

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of the Interconnection)
Agreement between Qwest Corporation and) DOCKET NO. 09-049-35
Digital Telecommunications, Inc.) REPORT AND ORDER REJECTING
) COMMERCIAL MASTER SERVICES
) AGREEMENT
)

ISSUED: June 23, 2009

SYNOPSIS

The commercial master services 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 May 22, 2009, Qwest Corporation (Qwest) and Digital Telecommunications, Inc. (Digital) filed a commercial master services agreement (Agreement) with the Commission. The Commission asked the Division of Public Utilities (Division), to review the matter and the Division filed its Memorandum on June 2, 2009, recommending rejection of the Agreement. The Division found that Digital “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 Digital 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, Digital 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 Digital 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 is rejected;
2. The rejection is without prejudice, permitting the Agreement to be resubmitted when Digital has received authorization to provide telecommunications services within Utah.
3. Pursuant to Utah Code § 63G-4-301 and 54-7-15, an aggrieved party may request agency review or rehearing of this Order.

DOCKET NO. 09-049-35

-3-

DATED at Salt Lake City, Utah, this 23rd day of June, 2009.

/s/ Ted Boyer, Chairman

/s/ Ric Campbell, Commissioner

/s/ Ron Allen, Commissioner

Attest:

/s/ Julie Orchard
Commission Secretary
G#62365