

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of the Application of Direct)
Communications Cedar Valley to Lower) DOCKET NO. 06-2419-01
Rates)
)
In the Matter of the Petition of Direct) DOCKET NO. 06-2419-02
Communications Cedar Valley, LLC to)
Establish a Rate Base)
) REPORT AND ORDER
) APPROVING STIPULATION
) AND CLOSING DOCKET
)

ISSUED: January 16, 2008

SYNOPSIS

Having concluded the Stipulation between Direct Communications Cedar Valley, LLC (“DCCV”) and the Division of Public of Utilities attached hereto is just and reasonable in result and is in the public interest, the Commission approves the same, subject to the conditions explained in this Order, and thereby establishes initial plant balances and depreciation rates for the assets of DCCV, as contained in Exhibits 1 and 2 to the Stipulation, respectively. The Commission closes Docket No. 06-2419-01 with no further action.

By The Commission:

I. PROCEDURAL HISTORY

Direct Communications Cedar Valley, LLC (“DCCV”) is the local exchange communications company within the City of Eagle Mountain. DCCV purchased the assets of the municipal telephone system operated by the City, and was issued a Certificate of Public Convenience and Necessity (“Certificate”) by the Public Service Commission of Utah (“Commission”) on August 9, 2004 in Docket No. 04-2419-01. After receiving approval from the Federal Communications Commission (“FCC”), DCCV began operations on February 1,

2006. The current assets of DCCV consist of the assets purchased from the City and additions subsequent to February 1, 2006.

On September 22, 2006, DCCV filed a letter with the Commission that proposed depreciation rates. The Commission established Docket No. 06-2419-01 in response to this letter.

On December 13, 2006, DCCV submitted a Petition, with accompanying exhibits, requesting the Commission establish initial plant account balances and depreciation rates for DCCV's regulated assets located in the state of Utah. DCCV asserted that these determinations were necessary to allow DCCV to close its 2006 books and allow DCCV to file financial statements with the Commission, the FCC, the National Exchange Carrier Association, and various other governmental agencies. The Petition was assigned Docket No. 06-2419-02.

Also on December 13, 2006, DCCV simultaneously applied for a Protective Order governing the production and use of Confidential Information, and the Commission issued its Protective Order on December 26, 2006.

DCCV subsequently filed with the Division of Public Utilities ("Division") a memorandum addressed to the Commission requesting a waiver of two of the reporting requirements contained in the Stipulation between DCCV, the Division, the Committee of Consumer Services ("Committee"), the Utah Rural Telephone Association, and Qwest in Docket No. 04-2419-01. These requirements had been incorporated within the Commission's Order granting DCCV a Certificate.

On April 24, 2007, following substantial negotiations and information exchange, DCCV and the Division (hereinafter jointly referred to as the “Parties”) entered into and filed for Commission approval a Stipulation resolving between them the issues presented in this docket.

On July 5, 2007, the Commission held a duly-noticed evidentiary hearing on DCCV’s Petition, including the Stipulation. DCCV was represented by David R. Irvine and presented the testimony of Raymond Hendershot in support of the Stipulation. Michael L. Ginsberg, Assistant Attorney General, appeared for the Division. Clair Oman, Division Utility Analyst, presented testimony in support of the Stipulation. No party appeared in opposition to the Stipulation.

At the conclusion of the evidentiary hearing, the Commission announced its decision from the bench approving the Stipulation as presented and requesting DCCV prepare a proposed written order.

On January 7, 2008, DCCV filed said draft order with the Commission.

II. THE STIPULATION

The Stipulation contains the following principal terms and conditions. This description of the Stipulation is made for convenience of reference only and is not intended to modify the terms and conditions of the Stipulation appended to this Order.

In paragraph 6 of the Stipulation, the Parties jointly request the Commission issue an order establishing depreciation rates for DCCV and a determination of the value of DCCV’s assets consistent with the following exhibits:

- a. Exhibit 2 Direct Communications Cedar Valley Depreciation Rates to be effective February 1, 2006;

b. Exhibit 1 Direct Communications Cedar Valley Plant Balances describing gross plant balance, total accumulated depreciation, and net book value as of February 1, 2006.

In paragraph 7, the Parties agree the Commission is approving the use of Exhibits 1 and 2 for financial reporting to the Commission and other regulatory agencies, and for the establishment of initial gross plant balance and total accumulated depreciation as of February 1, 2006.

In paragraph 8, DCCV agrees to file the following reports with the Commission. The scheduled filing of these reports is not intended to waive, modify or alter any provisions of the Commission's Order granting a Certificate of Public Convenience and Necessity or the Stipulation between the Division, Committee and DCCV in Docket No. 04-2419-01:

a. Within two weeks of the issuance of an Order in this docket, DCCV will file Verified Financial Statements with the Commission, Division and Committee for the period ending December 31, 2006, and shall continue filing those Financial Statements semi-annually;

b. DCCV will properly and timely file the traffic studies with the Division and Committee each quarter on March 31, 2007, and thereafter as required by the Stipulation and Commission Order granting the Certificate;

c. DCCV will fully cooperate in a financial review of DCCV's books and records to occur after DCCV files its 2006 annual report. There is no implication intended in this language to suggest that DCCV has been other than fully cooperative.

III. DISCUSSION

Settlement of matters before the Commission is encouraged at any stage of proceedings.¹ The Commission may approve a stipulation or settlement after considering the interests of the public and other affected persons if it finds the stipulation or settlement in the public interest.² Parties to a proceeding not joining in a stipulation or settlement shall be entitled to oppose the stipulation.³ No party has done so in this case. The Commission may approve a stipulation or settlement if the Commission finds on the basis of the evidence presented that the settlement proposal is just and reasonable in result and is in the public interest.⁴ In reviewing a settlement stipulation, the Commission may also consider whether it was the result of good-faith, arms-length negotiations.⁵

We have carefully reviewed the record in this matter, all issues raised by the Parties, and the arguments and proffered evidence of the Parties with respect to those issues. Based upon this review, we find that the initial plant balances and depreciation rates for the assets of DCCV as contained in Exhibits 1 and 2 to the Stipulation are just and reasonable. We further find that the reporting requirements agreed to by DCCV are just and reasonable.

We therefore find and conclude that the terms of the Stipulation represent a just and reasonable resolution of the issues raised by the Petition. We further find and conclude that

¹ Utah Code Ann. § 54-7-1. *See also Utah Dept. of Admin. Services v. Public Service Comm'n*, 658 P.2d 601, 613-14 (Utah 1983).

² *Id.*

³ Utah Code Ann. § 54-7-1(3)(e)(ii).

⁴ Utah Code Ann. § 54-7-1.

⁵ *Utah Dept. of Admin. Services*, 658 P.2d at 614, n.24.

approval of the Stipulation is in the public interest and therefore approve the Stipulation as a just and reasonable settlement between the Parties to this docket. However, as we have indicated in previous orders approving settlement stipulations, our approval is not intended to alter any existing Commission policy or to establish any precedent by the Commission.

The Commission notes Exhibit 1 to the Stipulation contains information claimed as proprietary and confidential that shall remain subject to the terms and conditions of the Protective Order previously entered in this docket. However, the account numbers and balances therein, to which the Parties have stipulated, shall be considered the value of the utility's assets, until modified by the Commission.⁶

We also note that in our Order approving DCCV's acquisition of the Town of Eagle Mountain's telephone system in Docket No. 04-2419-01, the Commission stated: "Any amount in the purchase price paid by [DCCV] 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 [DCCV's] rates and USF support." While we approve the proposed rate base as agreed in the Stipulation, such approval does not change the requirements of our earlier Order. If it is later found that any acquisition adjustment is included in the rate base, such amounts shall be removed and DCCV's rates or Utah Universal Service Support Fund payments shall be adjusted accordingly.

Wherefore, based upon the foregoing information, and for good cause appearing, the Commission enters the following:

⁶ Due to this claimed confidentiality, neither exhibit is included with the copy of the Stipulation appended to this Order. However, both remain available in the records of the Commission for inspection by those who agree to abide by the terms of the Protective Order.

IV. ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that:

1. The Stipulation appended hereto, along with its referenced exhibits, is approved and adopted and incorporated in its entirety by reference.
2. The use of Exhibits 1 and 2 of the Stipulation for financial reporting to this Commission and other regulatory agencies, and for the establishment of initial gross plant balance and total accumulated depreciation as of February 1, 2006 is approved.
3. Direct Communications Cedar Valley, LLC (“DCCV”) shall file the following reports with the Commission:
 - a. Within two weeks of the issuance of an Order in this Docket, DCCV shall file Verified Financial Statements with the Commission, Division of Public Utilities and Committee of Consumer Services for the period ending December 31, 2006 and shall continue filing those Financial Statements semi-annually for two years from that date.
 - b. DCCV shall properly and timely file the traffic studies with the Division of Public Utilities and Committee of Consumer Services each quarter on March 31, 2007 and for two years thereafter as required by the Stipulation and Commission Order granting the Certificate of Public Convenience and Necessity in Docket No. 04-2419-01;
 - c. DCCV shall fully cooperate in a financial review of DCCV’s books and records to occur after DCCV files its 2006 annual report.

The scheduled filing of these reports is not intended to waive, modify or alter any provisions of the Commission’s Order granting a Certificate of Public Convenience and Necessity or the

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Stipulation between the Division of Public Utilities, the Committee of Consumer Services, Utah Rural Telephone Association, and DCCV in Docket No. 04-2419-01.

4. Docket No. 06-2419-01 is closed with no further action.

This Order constitutes final agency action in this docket. 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 and 63-46b-16 and the Utah Rules of Appellate Procedure.

DATED at Salt Lake City, Utah, this 16th day of January, 2008.

/s/ Ted Boyer, Chairman

/s/ Ric Campbell, Commissioner

/s/ Ron Allen, Commissioner

Attest:

/s/ Julie Orchard
Commission Secretary

G#55983 Docket No. 06-2419-01
G#55984 Docket No. 06-2419-02

APPENDIX

BEFORE THE UTAH PUBLIC SERVICE COMMISSION

In the Matter of Direct Communications Cedar Valley, LLC and Its Petition to Establish a Rate Base.	Stipulation Docket No. 06-2419-02
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Pursuant to Utah Code Annotated Sections 54-7-1, 54-4-21 and 54-4-24 Direct Communications Cedar Valley LLC (Direct) and the Division of Public Utilities (Division) submit to the Commission for its approval depreciation rates for the assets of Direct and a valuation of the assets of Direct.

1. Direct is the local exchange telecommunications company within the City of Eagle Mountain. Direct purchased the assets of the municipal telephone system operated by the City and was issued a Certificate of Convenience and Necessity by the Commission on August 9, 2004 in Docket Number 04-2419-01. After receiving approval from the Federal Communications Commission, Direct began operations on February 1, 2006. The current assets of Direct consist of the assets purchased from the City and additions subsequent to beginning operations on February 1, 2006.

2. On September 22, 2006 Direct filed a letter with the Commission that had attached to it proposed depreciation rates. The Commission established docket 06-2419-01 for this letter. In addition the letter indicated that Direct would also be seeking a determination of the value of the assets purchased from the City and any additions that

have occurred. Direct asserted that such a determination is needed for them to make future regulatory filings.

3. On December 13, 2006 Direct filed a Petition with the Commission that created Docket 06-2419-02. In that Petition Direct requested approval of the depreciation rates previously submitted and an establishment of the value of its assets. Exhibit 1 to that Petition is the proposed valuation of Direct and Exhibit 2 is the proposed Depreciation rates of Direct. Direct asserts that these determinations are needed to allow Direct to close its 2006 books and allow Direct to file financial statements with this Commission, the Federal Communications Commission, the National Exchange Carriers Association and other various governmental agencies.

4. On December 26, 2006 a Protective Order was issued in Docket 06-2419-02.

5. Direct filed a Memorandum to the Commission a copy of which was sent to the Division requesting a waiver of two of the reporting requirements contained in the Stipulation between Direct, the Division and the Committee. Those requirements were incorporated into the Commission's Order granting Direct a Certificate. The request for a waiver, which was never filed directly with the Commission by Direct, is attached to this Stipulation as Exhibit 3. At the request of Direct, a copy was provided to the Commission by the Division.

6. The Division and Direct have met on a number of occasions, and jointly request that the Commission issue an Order establishing depreciation rates for Direct and a determination of the value of Directs assets consistent with the following exhibits:

a. Exhibit 2 Direct Communications Depreciation rates to be effective February 1, 2006;

b. Exhibit 1 Direct Gross Plant Balance, total accumulated depreciation and net book value as of February 1, 2006.

7. The parties agree that the Commission is approving the use of Exhibit 1 and 2 for Financial reporting to this Commission and other regulatory agencies, and for the establishment of initial gross plant balance and total accumulated depreciation as of February 1, 2006.

8. In addition to the actions specified below, Direct agrees to file the following reports with the Commission. The scheduled filing of these reports is not intended to waive, modify or alter any provisions of the Commission's Order granting a Certificate of Convenience and Necessity or the Stipulation between the Division, Committee and Direct.

a. Within two weeks of the issuance of an Order in this Docket Direct will file Verified Financial Statements with the Commission, Division and Committee for the period ending December 31, 2006 and shall continue filing those Financial Statements semi-annually;

b. Direct will properly and timely file the traffic studies with the Division and Committee each quarter on March 31, 2007 and thereafter as required by the Stipulation and Commission Order granting the Certificate;

c. Direct will fully cooperate in a financial review of Direct's books and records to occur after Direct files its 2006 annual report. There is no implication

intended in this language to suggest that Direct has been other than fully cooperative.

9. The parties to this Stipulation recommend that the Commission adopt it in its entirety. If needed Direct and the Division shall make witnesses available to provide support for this Stipulation including testimony explaining their bases for support of Exhibit 1 and 2.

10. 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.

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

12. 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 or 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.

Dated this _____ Day of April 2006.

Direct Communciations Cedar Valley, LLC

Kip Wilson

General Manager

Utah Division of Public Utilities

Michael Ginsberg

Assistant Attorney General