

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of the Application of)
Xmission Networks, LLC, for a)
Certificate of Public Convenience and)
Necessity to Operate as a Competitive)
Local Exchange Carrier (CLEC) in Utah)
)

DOCKET NO. 06-2472-01

REPORT AND ORDER

ISSUED: November 7, 2006

SYNOPSIS

By this Report and Order, the Public Service Commission of Utah (the “Commission”) grants the request of Xmission Networks, LLC (“Applicant”) for a Certificate of Public Convenience and Necessity (“Certificate”) authorizing Applicant to provide public telecommunications services within the State of Utah, excluding those local exchanges having fewer than 5,000 access lines of an incumbent telephone corporation with fewer than 30,000 access lines in the state. The Commission, having considered the record in this proceeding and the applicable law, hereby makes, adopts, and enters the following Report and Order.

By the Commission:

PROCEDURAL HISTORY

Xmission Networks, LLC (“Applicant”) filed its Application on August 7, 2006, pursuant to Utah Code Annotated §54-8b-1.1 *et. seq.*, and Title 63, Chapter 46b of the Utah Administrative Procedures Act, seeking a Certificate of Public Convenience and Necessity to operate as a provider of resold and facilities-based local exchange telecommunications services in the state of Utah. On October 5, 2006, the Division of Public Utilities (“Division”) filed a memorandum recommending approval of the Application.

Incumbent Local Exchange Carriers (“ILECs”) have been notified of the Application and have not requested intervention. Since there appears to be no meritorious opposition, and Applicant has made out its *prima facie* case in support of the Application, there

appears to be no reason to convene an evidentiary hearing on the matter. Accordingly, the Commission, having been fully advised in the premises, enters the following Report, containing Findings of Fact, Conclusions of Law, and the Order based thereon.

FINDINGS OF FACT

1. Applicant is qualified to do business in Utah.
2. Applicant has requested that the Commission grant a Certificate of Public Convenience and Necessity authorizing it to provide public telecommunications services within the State of Utah.
3. Applicant is proposing to provide public telecommunication services in the state of Utah, excluding those exchanges with less than 5,000 access lines that are served by incumbent telephone corporations with fewer than 30,000 access lines in the state.
4. Applicant will utilize its managerial and technical expertise to support its Utah operations.
5. Applicant has sufficient technical resources and abilities to provide the public telecommunications services for which it has applied for a Certificate.
6. Applicant has sufficient managerial resources and abilities to provide the public telecommunications services for which it has applied for a Certificate.
7. Applicant has a secure and sufficient source of funding for its Utah operations that will enable it to meet projected capital and operating expenses and to implement its business plans.
8. Applicant has sufficient financial resources and abilities to provide the public telecommunications services for which it has applied for a Certificate.

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9. In its provision of intrastate services, Applicant will be subject to competition from other certified telecommunications services providers.

10. Applicant's service offerings will provide customers with a wider range of choices in meeting their telecommunications needs and will support the development of competition.

11. The issuance of a Certificate to Applicant to provide public telecommunications services is in the public interest.

12. The reporting requirements in Exhibit B attached hereto are in the public interest and are binding upon Applicant until modified by the Commission.

13. Applicant has applied for exemptions from the requirements of various procedures of the Utah Code and the Commission's Rules and Regulations.

14. The grant of exemptions from the provisions of the Utah Code and the Commission's Rules and Regulations, as set forth in Exhibit B, is in accord with Commission practice and is in the public interest.

CONCLUSIONS OF LAW

1. It is in the public interest to convert this matter to an informal proceeding, pursuant to §63-46b-4(3), UCA 1953, as amended.

2. Applicant meets each of the statutory requirements §54-8b-2.1, *et. seq.* UCA 1953, as amended) for issuance of a Certificate as a telecommunications corporation.

3. Applicant meets each of the statutory requirements §54-8b-2.1, *et. seq.*, UCA 1953, as amended) for authorization to provide the public telecommunications services for which it seeks a Certificate.

4. The issuance of a Certificate to Applicant to provide the telecommunications services for which it has applied is in accord with the legislative policy declarations set forth in Utah Code §54-8b-1.1.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED as follows:

- This matter be, and it is, converted to an informal proceeding pursuant to §63-46b-4(3), UCA 1953, as amended.
- The Commission hereby grants Applicant the Certificate attached hereto as Exhibit A and, by this reference, made a part of this Report and Order.
- Applicant shall provide reports to the Commission and to the Division of Public Utilities, Utah Department of Commerce, as set forth in Exhibit B and, by this reference, made part of this Report and Order.
- Applicant is exempt from certain provisions of the Utah Code and the Commission's Rules and Regulations, as set forth in Exhibit B.
- As Applicant does not propose to take customer deposits nor provide pre-paid services, the Commission's bond requirement is waived.

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DATED at Salt Lake City, Utah, this 7th day of November, 2006.

/s/ Ric Campbell, Chairman

/s/ Ted Boyer, Commissioner

/s/ Ron Allen, Commissioner

Attest:

/s/ Julie Orchard
Commission Secretary
G#51301

EXHIBIT A

In the Matter of the Application of)
Xmission Networks, LLC, for a)
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Local Exchange Carrier (CLEC) in Utah)

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CERTIFICATE

ISSUED: November 7, 2006

By the Commission:

The Public Service Commission of Utah, pursuant to the Utah Code Ann. §54-8b-2.1, *et. seq.*, hereby issues a Certificate of Public Convenience and Necessity authorizing Xmission Network, LLC (“Grantee”) to provide public telecommunications services within the State of Utah, excluding those local exchanges of less than 5,000 access lines of incumbent telephone corporations with fewer than 30,000 access lines in the state.

DATED at Salt Lake City, Utah, this 7th day of November, 2006.

/s/ Ric Campbell, Chairman

/s/ Ted Boyer, Commissioner

/s/ Ron Allen, Commissioner

Attest:

/s/ Julie Orchard
Commission Secretary

EXHIBIT B

I. Annual Report

Grantee shall file an Annual Report, on or before March 31 of each year, unless said grantee requests and obtains an extension. The Annual Report shall contain the following:

A. **Annual Revenues** from operations attributable to the State of Utah by major service categories. Such information would be provided on a "Total Utah" and "Utah Intrastate" basis. "Total Utah" will consist of the total of interstate and intrastate revenues. "Utah Intrastate" will reflect only revenues derived from intrastate tariffs, price lists, or contracts. Both Total Utah and Intrastate Utah revenues shall be reported according to at least the following classes of service:

- (1) private line and special access,
- (2) business local exchange,
- (3) residential local exchange,
- (4) measured interexchange, and
- (5) vertical services.

Business local exchange, residential local exchange and vertical service revenue will be reported by geographic area, to the extent feasible.

B. **Annual Expenses and Estimated Taxes** attributed to operations in the State of Utah.

C. **Year End Balances by Account for Property, Plant, Equipment, Annual**

Depreciation, and Accumulated Depreciation for telecommunications investment in Utah. The Actual Depreciation Rates which were applied in developing annual and accumulated depreciation figures shall also be shown.

D. **Financial Statements** maintained in accordance with generally accepted accounting principles in the ordinary course of business. These financial statements shall at a minimum include an income statement, balance sheet and statement of cash flows.

E. **List of Services** offered to customers and the geographic areas in which those services are offered. This list shall be current and shall be updated whenever a new service is offered or a new area is served.

F. **Number of Access Lines in Service** by geographic area, segregated between business and residential customers.

G. **Number of Messages and Minutes of Services** for measured services billed to end users.

H. **List of Officers and Responsible Contact Personnel** updated annually.

I. **Chart of Accounts.** In addition to the foregoing, said grantee will provide its chart of accounts as existing and updated (no less than annually). Said Grantee will also work with the Division in good faith to develop a method of estimating intrastate expenses and investments.

II. Applicable Statutory Provisions and Exemptions from Statutes and Waiver of Regulations.

Grantee shall be exempted from the following statutory provisions and regulations:

A. Exemptions from Title 54

54-3-8, 54-3-19	--	Prohibitions of discrimination
54-7-12	--	Rate increases or decreases
54-4-21	--	Establishment of property values
54-4-24	--	Depreciation rates
54-4-26	--	Approval of expenditures

B. Waivers of Regulations

R746-340-2(D)	--	Uniform System of Accounts (47 C.F.R. 32)
R746-340-2(E)(1)	--	Tariff filings required
R746-340-2(E)(2)	--	Exchange Maps
R746-341	--	Lifeline ¹
R746-344	--	Rate case filing requirements
R746-401	--	Reporting of construction, acquisition and disposition of assets
R746-405	--	Tariff formats
R746-600	--	Accounting for post-retirement benefits

III. Obligations with Respect to Provision of Services.

¹This regulation would be waived only until the Commission establishes Lifeline rules that may include Grantee or until it begins to provide residential local exchange service.

Grantee agrees to provide service within specified geographic areas upon reasonable request and subject to the following conditions:

A. Grantee's obligation to furnish service to customers is dependent upon the availability of suitable facilities on its own network and the networks of underlying carriers. Grantee will provide a map identifying the areas within the state of Utah where it is offering any services. The map will be updated as Grantee serves new areas and no less frequently than annually.

B. Grantee will only be responsible for the operation and maintenance of services that it provides.

IV. Modification

It is anticipated that to the extent such requirements impact competitive entry or impact effective competition that they will be subject to the rule making requirements of the Utah Code Ann. § 54-8b-2.2 and that the provisions set forth herein shall be superseded by any such rule adopted by the Commission.