

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of the Joint Application of)
Qwest and FirstDigital Telecom, LLC for)
Approval of Purchase and Sale of)
Farmington Ranches Assets)

DOCKET NO. 05-049-68

REPORT AND ORDER

ISSUED: May 23, 2005

SYNOPSIS

The Commission finds the proposed purchase by Qwest of FirstDigital Telecom’s assets in the Farmington Ranches subdivision to be in the public interest and approves the same.

By The Commission:

PROCEDURAL HISTORY

On April 15, 2005, Qwest Corporation (“Qwest”) and FirstDigital Telecom, LLC (“FirstDigital”) (together “Petitioners”), filed a Verified Joint Application for Approval of Purchase and Sale of Farmington Ranches Assets (“Applications”) seeking approval of the purchase by Qwest of certain outside plant cabling facilities currently owned by FirstDigital in the Farmington Ranches subdivision located in Farmington, Utah. On April 28, 2005, the Division of Public Utilities (“Division”) submitted a Memorandum recommending the Commission withhold decision on Petitioners’ Application pending receipt of Petitioners’ responses to Division data requests. On May 9, 2005, the Division filed a Memorandum recommending approval of the Application.

DISCUSSION

Qwest is a certificated incumbent local exchange carrier (“ILEC”) in the State of Utah authorized to provide public telecommunications services in various areas in the state, including Farmington Ranches. FirstDigital is a competitive local exchange carrier (“CLEC”) certificated in the State of Utah to provide public telecommunications services in areas of the state served by Qwest.

As noted in the Application and its Confidential Attachment 1, FirstDigital owns certain outside plant cabling facilities in Farmington Ranches and provides public telecommunications services to its Farmington Ranches customers using these facilities. Qwest also has facilities installed in portions of Farmington Ranches and provides services to its Farmington Ranches customers utilizing these facilities. There is some overlap of Petitioners’ facilities in Farmington Ranches but there are

also areas within the subdivision where customers served by FirstDigital facilities cannot currently be served by Qwest facilities. Other CLEC's also provide public telecommunications services to customers in Farmington Ranches using Qwest facilities obtained pursuant to interconnection agreements with Qwest.

Following closing of the proposed sale, FirstDigital will serve its current and future Farmington Ranches customers utilizing unbundled network elements obtained from Qwest in accordance with the terms of the Petitioners' interconnection agreement. Due to the unique nature of this asset transfer, including FirstDigital's intended future use of these assets to serve its existing customers by leasing Qwest loops under the terms of the Petitioners' interconnection agreement, Qwest has agreed to waive the non-recurring charge typically assessed for loop provisioning as it relates to FirstDigital's continuing service of its existing customers. Terms relating to loop non-recurring charges are contained in Petitioners' interconnection agreement. However, because this waiver is a "one-time event", Petitioners request the Commission not require filing of the Asset Purchase Agreement as an interconnection agreement or amendment thereto under the filing requirements of 47 U.S.C. § 252.

The Division recommends the Commission approve the proposed transaction as in the public interest, noting that it will provide more customer flexibility in choosing and changing telecommunications service providers at no cost to consumers. The Division notes that, as a CLEC, FirstDigital is not obligated to interconnect its facilities with those of its competitors. However, Qwest is obligated to interconnect so its purchase of FirstDigital facilities in Farmington Ranches will open the entire subdivision to CLEC competition. Such competitive choice should benefit consumers through discounted rates, availability of advanced services and other unique offerings. The Division also notes that there will be no disruption of service or requirement that customers change their current service provider as a result of the proposed transfer of assets.

FINDINGS AND CONCLUSIONS

Utah Administrative Code Rule 746-110-1, authorizes the Commission to adjudicate a matter informally under Utah Code Annotated § 63-46b-5 when the Commission "determines that the matter can reasonably be expected to be unopposed and uncontested." Based upon the information submitted by the Petitioners and the Division's recommendation, and no opposition appearing, we determine to proceed informally without hearing and conclude that the proposed transfer of assets from FirstDigital to Qwest will not harm the State of Utah, its citizens, or the customers of FirstDigital or Qwest in the Farmington Ranches subdivision; will enhance competitive choice in the Farmington Ranches subdivision; and is therefore in

the public interest. We further conclude, owing to the unique nature of this transaction, Petitioners are not required to file the Asset Purchase Agreement as an interconnection agreement or amendment to such agreement under 47 U.S.C. § 252.

Wherefore, we enter the following:

ORDER

1. Tentatively approving the proposed purchase by Qwest of certain FirstDigital assets located in the Farmington Ranches subdivision as indicated in Petitioners' Verified Joint Application for Approval of Purchase and Sale of Farmington Ranches Assets and its Confidential Attachment 1.
2. Absent meritorious protest, this Order shall automatically become effective without further action twenty (20) days from the date of this Order.
3. Persons desiring to protest this Order may file said protest prior to the effective date of this Order. If the Commission finds said protest to be meritorious, the effective date shall be suspended pending further proceedings.
4. Pursuant to *Utah Code Ann.* §§ 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 Ann.* §§ 63-46b-14, 63-46b-16 and the Utah Rules of Appellate Procedure.

DATED at Salt Lake City, Utah, this 23rd day of May, 2005.

/s/Ric Campbell, Chairman

/s/Ted Boyer, Commissioner

/s/Ron Allen, Commissioner

Attest:

/s/Julie Orchard

Commission Secretary

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