

PUBLIC SERVICE COMMISSION
OF WEST VIRGINIA
CHARLESTON

Entered: March 16, 2016



CASE NO. 15-1961-T-CN

DQE COMMUNICATIONS, LLC,

Application for a certificate of convenience and necessity to provide non-switched facilities-based interexchange and dedicated access intrastate telecommunications services throughout the State of West Virginia.

RECOMMENDED DECISION

DQE Communications, LLC (DQE) is granted a certificate of public convenience and necessity (Certificate) to provide competitive non-switched facilities-based interexchange and dedicated access intrastate telecommunications services throughout the State of West Virginia.

BACKGROUND

On December 17, 2015, DQE applied for a Certificate to provide competitive non-switched facilities-based interexchange and dedicated intrastate access telecommunications services throughout West Virginia. Specifically, DQE represented that it intends to provide customized communications networks and services to commercial and government customers. It will not furnish traditional residential or business telephone services or switched interexchange services. DQE asserted that granting it a Certificate will increase telecommunications competition in this State. It also asserted that it possesses the financial resources to hold a Certificate. DQE attached copies of its authorization to transact business from the Secretary of State, a revenue disclosure, biographies of its key employees and an illustrative tariff to its Certificate application.

Also on December 17, 2015, the Commission directed DQE to publish notice of its Certificate application in nineteen cities throughout West Virginia and subsequently file affidavits attesting to the publication. The notice directed the public to make any objection to the Certificate application within thirty days after publication.

On January 13, 2016, Commission Staff recommended that the Commission refer this matter to its Division of Administrative Law Judges (ALJ) for a Recommended Decision. Staff also noted that it informally suggested two tariff revisions to DQE.

On January 20, 2016, DQE filed a number of affidavits demonstrating that it complied with the publication requirements of the December 17, 2015 Commission Order. DQE supplemented its filing on February 5, 2016. The final publication occurred on January 8, 2016.

On January 26, 2016, the Commission referred this matter to its ALJ Division for a Recommended Decision on or before July 14, 2016.

On February 17, 2016, Staff filed a further memorandum recommending that DQE file a revised proposed tariff on or before March 1, 2016.

On February 24, 2016, DQE filed a revised illustrative tariff responding to the February 17, 2016 Staff Memorandum.

On March 1, 2016, Staff recommended that the Commission grant DQE a Certificate as requested. Staff commented, however, that DQE did not provide “the financial information that Staff generally would review” with the Certificate application. (March 1, 2016 Memorandum at 3.)

On March 2, 2016, DQE filed a letter concurring with the Staff recommendation and requesting an order consistent with the Staff recommendation.

On March 3, 2016, the presiding ALJ directed DQE to supplement its Certificate application with information to adequately demonstrate its financial ability.

On March 11, 2016, DQE supplemented its Certificate application with an income statement and balance sheet for the year ending December 31, 2015. DQE filed a redacted public version and an unredacted version under seal.

Also on March 11, 2016, DQE requested a protective order for the financial data it filed under seal. DQE asserted that the sealed information is competitively sensitive and exempt from the provisions of the West Virginia Freedom of Information Act, codified as W.Va. Code §29B-1-1 et seq. (WV FOIA). DQE also filed a supporting affidavit attesting to the facts set forth in its motion.

No one from the public filed a protest in this matter after statewide notice by publication.

DISCUSSION

Certificate Application

DQE requested that the Commission grant it a Certificate to provide competitive non-switched facilities-based interexchange and dedicated access intrastate

telecommunications services throughout the State of West Virginia. DQE submitted a proposed tariff for those services and subsequently revised that tariff on February 24, 2016, in response to certain Staff recommendations. DQE asserted that it has the resources to provide the proposed services and filed documents to support both its financial and managerial fitness. Staff concluded that the application DQE filed demonstrates the required technical, financial and managerial fitness to provide telecommunications services in this State. Further, no one from the public filed a protest to the Certificate application after statewide notice.

Considering (i) the data DQE filed with its Certificate application and the March 11, 2016 supplement, (ii) the Staff recommendation and (iii) the lack of public protest, DQE has demonstrated that it has the technical, financial and managerial fitness to provide telecommunications services in this State. The proposed telecommunications services will also further the public convenience and necessity. Therefore, DQE is entitled to a Certificate to provide competitive non-switched facilities-based interexchange and dedicated access intrastate telecommunications services throughout the State of West Virginia. (W.Va. Code §24-2-11, 47 U.S.C. §151 et seq.)

DQE will promptly begin to provide the authorized telecommunications services pursuant to the Certificate granted by this Recommended Decision and must file an original and six copies of a properly formatted tariff based on its revised illustrative tariff for its regulated services with the Commission Tariff Office. That tariff should reflect that DQE has obtained authority to provide its regulated services pursuant to an Order of the Public Service Commission in this proceeding. (See, Rules 1 and 21 of the Rules for the Construction and Filing of Tariffs, 150 C.S.R. Series 2 (Tariff Rules)).) If DQE fails to begin providing service under its Certificate within one year from the date that this Recommended Decision becomes a final Commission Order, the authority granted herein will be null and void.

Confidential Treatment Request

DQE filed a balance sheet and an income statement for calendar year 2015 under seal in support of its Certificate application. It requested that the Commission maintain the financial information under seal. DQE asserted that the sealed information is a trade secret not generally available to the public and that disclosure would subject DQE to a competitive disadvantage. DQE also submitted an affidavit supporting the representations in its motion.

There is no need at present to make a final ruling on the protective treatment request DQE filed on March 11, 2016. Instead, the Executive Secretary will hold the unredacted version of the March 11, 2016 filing in a sealed condition, separate and apart from the remnant of this case file until the Commission receives and reviews a request for that information. By deferring consideration of the protective treatment request, the Commission is not taking any final position on the application of WV FOIA to the sealed exhibit.

FINDINGS OF FACT

1. DQE requested a Certificate to provide competitive non-switched facilities-based interexchange and dedicated access intrastate telecommunications services throughout the State of West Virginia. (Application.)

2. DQE filed an illustrative tariff detailing the services it proposed to offer in West Virginia. (February 24, 2016 DQE Filing).

3. DQE has a positive net income and adequate financial resources to operate. (March 11, 2016 Filing.)

4. DQE submitted biographies demonstrating that its senior managers have substantial experience in the telecommunications industry. (Application at Exhibit C).

5. DQE requested a protective order to prevent public release of the details of its finances as depicted in its March 11, 2016 Filing. (March 11, 2016 Motion for Protective Order.)

6. Staff recommended that the Commission grant a Certificate to DQE. (March 1, 2016 Staff Recommendation.)

7. No one filed a protest to the Certificate application in this proceeding after DQE published statewide notice. (See, January 20, 2016 and February 5, 2016 Filings.)

CONCLUSIONS OF LAW

1. DQE demonstrated the technical, financial and managerial fitness to provide competitive non-switched facilities-based interexchange and dedicated access intrastate telecommunications services throughout the State of West Virginia.

2. The proposed telecommunications service is entitled to a Certificate because it facilitates the public convenience and necessity. (W.Va. Code §24-2-11 and 47 U.S.C. §151 et seq.)

3. The Executive Secretary will seal the material subject to the protective treatment request until the Commission receives and reviews a WV FOIA request for that information.

4. DQE should file an original and six copies of a properly formatted tariff with the Commission Tariff Office reflecting its proposed regulated services and the authority to operate granted by this Order. (Tariff Rules 1 and 21.)

ORDER

IT IS THEREFORE ORDERED that the request from DQE for a Certificate to provide competitive non-switched facilities-based interexchange and dedicated access intrastate telecommunications services throughout the State of West Virginia is granted.

IT IS FURTHER ORDERED that DQE shall file an original and six copies of properly formatted tariff for its regulated services based on its revised illustrative tariff filed on February 24, 2016, reflecting the authority granted by this Order at least thirty days prior to the date it intends to commence providing service.

IT IS FURTHER ORDERED that DQE shall commence operations within one year of the date this Recommended Decision becomes a final Commission Order. The authority granted herein becomes null and void if DQE fails to initiate service within that one-year period.

IT IS FURTHER ORDERED that the authority granted in this Order does not constitute approval to construct specific facilities for the provision of telecommunication services and that in the event that DQE develops a plan for constructing regulated facilities for providing telecommunications services in West Virginia, it must provide the Commission with complete details and obtain Commission consent before construction of the regulated facilities.

IT IS FURTHER ORDERED that the restriction on construction of facilities in this Order does not apply to leasing unbundled network elements or the installation of equipment with transmission capabilities or switching or routing facilities solely within a central office or point of presence owned by a telecommunications provider or another party.

IT IS FURTHER ORDERED that DQE cannot offer regulated telecommunications services to the public unless and until it has filed for and received Commission approval of the appropriate interconnection agreements.

IT IS FURTHER ORDERED that the request for permanent protective treatment of the data filed under seal on March 11, 2016, is deferred until the filing and review of a request under WV FOIA. The Executive Secretary shall maintain the unredacted version of the sealed filing in its current condition, separate and apart from the rest of the file pending further Order.

IT IS FURTHER ORDERED that this matter is removed from the active docket of Commission cases on the effective date of this Recommended Decision.

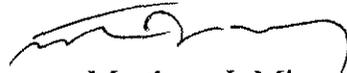
The Executive Secretary is ordered to serve this Order upon the Commission and its Staff by hand delivery, upon all parties of record who have filed an e-service

agreement with the Commission by electronic service and upon all other parties by United States Certified Mail, return receipt requested.

Leave is granted to the parties to file written exceptions supported by a brief with the Executive Secretary of the Commission within fifteen days of the date of this Order. If exceptions are filed, the parties filing exceptions shall certify that all parties of record have been served the exceptions.

If no exceptions are filed, this Order shall become the Order of the Commission, without further action or order, five days following the expiration of the fifteen day time period, unless it is ordered stayed by the Commission.

Any party may request waiver of the right to file exceptions by filing an appropriate petition in writing with the Executive Secretary. No such waiver, however, will be effective until approved by order of the Commission.



Matthew J. Minney
Deputy Chief Administrative Law Judge

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