

In the Matter of the Application of )  
CONVERGENT COMMUNICATIONS, )  
INC., for a Certificate to Compete as a )  
Telecommunications Corporation and to )  
Offer Public Telecommunications )  
Services. )

DOCKET NO. 97-2239-01

REPORT AND ORDER

ISSUED: February 3, 1998

SYNOPSIS

By this Order, the Public Service Commission of Utah approves the application of Convergent Communications, Inc. and issues to it a Certificate to Compete as a Telecommunications Corporation and to Offer Public Telecommunications Services in Utah.

Appearances:

Thomas M. Zarr	For	Convergent Communications, Inc., Applicant
Laurie L. Noda, Assistant Attorney General	"	Utah Division of Public Utilities

By the Commission:

On June 25, 1997, Convergent Communications, Inc. ("Convergent" or "Applicant") filed a Request for Agency Action and Application for a Certificate of Public Convenience and Necessity to compete as a telephone and telecommunications corporation (as defined at Section 54-8b-2, Utah Code Anno.) in providing public telecommunications service within and among points in Salt Lake, Davis, Weber and Utah Counties, and to compete in providing public telecommunications services, as defined at Section 54-8b-2, Utah Code Anno. and other applicable statutes.

The Application came on for hearing at 1:00 p.m. on December 9, 1997, before A. Robert Thurman, Administrative Law Judge, at the Commission's hearing room in Salt Lake City, Utah, pursuant to notice duly given by publication. Additional notice of the Application was given by mail to approximately 70 potentially interested parties; the Commission has received no protests or petitions to intervene from third parties. The only party to comment on the application is the Division of Public Utilities which recommends approval of the application. Evidence was offered and received at the hearing.

Based on the evidence, the Commission makes this Report containing the following Findings of Fact and Conclusions of Law, together with the Order based thereon.

FINDINGS OF FACT

1. Jurisdiction is invoked under Title 54, Chapters 4 and 8b, Utah Code Anno.
2. Convergent is a Colorado corporation, and it is qualified to do business in Utah as evidenced by the Certificate of Good Standing from the Utah Division of Corporations, received as an Exhibit. The principal office of Convergent is at

67 Inverness Drive East, Englewood, Colorado, 80112. The Utah office of Convergent is located at 2440 South 1070 West, West Valley City, Utah. Convergent is a privately held corporation.

3. Convergent seeks a Certificate to provide intrastate public telecommunications services, including but not limited to, intraexchange switched services for business and residential services; private line and special access services; intrastate interexchange switched telecommunications services and all other intrastate intraexchange or interexchange services incidental to, supplementary to, or related to the foregoing described services. The services listed above are general categories of service; individual service offerings, as described in the application and the evidence, are voluminous and those detailed descriptions are incorporated here by reference.

4. Convergent seeks authorization to provide the above-described services within and among points in Salt Lake, Davis, Weber and Utah counties; initially Convergent proposes to implement services in and through the following Utah local telephone exchanges: Salt Lake City, Murray, Holladay, Cottonwood, Midvale, Riverton, Draper, Kearns, Magna, Bountiful, Farmington, Kaysville, Clearfield, Ogden, Provo, and Orem. Other local telephone exchanges in those counties may be involved in the future.

5. Convergent has sufficient managerial and technical resources to provide the proposed public telecommunications services. Convergent 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. Convergent is financially fit to conduct the operations it proposes and has sufficient financial resources available to it. Convergent has all the necessary abilities to provide the public telecommunications services proposed.

6. The entry of Convergent into the public intrastate telecommunications marketplace will provide a wider private investment in the telecommunications infrastructure of the State of Utah; promote consumer choice by expanding the availability of innovative, high quality, reliable and competitively priced public telecommunications services; and increase incentives for other providers of public telecommunications services to improve their responsiveness to consumers, to enhance their productive efficiency, to accelerate product innovation, and to adjust service prices continually according to market conditions.

7. The present and future public convenience and necessity requires the issuance of a Certificate to Convergent on account of the significant benefits of the entry of Convergent to the subject counties; the continuing changes in the public demand for public telecommunications services; the rapid advance of telecommunications technology; and the managerial skill and technological expertise that Convergent can make available.

8. The lack of any opposition to the application from any party clearly indicates that the proposed operations of Convergent will not conflict with or adversely affect the operations of any existing telephone or telecommunications public utility in the subject counties within the meaning of Section 54-4-25(3), Utah Code Anno., as further modified by Title 54, Chapter 8b, Utah Code Anno.

9. Convergent has sought partial exemption from regulation applicable to telecommunication services, as now allowed by Title 54, Chapter 8b, Utah Code Anno. Said exemptions will be allowed in accordance with Rule R746-349 of the Commission's Rules, and the modifications to that rule now under consideration by the Commission, to the extent as adopted by the Commission and as applicable generally to other such telecommunication service providers.

10. Convergent has requested a waiver of the requirement to post a \$100,000.00 bond as proposed in the Commission's rules. Convergent has demonstrated that it is sufficiently capitalized and that such a bond is not necessary. The Division, after examining Convergent's financial documents, recommends waiver of that bond.

11. Each of Convergent's proposed services is currently offered by incumbent service providers in the same areas. Therefore, Convergent will face effective competition when Convergent offers its services. Convergent, through its proven managerial and technical expertise, has the ability to provide services to its customers which are comparable to and competitive with services currently offered in the subject counties. Accordingly, competition is both feasible and practical; competition already exists.

12. Authorizing Convergent to provide its services in the subject counties is in the public interest. Approval of

Convergent's application for a Certificate of Public Convenience and Necessity is in the public interest because:

- a. Competition, such as that offered by Convergent, has emerged for public telecommunications services that were previously regulated monopolies;
- b. Advancements in telecommunications infrastructure provided by Convergent will enhance the public welfare by helping to speed the delivery of new and competitive services;
- c. Increased competition in public telecommunications services afforded by Convergent will encourage infrastructure development and have beneficial effects on the price, universal availability, variety, and quality of public telecommunications services;
- d. Competition in public telecommunications services through Convergent's services can be expected to contribute to the modernization of the telecommunications infrastructure in Utah; and
- e. Access to unbundled network features and functions will enhance the growth of competition in Utah and promote the diversity of services available to the public as offered by Convergent.

13. Convergent will participate in all existing and required Commission programs applicable to the proposed service and can satisfy statutory requirements relating to the universal availability of public telecommunications services in Utah. Convergent has agreed to participate in any Commission sanctioned program supporting universal availability of public telecommunications services, if such a program is applicable to Convergent.

14. The Division of Public Utilities reviewed the underlying data submitted by Applicant and did not oppose the application.

Based upon the foregoing Findings of Fact, the Commission makes the following:

#### CONCLUSIONS OF LAW

1. This case may be appropriately considered pursuant to the provisions of Chapters 4 and 8b, Utah Code Anno., other applicable statutes, and under the Rules of Practice and Procedure of this Commission.
2. Convergent meets each of the statutory requirements for issuance of a Certificate as a telephone and telecommunications corporation and also meets each of the statutory requirements for authorization to provide the public telephone and telecommunications services for which it seeks a certificate.
3. The present and future public convenience and necessity requires the issuance of a Certificate to Convergent as a telephone and telecommunications corporation and provider, as sought in its application.
4. The application is unopposed, and issuance of a Certificate to Convergent is in the public interest.

Based upon the foregoing Findings of Fact and Conclusions of Law, the Commission enters the following:

#### ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED, That:

1. Convergent Communications, Inc. is hereby issued a Certificate of Public Convenience and Necessity as follows:

#### CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

- A. Convergent Communications, Inc. is authorized to operate as a telephone and telecommunications corporation under the jurisdiction of this Commission, as provided in Chapters 4 and 8b, Utah Code Anno.
- B. Convergent Communications, Inc. is authorized to provide telephone and telecommunications services to the public

located in the counties of Salt Lake, Davis, Weber and Utah in accordance with the foregoing Findings of Fact and Conclusions of Law.

2. A waiver is granted to Convergent Communications, Inc. of any requirement to post a bond with the Commission or the Division of Public Utilities, subject to further order of the Commission.
3. Convergent Communications, Inc. is hereby granted partial exemption from regulation to the extent allowed in Title 54, Chapter 8b, Utah Code Anno. and as also provided in the Rules of the Commission now existing or as hereafter promulgated.
4. Convergent Communications, Inc. is hereby granted the right to interconnect with the essential facilities of US West Communications or other incumbent service providers or telephone corporations having such facilities within the following counties or at such other places as may be necessary to serve the public located in Salt Lake, Davis, Weber and Utah Counties.
5. Convergent Communications, Inc. is hereby granted the right to purchase essential services, including but not limited to, access, interconnection and related services, from US West Communications or other incumbent service providers or telephone corporations on a nondiscriminatory and reasonably unbundled basis consistent with statute and Rules of the Commission.
6. Convergent Communications, Inc. is hereby granted the right to price its services by means of a price list or competitive contract consistent with statute.
7. Convergent Communications, Inc. is hereby authorized to undertake such additional activities as are necessary or incidental to bring its services into operation.
8. This Order is effective upon the date of its issuance.
9. Pursuant to the Utah Administrative Procedures Act, the Commission issues the following notice that any party aggrieved by the Commission's Order may apply to the Commission for rehearing of the Commission's Order pursuant to Sections 54-7-15 and 63-46b-13, Utah Code. Any petitions for rehearing must be filed with the Commission within twenty (20) days after the issuance of this Report and Order.

DATED at Salt Lake City, Utah, this 3rd day of February, 1998.

/s/ A. Robert Thurman  
Administrative Law Judge

Approved and Confirmed this 3rd day of February, 1998, as the Report and Order of the Public Service Commission of Utah.

/s/ Stephen F. Mecham, Chairman

(SEAL) /s/ Constance B. White, Commissioner

/s/ Clark D. Jones, Commissioner

Attest:

/s/ Julie Orchard  
Commission Secretary