

In the Matter of the Application of )  
NOW COMMUNICATIONS, INC. )  
for Authority to Provide Competitive )  
Local Exchange Telecommunications )  
Service )

DOCKET NO. 99-2283-01

REPORT AND ORDER

ISSUED: November 24, 1999

SYNOPSIS

By this Report and Order, the Public Service Commission of Utah (the "Commission") grants the request of NOW COMMUNICATIONS, INC., ("Applicant") for a Certificate of Public Convenience and Necessity ("Certificate") authorizing Applicant to provide local exchange services within the State of Utah, with certain conditions attached to its operations within any local exchange with fewer than 5,000 access lines that is owned or controlled by an incumbent telephone corporation with fewer than 30,000 access lines within 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

NOW COMMUNICATIONS, INC. ("Applicant") filed its Application for Authority to Provide Local Exchange Service on June 28, 1999, pursuant to Utah Code Annotated § 54-8b-1.1 *et. seq.*, and Title 63, Chapter 46b of the Utah Administrative Procedures Act. U.S. West Communications, Inc. ("USWC"), the Incumbent Local Exchange Carrier ("ILEC") has been notified of the Application. The ILEC does not protest the Application per se, but maintains the granting thereof should entitle the ILEC to greater price flexibility. Since the Commission has agreed to hear that issue in a separate proceeding, and the ILEC has expressed its amenability to such procedure, we dismiss the ILEC's protest. Since there appears to be no other 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 Administrative Law Judge, having been fully advised in the premises, enters the following Report, containing proposed Findings of Fact, Conclusions of Law, and the Order based thereon.

FINDINGS OF FACT

1. Applicant is a foreign corporation 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 local exchange service throughout the State of Utah.
3. Applicant has or is currently negotiating a resale agreement with USWC to provide service in the State of Utah.
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.
9. In its provision of intrastate services, Applicant will be subject to competition from USWC and other certified local exchange 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 should be 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 the public interest.

Although Applicant has applied for state-wide authority, it is not clear at this time whether or when Applicant proposes to offer local exchange service in any areas of the state currently served by a local exchange comprised of fewer than 5,000 access lines and owned or controlled by an incumbent local exchange carrier serving fewer than 30,000 access lines.

#### 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.

In view of the doubtfulness of Applicant's intent immediately to provide service in rural areas of the state, the certificate issued should condition the right to operate in such areas on prior notice to the incumbent local exchange carrier and the Commission and opportunity for such incumbent local exchange carrier to protest such service expansion in accordance with § 54-8b-2.1(3)(c) UCA 1953, as amended.

The Division of Public Utilities, Utah Department of Commerce (DPU) has recommend waiver of the Commission's usual bonding requirement since Applicant will not be collecting customer deposits or advance payments. The waiver should be granted.

#### 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 to NOW COMMUNICATIONS, INC. the Certificate that is attached hereto as Exhibit A and by this reference made a part of this Report and Order.

NOW COMMUNICATIONS, INC. 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.

NOW COMMUNICATIONS, INC. is exempt from certain provisions of the Utah Code and the Commission's Rules and Regulations, as set forth in Exhibit B.

- The Commission's usual bonding requirements be, and they are, waived.

DATED at Salt Lake City, Utah, this 24<sup>th</sup> day of November, 1999.

/s/ A. Robert Thurman  
Administrative Law Judge

Approved and Confirmed this 24<sup>th</sup> day of November, 1999, as the Report and Order of the Public Service Commission of Utah.

/s/ Stephen F. Mecham, Chairman

/s/ Constance B. White, Commissioner

/s/ Clark D. Jones, Commissioner

Attest:

/s/ Julie Orchard  
Commission Secretary

EXHIBIT A

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of the Application of )  
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CERTIFICATE

ISSUED: November 24, 1999

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 NOW COMMUNICATIONS, INC. ("Grantee") to provide local and interexchange services and other public telecommunications services, including facilities-based

as well as resold services, anywhere within the State of Utah, as described in Exhibits which shall be filed effective ten (10) days after filing, except within. The Exhibits shall define the service territory in the State and shall specify the public telecommunications services offered.

Notwithstanding the generality of the above grant, Grantee shall, prior to expanding its service area to a territory of the state served by any local exchange with fewer than 5,000 access lines that is owned or controlled by an incumbent telephone company with fewer than 30,000 access lines within the State, give written notice of its intent to such incumbent telephone company and the Commission, and said incumbent telephone company shall have the opportunity to oppose said expansion in accordance with § 54-8b-2.1(3)(c), UCA 1953 as amended. In the event the Commission finds such expansion to be in the public interest, it shall amend this certificate to impose on Grantee in such area the obligation to serve all persons and classes of persons as provided in § 54-8b-2.1(4), UCA 1953, as amended.

Grantee shall file a revised Exhibit at such time as said grantee intends to expand or otherwise change the public telecommunications services it offers or the geographic area in which it offers public telecommunications services within the State.

U S West Communications, Inc. or the Division of Public Utilities, Utah Department of Commerce, may file a Request for Agency Action that seeks to expand or contract the definition of said grantee's service territory as specified in any Exhibit filed in accordance with this Certificate. The mere filing of a Challenge to the Exhibit shall not suspend its effectiveness. No suspension or charge of an Exhibit can occur without a hearing. No hearing shall be required if a challenge to the Exhibit is not filed. The Commission shall after notice and hearing have the right, jurisdiction and power to require said Grantee to refile the Exhibit in accordance with the Commission's decision on the proper definition of said grantee's service territory.

DATED at Salt Lake City, Utah, this 24<sup>th</sup> day of November, 1999.

/s/ Stephen F. Mecham, Chairman

/s/ Constance B. White, Commissioner

/s/ Clark D. Jones, Commissioner

Attest:

/s/ Julie Orchard, Commission Secretary

## EXHIBIT B

### **I. Annual Report**

NOW COMMUNICATIONS, INC. shall file an Annual Report, which shall be subject to a Protective Order issued by the Commission, 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.**

NOW COMMUNICATIONS, INC. 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<sup>(1)</sup>

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.**

To the extent Applicant functions as a non-facilities based reseller of local exchange telecommunication service, NOW COMMUNICATIONS, INC. agrees to provide service within specified geographic areas upon reasonable request and subject to the following conditions:

A. NOW COMMUNICATIONS, INC.'s obligation to furnish service to customers is dependent upon the availability of suitable facilities on the networks of its underlying carriers (e.g., U.S. West Communications, Inc.). NOW COMMUNICATIONS, INC. will provide a map identifying the areas within the state of Utah where it is offering service through resale. The map will be updated no less frequently than annually.

B. NOW COMMUNICATIONS, INC. 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 rulemaking 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.

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