to Highway 73, some of whom live within the corporate limits of the City. Qwest will continue to serve these original customers; the geographic area where they live is not included in the request this Order addresses. The population of the City is currently concentrated approximately 5 miles south of the nearest State road, Highway 73.

As it became obvious that Eagle Mountain could not provide service at a reasonable rate, many parties suggested that one resolution of the problem would be for Qwest to purchase the City's system. While Qwest was willing to place its own facilities to serve Eagle Mountain, utilizing its own existing switches and network, it was not willing to buy what it considered unnecessary equipment to serve the area. Qwest and the City were unsuccessful in negotiating a mutually acceptable agreement for Qwest to provide service in the City. As a result the City has continued to operate the telecommunications system as a municipal utility.

Eagle Mountain and Qwest entered into a formal interconnection agreement in November 2000, which

was filed with the Commission. The interconnection arrangement between Qwest and the City is similar to the arrangements between Qwest and other telecommunications companies in Utah.

DISCUSSION

I. The Proposed Purchase and the Necessity of Federal and State Support

Eagle Mountain's telephone system has been problematic for the City, for its subscribers, and, to some extent, for Utah regulators since its inception. Eagle Mountain has been operating a high cost, rural telephone system, in part, on a learn-as-you-go basis. The original switch offered only limited services and the infrastructure originally installed was of poor quality and faulty design. This resulted in many subscriber complaints. To remedy this situation, Eagle Mountain chose to make significant investments in plant and equipment. In addition to building a proper distribution network, the City also purchased a larger and more technologically sophisticated switch three years ago.

The City's telephone system today is technically capable of providing the same kinds of central office services offered by most local exchange carriers. However, Eagle Mountain has not fully utilized the full range of the new Nortel switch's technical capabilities, nor has it stayed current with evolving technology. As a municipal utility, the City has not participated in the high cost universal service support funding available to telecommunications carriers through the State program administered by this Commission (the State's Universal Public Telecommunications Service Support Fund, hereafter USSF), nor has the City attempted to participate in any of the Federal programs or associations designed to help offset the high cost of providing service in remote areas (although testimony in this Docket suggest it might have qualified for at least some of the federal programs). Due to the shortage of revenues, the City has not attempted to do much more than provide basic service. The range of services and options that Direct will provide are greater than the subscribers currently are obtaining through the City's municipal telephone system. In order to make improvements and to keep residential rates affordable, it is advantageous for Direct to participate in the state USSF, and the Federal Universal Service Fund. Obtaining federal and state Universal Service Fund support will support the legislative policy of this State, as set forth in Utah Code Ann. § 54-8b-1.1(2), which favors access to high quality,

affordable public telecommunications services by all residents and businesses in the state. The Division witnesses testified that they believe receipt of federal Universal Service Fund support is critical to the economic viability of the system Direct is purchasing.

The operating expenses of the City's system have been borne solely by the subscribers, and they pay the highest local rates of any customers in Utah. The current rate for residential line service is \$27.00 per month, or \$4.05 higher than the State's USSF rate of \$13.50 per residential access line (when the extended area service [EAS] and Carrier Access Line Charge [CALC] or the Subscriber Line Charge [SLC] are added to the "affordable rate" target used in the USSF). The City has indicated that it will soon have to increase telephone rates to meet increasing operational costs. Being part of the National Exchange Carriers Association (NECA) and receiving federal and state Universal Service Fund support will allow Direct to maintain the current rates, and perhaps even make adjustment in the future to the statewide USSF-supported average. Direct can obtain capital financing on more reasonable terms than can the City in order to finance growth and improvements.

The vast majority of Eagle Mountain residents today were not residents when the decision to establish a municipal telephone system was made. Nevertheless, these current residents are bound to a telephone system which has been fraught with facility and plant difficulties, has generated many complaints to the City and to state regulators, is chronically underfunded, charges its subscribers the highest local rates in the state, and likely cannot sustain itself over the long term without both federal and state universal service support assistance.

In November 2002, pursuant to its ordinance, the City conducted a referendum in which the City residents were asked to vote on whether the City's telephone utility should be sold to Direct. In that city-wide referendum, 94% of the voters favored the sale in order to receive the additional service features Direct committed to provide. The service Direct proposes to provide is considerably expanded beyond the service now available; Direct has committed to upgrade the existing switch to the latest manufacturer's release, and to assure service that is on par with the service offered to subscribers throughout the rest of Utah.

On November 11, 2003, after a nearly two-year negotiation process, the City and Direct executed a sale and purchase agreement (Contract), under the terms of which Direct agreed to purchase the City's municipal telephone system. The Commission has not been asked to approve the Contract, but it has been made available for review to the parties, subject to the Protective Order. The City Council has voted to accept the terms of the Contract negotiated between Direct and the City.

Previously, an impediment to any resolution of the City's telephone service problems has always been the City's unwillingness to sell the system for an amount less than would be required to defease its construction bonds, which until now was an amount greater than a willing buyer might offer for the system. However, as Eagle Mountain has made regular payments on these bonds and has upgraded the physical facilities, the two values have grown closer together. At this point in time, Direct and the City have been able to agree to a purchase price which is acceptable to both parties. Any acquisition "premium" Direct paid for the purchase will not be included in Direct's rate base, nor in future cost recovery. The only support that is needed to make the operation work is federal and state Universal Service Fund support to make up the difference between the reasonable revenue the system can generate and the ongoing costs of operating and maintaining the system.

II. Qwest's Exchange Boundary, Direct's Service Territory, and Study Area Waivers.

In the Stipulation, Qwest agrees to promptly file a request for an amended certificate and a request for a modification to its Lehi Exchange boundary, which will exclude the area now served by the City's municipal telephone system from Qwest's current Lehi Exchange boundaries (conditioned upon the closing of the sale). The service territory of Direct's Certificate shall include all areas within the incorporated limits of the City of Eagle Mountain except for the limited area with customers currently served by Qwest. Qwest shall continue to serve its customers. The Commission expects that Qwest and Direct resolve any service issues in the best interests of the subscribers. The subscribers (or companies) may request the Commission's assistance if necessary. The Commission has no objection to and supports

the modification of Qwest's FCC study area that will be needed to consummate the sale and allow transfer of the service area.

III. Direct's Qualifications for a Certificate of Public Convenience and Necessity.

DCRI is an Idaho corporation that since 1952 has operated telephone exchange systems in Idaho under certificated authority granted by the Idaho Public Utilities Commission both as an eligible telecommunications carrier ("ETC"), for purposes of 47 U.S.C. § 214(e)(2), and as an incumbent local exchange carrier ("ILEC"), for purposes of 47 U.S.C. § 251(h). DCRI satisfies the federal requirements for ILEC status in Idaho inasmuch as the Company was a local exchange carrier on the date of enactment of the 1996 Federal Telecommunications Act (1996 Federal Act) and on such date was a member of NECA. DCRI provides local exchange service to approximately 1,500 subscribers in Rockland, Arbon, and the southern half of Bear Lake County in Idaho. DCRI's management has 30 years of experience in the telecommunications industry and is fully capable of operating the telephone system in Eagle Mountain, through its subsidiary DCCV, in a manner that will assure subscribers of reliable, efficient, and high-quality telecommunications service.

DCRI has proposed to operate the Eagle Mountain system through its subsidiary DCCV. Direct has the financial, managerial, and technical experience and resources necessary to operate the telephone system in Eagle Mountain and provide for the system's growth and modernization. DCRI, the corporate parent of DCCV, agrees to assume ultimate responsibility for the financial stability and sound management of DCCV and will assure the subsidiary's compliance with the rules and regulations of the Commission. To the extent that external financing is required for funding principal or interest, for additional capital investment necessary for plant upgrades, new facilities, and the successful operation of the system Direct is purchasing, DCRI shall bear that responsibility.

IV. Direct's Certificate of Public Convenience and Necessity and Regulated Status.

Utah's 1995 Public Telecommunications Law and the 1996 Federal Act do not specifically provide for

situations where an ILEC from another state might receive a certificate to provide telephone service in a rural, high cost area in this state. Because Utah law (Utah Code Ann. § 54-8b-2(6)) defines an “incumbent telephone corporation” as a “telephone corporation . . . which, as of May 1, 1995, held a certificate to provide local exchange services in a defined geographic service territory in the state,” an ILEC defined by federal law and serving in one state would not meet the state definition if it began to serve in this state after May 1, 1995. However, at Eagle Mountain, there were no telephone facilities present in 1995 or 1996 within the area the City’s system was organized to serve, and Direct is taking over service responsibilities for an area that was unserved at the time of either laws’ passage. We note that recent FCC decisions in similar cases have waived ILEC status as a requirement for membership in NECA and for Federal USF participation in circumstances similar to the instant case.

Federal Definitions

Rural Telephone Company Status

It appears to the Commission that Direct’s operations at Eagle Mountain classify it as a “rural telephone company” under the definition of 47 U.S.C. § 153(47), in that Direct will operate as a local exchange carrier which provides common carrier service to a local exchange study area that: (a) does not include any incorporated place of 10,000 inhabitants or more; (b) provides telephone exchange service to fewer than 50,000 access lines; and (c) provides telephone exchange service to a local exchange study area of fewer than 100,000 access lines. Eagle Mountain’s population, as reported by the Bureau of the Census in July 2002, was 6,093. The City’s telephone system serves approximately 2,223 access lines.

ETC Status

The Commission believes that Direct’s operation of the telephone system in Eagle Mountain is consistent with and meets all of the requirements under federal and state law to classify Direct, for purposes of its operations in Utah, as an eligible telecommunications carrier (ETC). 47 U.S.C. § 214(e)(2) allows this Commission to determine

whether a carrier is an ETC for purposes of federal recognition of that status. The Commission designates Direct as the area's ETC because the Eagle Mountain area is a rural area under the federal guidelines, and Direct will be: (a) offering the services supported by the federal universal service support mechanisms through the use of its own facilities; (b) advertising the availability of such services and the charges therefore using media of general distribution; ©) no other common carrier provides the services supported by the federal universal service support mechanisms in the area in which DCCV will serve; (d) no other carrier has, prior to the City's construction of the system it operates, installed facilities in the area DCCV will serve; and (e) the City's service area was otherwise not previously served in any manner contemplated by the 1996 Federal Act.

V. Rates and Tariffs.

Direct has proposed, and the Division and Committee agree, that the current rates paid by the City's subscribers shall remain in effect, adjusted to recognize appropriate extended area service and subscriber line charges, until further Order of this Commission.

In order to accurately set rates in the future, the Commission recognizes a need for traffic and cost data. Therefore, within one month after Direct commences its operations, it shall begin to collect traffic and cost data separately for business and residential lines to and from every other Utah County exchange, and shall continue to collect and report for each successive three month period to enable the calculation of EAS rates and traffic stimulation factors. Direct will report this data to the Division and to the Committee within one month of the end of each three-month period. Until these studies enable Direct cost-based EAS rates to be set by the Commission, proxy EAS rates will be set for the Eagle Mountain exchange at the current Qwest rate for the Lehi Exchange, as is reflected in Direct's filings in this Docket. If new facilities are required in order to continue EAS services, a cost study will be conducted to determine whether EAS rates need to be further adjusted to cover the total cost of the service.

Direct's rate for terminating switched access was a subject of much discussion among the parties in this Docket. The Stipulation specifies that this rate will not exceed 5 cents per minute for 3 years following the date of the

contract's closing. Further, in the event the Commission or any party other than Direct seeks an increase in Direct's terminating access rate within those 3 years, the Stipulation specifies that Qwest shall be given notice of the requested increase and an opportunity to be heard.

VI. Direct's Eligibility for Utah Universal Service Fund Support.

Direct can qualify to participate in the Utah USSF, pursuant to Utah Code Ann. § 54-8b-15 and Commission Rule 746-360-6, in that Direct is a facilities-based provider and satisfies the ETC requirements of 47 U.S.C. § 214(e). We find the testimony of the Division's witnesses and Direct's witnesses persuasive regarding the necessity of Universal Service Fund support as a means of assuring affordable service at Eagle Mountain, and it is evident that the current subscribers have borne and must continue to bear the full cost of the operation of the telephone system if Direct cannot qualify for USF support.

The Division witnesses testified that some of the original plant installed by the City did not meet industry standards. These witnesses further testified that much of the non-standard plant has been replaced by the City, and that the Division, in its audit, has made its best effort to remove the remaining non-standard plant, which could be identified, from the Division's calculations and analysis. We conclude that if any of the plant to be purchased by Direct does not meet industry standards, neither state nor federal USF support nor customer rates shall be used to pay for the costs of replacement, including the cost of un-recovered depreciation. In no event shall any substandard plant be included in rate base, nor associated costs be included in revenue requirement calculations.

FINDINGS AND CONCLUSIONS

1. Pursuant to Utah Code Ann. § 54-4-25, the Commission finds and concludes that it is in the public interest to issue a Certificate of Public Convenience and Necessity authorizing DCRI and DCCV to provide local exchange telecommunications services to subscribers within the City of Eagle Mountain.

2. The Commission finds that the purchase of the Eagle Mountain telephone system by Direct is in the

public Interest.

3. The Commission concludes that it supports and will make no objection to any change in FCC study areas needed to consummate the sale and permit Direct to serve the Eagle Mountain area.

4. The Commission finds that Qwest's request for an amended certificate and request for a modification to the Lehi Exchange boundary will leave the City as the sole carrier in an area neither served by nor certificated to any other carrier.

5. The Commission finds and concludes that Direct is a "telephone corporation" as defined in Utah Code Ann. § 54-2-1(23), and that it is a "local exchange carrier" as defined in Commission Rule 746-240-2©), and that in the area served by the City's municipal telephone utility, Direct will be providing "local exchange service", as defined in Utah Code Ann. § 54-8b-2(8).

6. The Commission finds that DCRI's experience as a regulated public utility in Idaho will contribute to the more stringent adherence to the Uniform System of Accounts required by public utilities, and that the Eagle Mountain subscribers will benefit from Direct's operations as a fully regulated telephone utility system.

7. The Commission finds and concludes that the City's system, within the area it has served, has functioned as an ILEC; and that when Direct replaces it as the area's carrier, Direct will function as a facilities-based provider, as defined by Commission Rule 746-360-2(E), not a resale provider.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED, that:

1. The Stipulation of the parties in this Docket is hereby adopted and incorporated herein by reference (attached as Appendix I).

2. The application of Direct for a Certificate of Public Convenience and Necessity is granted pursuant to Utah Code Ann. § 54-4-25.

3. Direct's initial basic local rates shall be the rates in effect for the City's system as of the date this Order is issued, adjusted to recognize appropriate extended area service and line charges. These are the rates for services included in Direct's prefiled exhibits. All of the rates for services as filed in Direct's prefiled exhibits are approved. Adjustments to the rates will be considered in Direct's first rate proceeding or other proceedings by the Commission.

4. Any amount in the purchase price paid by Direct that is above the Commission-determined rate base value shall be booked as an acquisition adjustment and shall not be included in the calculations for development of Direct's rates and USF support.

5. For purposes of setting Direct's rates, all of the revenues Direct generates shall be considered.

6. Any disbursement of State USSF to Direct shall be conditioned upon a satisfactory Commission review of Direct's revenue requirement and rate structure in accordance with Commission Rule 746-360-6(A)(2)(b). Direct may draw State USSF support for Lifeline service as soon as such service is established in accordance with Commission Rule 746-360-6©).

7. Any modifications to the terms of the Contract shall be served upon the parties to the case.

8. Direct shall notify the Commission of any FCC action or decision upon any application filed by Direct, pertaining to the City's telephone system, prior to the closing of the contract. Direct shall advise the Commission and the Division of a projected contract closing date not later than 10 days in advance of any such projection.

9. Direct shall file with the Commission semi-annual financial reports of operations and be subject to audit as often as the Division determines is necessary.

10. Direct shall provide an informational copy to the Commission of all filings made by Direct with the FCC

and NECA.

11. Direct shall inform customers that they have the right to choose both an intra and interstate carrier other than Direct for their long distance services.

12. Direct shall ensure that no Eagle Mountain subscriber will be in a worse customer position as a result of Direct's purchase of the City's system than they were under the City's service with respect to rates, services offered, and service quality. If this Commission determines at a future time that the subscribers are in a worse position in those specific respects, Direct, consistent with its guarantee, shall be responsible for implementing a satisfactory remedy, consistent with state law.

13. Direct is designated an Eligible Telecommunications Carrier for the area served by the system it is purchasing from the City of Eagle Mountain.

14. Direct shall file with the Commission its operating tariffs, rules, and regulations not later than 30 days in advance of the projected service cut-over date, and the rates will become effective upon Direct providing service in the Eagle Mountain area.

15. Pursuant to Utah Code 63-46b-12 and 54-7-15, agency review or rehearing of this order may be obtained by filing a request for review or rehearing with the Commission 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 Commission 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 Commission'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 63-46b-14, 63-46b-16 and the Utah Rules of Appellate Procedure.

DATED at Salt Lake City, Utah this 9th day of August 2004.

/s/ Ric Campbell, Chairman

/s/ Constance B. White, Commissioner

/s/ Ted Boyer, Commissioner

Attest:

/s/ Julie Orchard
Commission Secretary

G#39873

-ATTACHMENT-

-BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH-

IN THE MATTER OF THE APPLICATION OF)
DIRECT COMMUNICATIONS ROCKLAND, INC.,)
and DIRECT COMMUNICATIONS CEDAR VALLEY,)
LLC, FOR A CERTIFICATE OF PUBLIC)
CONVENIENCE AND NECESSITY ALLOWING)
OPERATION AS AN INDEPENDENT LOCAL)
EXCHANGE CARRIER.)

DOCKET NO. 04-2419-01
STIPULATION

The undersigned parties in the above-entitled Docket, by and through their counsel of record, hereby stipulate and represent to the Commission as follows:

1. The parties have had an opportunity to fully participate in this docket, including three technical conferences conducted for the purpose of evaluating all aspects of the certification petition filed by Direct Communications Rockland, Inc. and its subsidiary, Direct Communications Cedar Valley, LLC (jointly "Direct"). Direct has filed prefiled testimony and exhibits in support of its petition, as well as supplemental direct testimony and updated financial data pertaining to its proposed purchase of the Eagle Mountain City ("the City") municipal telephone system.

2. Direct has worked through a series of issues and questions with the Division of Public Utilities (“the Division”), the Committee of Consumer Services (“the Committee”), the Utah Rural Telecom Association (“URTA”), Beehive Telephone Company, and Qwest Communications (“Qwest”), some of whom have entered into this Stipulation, which resolves their respective issues and concerns if adopted by the Commission.

3. Based upon the Commission’s incorporation of the following elements to be incorporated in an Order, the undersigned parties hereby express their approval and assent to issuance by the Commission of the Certificate of Public Convenience and Necessity sought by Direct, pursuant to Utah Code Ann. § 54-4-25, and the undersigned parties hereby stipulate and agree that issuance of such a Certificate to Direct is in the public interest.

4. Based upon the fact of this Stipulation, the parties have not prefiled rebuttal testimony, but some will provide testimony at the hearing scheduled for July 8, 2004. The parties further stipulate and agree that the prefiled direct testimony, supplemental testimony and exhibits submitted by Direct may be received into evidence by the Commission without objection.

5. The parties agree that the Commission should require that any modifications to the sale and purchase agreement be submitted to the Commission prior to the closing. If no objection is raised by any party within 5 business days from the date of such submission, the Commission and the parties will be deemed to have assented, and no further action shall be required of Direct. If any changes to the sale and purchase agreement have been made after closing, the entire sale and purchase agreement shall be filed with the Commission, along with an explanation, within 10 business days of closing.

6. The parties agree that there are three elements of the contract that should be addressed in the Commission’s order: (1) Direct has agreed to the general principle that any amount in the purchase price which is above the Commission determined original cost be booked as an acquisition adjustment and will not be included in the calculations for development of rates and USF support; (2) the contract makes the sale conditional upon Direct

Communications Cedar Valley receiving approval to participate in federal and state universal service support funds; and (3) in the event Direct or the City terminate the contract according to its terms, the certification for which Direct has petitioned should be vacated. The Certificate of Public Convenience and Necessity to be granted is contingent upon the closing of the contract by Direct and the City and Direct Communications Cedar Valley obtaining membership in NECA and the receipt of Federal USF support. Direct will notify the Commission of the decision of the FCC prior to closure of the sale.

7. The parties agree that Direct Communications Rockland has the financial, managerial, and technical experience and resources necessary to operate the system in Eagle Mountain and provide for its growth and modernization consistent with the best practices of the industry throughout the rest of Utah. Direct Communications Rockland has proposed to operate the Eagle Mountain system through its subsidiary. Direct Communications Rockland, as the corporate parent of the subsidiary, agrees to assume ultimate responsibility for the financial stability and sound management of its subsidiary, and that it will assure the subsidiary's compliance with the rules and regulations of the Commission and the Division's statutory enforcement role. To the extent that external financing is required for funding principal or interest, for additional capital investment necessary for plant upgrades, new facilities and the successful operation of the system Direct is purchasing, Direct Communications Rockland shall bear that responsibility.

8. The specific elements to which the parties further stipulate are as follows:

a. Qwest agrees to file a request for an amended certificate and request for a modification to the Lehi Exchange boundary, which will exclude the area now served by the City's municipal telephone system from Qwest's current Lehi Exchange boundaries. This modification is conditioned upon the closing of the sale of the City's system to Direct.

b. Qwest and Direct agree that it will be necessary for both companies to file a request for a Study Area Waiver with the FCC, which will remove the area served by Direct Communications Cedar Valley from Qwest's Study Area and create a separate Study Area for Direct Communications Cedar Valley. The parties agree that the Commission

should find that such a waiver and modification of Study Area boundaries is in the public interest and that this Commission encourages favorable action thereon by the FCC.

c. Direct agrees that Direct Communication Cedar Valley's rate for terminating switched access will not exceed 5 cents per minute for 3 years following the date of closing. In the event that the Commission or any party other than Direct seeks an increase in Direct Communications Cedar Valley's terminating access rate within those 3 years, Qwest shall be given notice of the requested increase and an opportunity to be heard.

d. The parties agree that the Certificate issued by the Commission to Direct Communication Cedar Valley contemplates that it will obtain federal USF support and NECA pool eligibility as quickly as possible. The parties request that the Commission re-open this docket and consider vacating the Certificate in the event the FCC does not approve NECA pool participation or federal USF support as requested.

e. The parties stipulate that Direct Communications Cedar Valley qualifies for "eligible telecommunications carrier" status, pursuant to all of the requirements of state and federal law, specifically, 47 U.S.C. § 214(e)(2), and request that the Commission so find. Direct Communications Cedar Valley will be the only ETC in the area it will serve, and it will be the carrier of last resort in a high cost rural area of the state. Direct Communications Cedar Valley will not be in competition with any other incumbent local exchange carrier ("ILEC") within the area of its Certificate.

f. The parties stipulate that Direct Communications Cedar Valley meets the requirements of Utah Code Ann. § 54-8b-15 and Commission Rule 746-360-6 for eligibility to participate in the Utah USF.

g. The parties agree that the area currently served by Eagle Mountain's telephone system, prior to inauguration of the City's telephone system, was an area in which no other carrier had existing facilities, leaving it, essentially, unserved. Exhibit 1, which is attached hereto and is incorporated herein by reference, contains a factual narrative providing greater detail regarding the history of telephone service in this area.

Direct represents the accuracy of this narrative, and the parties do not object to it for purposes of this Stipulation.

h. The parties stipulate and agree that this Commission should make certain findings and conclusions with respect to Direct Communications Cedar Valley's status which are consistent with facts common to recent FCC decisions approving early federal USF participation and NECA pool participation from applicants which have not met the technical definitions of ILEC status and propose to serve previously unserved areas. Such findings and conclusions should include the following sub-elements:

i. ETC status pursuant to 47 U.S.C. § 214(e)(2);

ii. Rural carrier status pursuant to 47 U.S.C. § 153(47);

iii. Direct Communications Cedar Valley meets the requirements of Utah Code Ann. § 54-8b-15 and Commission Rule 746-360-6 to be eligible to participate in the Utah USF;

iv. The necessity for USF support, without which Direct Communications Cedar Valley would have to raise rates to recover amounts which would otherwise come from USF;

v. Direct Communications Rockland is an ILEC and an ETC in Idaho, and Direct Communications Cedar Valley should be regulated in Utah as an ILEC, inasmuch as its operations will be consistent in every practical and legal sense with the operations of the other Utah ILECs;

vi. Like the other rural Utah ILECs, Direct Communications Cedar Valley should be subject to all the statutes, rules and provisions which apply to rural ILECs.

vii. The City's municipal service has, and Direct Communication Cedar Valley 's service will, function as the carrier of last resort in the area served;

viii. Direct Communication Cedar Valley is not a CLEC, and is not in competition with any other ILEC in the area that it will serve;

ix. Direct Communications Cedar Valley is not a reseller, but is a facilities based carrier as that term is defined in Commission Rule 746-360-2(E);

I. The parties stipulate that Direct Communications Cedar Valley is a “telephone corporation” as defined in Utah Code Ann. § 54-2-1(23), and that it is a “local exchange carrier” as defined in Commission Rule 746-240-2©), and that it will be providing “local exchange service” in the area served by the City’s municipal telephone utility, as defined in Utah Code Ann. § 54-8b-2(8).

j. The parties stipulate that Direct Communication Cedar Valley’s initial basic local rates shall be the rates currently in effect, as of the date hereof for the City’s system, adjusted to recognize appropriate EAS and SLC charges.

k. The parties agree that there shall be a presumption that Direct’s acquisition costs related to the purchase of the City’s system should not be included in the calculation of Direct Communication Cedar Valley’s revenue requirement nor reimbursed from the Utah USF; however, Direct Communication Cedar Valley shall not be precluded from requesting recovery of such acquisition costs in a future rate proceeding. Any amount in sales price above book value will be booked as an acquisition adjustment and will not be included in the revenue requirement calculation for development of rates. Any draw by Direct Communication Cedar Valley on the Utah USF shall be conditioned upon a satisfactory Commission review of Direct Communication Cedar Valley’s revenue requirement and rate structure in accordance with Commission Rule 746-360-2(b). In order to ensure accuracy and an understanding of operations, Direct Communication Cedar Valley shall collect 18 months of actual data before filing a rate proceeding with the Commission. The parties anticipate the rate proceeding will be completed within 6 months after it is filed. However, Direct Communication Cedar Valley may draw USF support immediately for a Lifeline service when such service is established in accordance with the Commission’s rules.

l. In the event any of the plant to be purchased by Direct does not meet industry standards, USF support or customer rates shall not be used to pay for the costs of replacement, including the cost of unrecovered depreciation, without Commission approval.

m. The parties stipulate that in calculating Direct Communications Cedar Valley's revenues, all sources of revenue shall be considered. For purposes of Direct Communication Cedar Valley's first rate case, toll and DSL revenues will be included. In rate proceedings, Direct Communications Cedar Valley agrees that its actual capital structure can be included in the calculation of revenue requirements.

n. Direct Communications Cedar Valley will inform customers that they have the right to choose both an intra- and interstate carrier other than Direct Communications Cedar Valley for their long distance service.

o. Direct Communications Cedar Valley will file with the Commission semi-annual financial reports of operations and be subject to audit as the Division may determine necessary for the first 24 months of its operations. Direct Communications Cedar Valley shall also provide an informational copy to the Commission of all filings made by Direct Communications Cedar Valley with the FCC and NECA prior to the closing of its contract with the City. Direct Communications Cedar Valley will promptly advise the Commission of any pre-closing rulings by the FCC and NECA.

p. Direct will advise the Commission and the Division of a projected contract closing date and effective date of its tariffs not later than 10 days in advance of any such projection. Direct Communications Cedar Valley shall file its operating tariffs and rules and regulations not later than 30 days in advance of the service cut-over. Direct Communications Cedar Valley's initial basic local rates shall be the rates currently in effect for the City's system as of July 1, 2004, adjusted to recognize appropriate EAS and SLC charges. Adjustments to the current rates will be considered in Direct Communications Cedar Valley's first rate proceeding. Within one month after Direct Communications Cedar Valley commences those operations, it will begin to collect traffic and cost data separately for business and residential lines to and from each other Utah County exchange, for each successive period of three months to enable the calculation of EAS rates and traffic stimulation factors. Direct Communications Cedar Valley will report this data to the Division and to the Committee of Consumer Services within one month of the end of each three-month period. Until these studies enable cost-based EAS rates to be set by the Commission in Direct Communications Cedar

Valley's first rate proceeding, proxy EAS rates will be set for the Eagle Mountain exchange at the current Qwest rate for the Lehi Exchange. If new facilities are required in order to continue EAS services, a cost study will be conducted to determine whether EAS rates need to be further adjusted to cover the total cost of the service.

q. As a condition of the order, Direct Communications Cedar Valley shall ensure that no Eagle Mountain subscriber will be in a worse customer position as a result of Direct's purchase of the City's system than they were under the City's service with respect to rates, services offered, and service quality. If the Commission should determine at a future time that the subscribers are in a worse position in any of those specific respects, Direct, consistent with its guarantee, will be responsible for implementing a satisfactory remedy, consistent with state law.

9. The parties agree that their obligations under this Stipulation are subject to the Commission's approval of this Stipulation in accordance with its terms and conditions.

10. The parties recommend that the Commission adopt this Stipulation in its entirety. No party shall appeal any portion of this Stipulation and no party shall oppose the adoption of this Stipulation pursuant to any appeal filed by any person not a party to the Stipulation. Direct and the Division shall make witnesses available to provide testimony in support of this Stipulation, including testimony to explain the basis of their support for this Stipulation, and other parties may make such witnesses available. In the event other parties introduce witnesses opposing approval of the Stipulation, the parties agree to cooperate in cross-examination and in providing testimony as necessary to rebut the testimony of opposing witnesses.

11. In the event the Commission rejects any or all of this Stipulation, or imposes any additional material conditions on approval of this Stipulation, or in the event the Commission's approval of this Stipulation is rejected or conditioned in whole or in part by an appellate court, each party reserves the right, upon written notice to the Commission and the other parties to this proceeding delivered no later than 5 business days after the issuance date of the applicable Commission or court order, to withdraw from this Stipulation. In such case, no party shall be bound or

prejudiced by the terms of this Stipulation, and each party shall be entitled to undertake any steps it deems appropriate.

12. The parties agree that this Stipulation is in the public interest and that all of its terms and conditions are fair, just and reasonable.

13. No party is bound by any position asserted in the negotiation of this Stipulation, except to the extent expressly stated herein, nor shall this Stipulation be construed as a waiver of the rights of any party unless such rights are expressly waived herein. Execution of this Stipulation shall not be deemed to constitute an acknowledgement by any party of the validity or invalidity of any particular method, theory or principle of regulation, cost recovery, cost of service or rate design, and no party shall be deemed to have agreed that any method, theory or principle of regulation, cost recovery, cost of service or rate design employed in arriving at this Stipulation is appropriate for resolving any issues in any other proceeding in the future except as specified herein. No findings of fact or conclusions of law other than those stated herein shall be deemed to be implicit in this Stipulation. .

14. This Stipulation may be executed in counterparts and each signed counterpart shall constitute an original document.

DATED this 8th day of July, 2004.

/s/ David R. Irvine
Attorney for Direct Communications

/s/ Michael Ginsberg
Assistant Attorney General
Division of Public Utilities

/s/ Stephen F. Mecham
Attorney for the Utah Rural Telecom
Association

/s/ Gregory S. Monson
Attorney for Qwest Communications

/s/ Paul Proctor
Assistant Attorney General
Counsel to the Utah Committee
Of Consumer Services