

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of the Interconnection)
Agreement between Qwest Corporation and) DOCKET NO. 09-049-11
Greenfly Networks, Inc. d/b/a Clearfly)
Communications) REPORT AND ORDER REJECTING
) INTERCONNECTION AGREEMENT
)
)
)

ISSUED: May 11, 2009

SYNOPSIS

The interconnection agreement at issue being defective as involving an entity that does not possess a Certificate of Public Convenience and Necessity (CPCN), and therefore against the public interest, convenience, and necessity, the Agreement was rejected.

By The Commission:

On March 5, 2009, Qwest Corporation (Qwest) and Greenfly Networks, Inc. d/b/a Clearfly Communications (Greenfly) filed an interconnection agreement (Agreement) with the Commission. The Commission asked the Division of Public Utilities, Utah Department of Commerce (Division), to review the matter and the Division filed its Memorandum on April 21, 2009, recommending rejection of the Agreement. The Division found that Greenfly “has not filed with the [Commission] a request to obtain a Certificate of Public Convenience and Necessity ‘CPCN.’ . . . and does not have permission from the Commission to serve within the State of Utah” *Recommendation*, p.1.

Section 252(e)(2), 47 U.S.C., provides the basis upon which we may reject a negotiated interconnection agreement. That section, in part, provides:

The State commission may only reject - (A) an agreement (or any portion thereof) adopted by negotiation under subsection (a) if it finds that - (i) the agreement (or portion thereof) discriminates against a telecommunications carrier not a party to the agreement; or (ii) the implementation of such agreement or portion is not consistent with the public interest, convenience, and necessity. . . .”

The fact that Greenfly is not certificated to provide services as a public utility within Utah is dispositive in our consideration of this Agreement. Utah law is clear that entities which provide public telecommunication services are public utilities subject to the provisions of Utah’s public utility laws. *See Utah Code Ann. §54-2-1(16)(a), 25(a), and Utah Code Ann. 54-8b-2.1.* As of the date of this Order, Greenfly has not been granted a certificate to provide public telecommunications services in Utah.

In this context, we conclude that the Agreement must be rejected as “not consistent with the public interest, convenience, and necessity” in attempting to position Greenfly to provide public telecommunication services in the State of Utah without a certificate. We conclude that it would also “discriminate against [all other] telecommunications carrier[s] not a party to the Agreement” that have complied with Utah law and obtained their certificates to provide the services their certificates authorize and within the areas designated.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED, that:

1. The Agreement submitted March 5, 2009 is rejected;
2. The rejection is without prejudice, permitting the Agreement to be resubmitted

when Greenfly has received authorization to provide telecommunications services within Utah.

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3. Pursuant to Utah Code § 63G-4-301 and 54-7-15, an aggrieved party may request agency review or rehearing of this Order.

DATED at Salt Lake City, Utah, this 11th day of May, 2009.

/s/ Ted Boyer, Chairman

/s/ Ric Campbell, Commissioner

/s/ Ron Allen, Commissioner

Attest:

/s/ Julie Orchard
Commission Secretary
G#61825