Sec 34, 35, & 36, T 6 S, R 2 W
All

Sec 1, 2, 3, 10, 11 & 12, T 7 S, R 2 W
All

The base reference point for all of the cited sections is the Salt Lake Base and Meridian.

-BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH-

IN THE MATTER OF THE APPLICATION OF DIRECT COMMUNICATIONS ROCKLAND, INC., and DIRECT COMMUNICATIONS CEDAR VALLEY, LLC, FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY ALLOWING OPERATION AS AN INDEPENDENT LOCAL EXCHANGE CARRIER.	)	DOCKET NO. 04-2419-01 ORDER

ISSUED: August 9, 2004

SYNOPSIS

The application of Direct Communications Rockland, Inc. and its subsidiary, Direct Communications Cedar Valley, LLC, meet the statutory and other administrative requirements for issuance of a Certificate of Public Convenience and Necessity. Subject to the conditions explained in the Order, the Commission approves the application.

By The Commission:

PROCEDURAL HISTORY

On January 13, 2004, Direct Communications Rockland, Inc. (DCRI) and its subsidiary, Direct Communications Cedar Valley, LLC (DCCV), filed a petition for a Certificate of Public Convenience and Necessity to operate as an independent local exchange carrier providing telecommunications services primarily within the corporate limits of the City of Eagle Mountain, Utah. The companies (jointly referred to as Direct) applied for a Protective Order governing

the production and use of Confidential Information, and the Public Service Commission (Commission) issued its Protective Order on February 20, 2004. Parties to this case are: Direct, The Division of Public Utilities (Division), the Committee of Consumer Services (Committee), Qwest Corporation (Qwest), the Utah Rural Telecom Association (URTA), and Beehive Telephone Company, Inc. (Beehive).

Direct prefiled testimony and exhibits in support of the petition on March 24, 2004, and filed additional prefiled supplemental testimony and revised exhibits May 26, 2004, all of which have been reviewed by the parties. The parties participated in technical conferences to further review the information presented by Direct. On July 8, 2004, a Stipulation was filed to resolve this case. Parties to the Stipulation are: Direct, the Division, the Committee, Qwest and URTA.

Pursuant to notice, the Commission held a public hearing on Direct's petition at the City Council chambers at the City of Eagle Mountain on July 7, 2004, for the purpose of receiving public testimony. Four public witnesses expressed their support for the sale to Direct, and they encouraged rapid approval by state and federal regulators. An evidentiary hearing on Direct's petition was held on July 8, 2004, at which testimony and evidence was presented by the Division and Direct. The Commission questioned the parties and witnesses regarding various aspects of the Stipulation and the evidence

presented.

HISTORY OF TELECOMMUNICATIONS IN THE EAGLE MOUNTAIN AREA

Eagle Mountain City (the City or Eagle Mountain) was incorporated under Utah law as a fifth class city on December 6, 1996, having been privately developed in an area where no community existed before. Prior to 1996, the only existing economic or human activity in the area was agricultural rangeland and dry farming. Within the area that is now encompassed by Eagle Mountain's boundaries there was literally only a handful of homes all located close to Highway 73 on the edge of the City's boundary.

The City is the only significant residential area in Utah County west of Cedar Mountain. Eagle Mountain has a population of approximately 6,093 and has approximately 2,223 telephone subscribers. Other than municipal utility services, there is very little commercial activity within the city boundaries. Residents depend on other cities in Utah County for nearly all services. The nearest community is Saratoga Springs, which is approximately 8 miles from the center of the City.

By a 1997 municipal ordinance, the City created and operates the only municipal telephone utility in Utah. The City financed its telephone system through the sale of revenue bonds in the amount of approximately $7 million; currently the bonds have a remaining balance of approximately $5.1 million. As a municipal system, Eagle Mountain is not subject to the regulatory jurisdiction of

this Commission.

At the time the City was incorporated (and until the issuance of this Order), Eagle Mountain was located within Qwest's certificated territory. As such, the area is currently within the Qwest Study Area for Utah as that area has been approved by the Federal Communications Commission (FCC). However, due to choices made by the City's original real estate developers, Qwest was never allowed to expand its facilities to serve the area now served by Eagle Mountain. As a result, the area served by the City's telephone system (the area which is the subject of this Order) was never served by Qwest or any other carrier. Therefore the area now served by the City's municipal telephone system was an unserved area since neither Qwest nor any other local exchange company ever served it or had facilities in it.

At the time of the City's initial development, Qwest was willing to extend its service south of Highway 73, in accordance with the terms of its tariff, but the land developers did not choose that option. Subsequent action by the City of Eagle Mountain to organize a municipal utility made it impossible for Qwest to extend service. Currently Qwest serves fewer than 100 subscribers located adjacent to Highway 73, some of whom live within the corporate limits of the City. Qwest will continue to serve these original customers; the geographic area where they live is not included in the request this Order addresses. The population of the City is currently concentrated approximately 5 miles south of

the nearest State road, Highway 73.

As it became obvious that Eagle Mountain could not provide service at a reasonable rate, many parties suggested that one resolution of the problem would be for Qwest to purchase the City's system. While Qwest was willing to place its own facilities to serve Eagle Mountain, utilizing its own existing switches and network, it was not willing to buy what it considered unnecessary equipment to serve the area. Qwest and the City were unsuccessful in negotiating a mutually acceptable agreement for Qwest to provide service in the City. As a result the City has continued to operate the telecommunications system as a municipal utility.

Eagle Mountain and Qwest entered into a formal interconnection agreement in November 2000, which was filed with the Commission. The interconnection arrangement between Qwest and the City is similar to the arrangements between Qwest and other telecommunications companies in Utah.

DISCUSSION

I. The Proposed Purchase and the Necessity of Federal and State Support

Eagle Mountain's telephone system has been problematic for the City, for its subscribers, and, to some extent, for Utah regulators since its inception. Eagle Mountain has been operating a high cost, rural telephone system, in part, on a learn-as-you-go basis. The original switch offered only limited services and the infrastructure originally installed was of poor quality and faulty design. This resulted in many subscriber complaints. To remedy this situation, Eagle Mountain chose to make significant investments in plant and equipment. In addition to building a proper distribution network, the City also purchased a larger and more technologically sophisticated switch three years ago.

The City's telephone system today is technically capable of providing the same kinds of central office services offered by most local exchange carriers. However, Eagle Mountain has not fully utilized the full range of the new Nortel switch's technical capabilities, nor has it stayed current with evolving technology. As a municipal utility, the City has not participated in the high cost universal service support funding available to telecommunications carriers through the State program administered by this Commission (the State's Universal Public Telecommunications Service Support Fund, hereafter USSF), nor has the City attempted to participate in any of the Federal programs or associations designed to help offset the high cost of providing service in remote areas (although testimony in this Docket suggest it might have qualified for at

least some of the federal programs). Due to the shortage of revenues, the City has not attempted to do much more than provide basic service. The range of services and options that Direct will provide are greater than the subscribers currently are obtaining through the City's municipal telephone system. In order to make improvements and to keep residential rates affordable, it is advantageous for Direct to participate in the state USSF, and the Federal Universal Service Fund. Obtaining federal and state Universal Service Fund support will support the legislative policy of this State, as set forth in Utah Code Ann. § 54-8b-1.1(2), which favors access to high quality, affordable public telecommunications services by all residents and businesses in the state. The Division witnesses testified that they believe receipt of federal Universal Service Fund support is critical to the economic viability of the system Direct is purchasing.

The operating expenses of the City's system have been borne solely by the subscribers, and they pay the highest local rates of any customers in Utah. The current rate for residential line service is $27.00 per month, or $4.05 higher than the State's USSF rate of $13.50 per residential access line (when the extended area service [EAS] and Carrier Access Line Charge [CALC] or the Subscriber Line Charge [SLC] are added to the "affordable rate"target used in the USSF). The City has indicated that it will soon have to increase telephone rates to meet increasing operational costs. Being part of the National

Exchange Carriers Association (NECA) and receiving federal and state Universal Service Fund support will allow Direct to maintain the current rates, and perhaps even make adjustment in the future to the statewide USSF-supported average. Direct can obtain capital financing on more reasonable terms than can the City in order to finance growth and improvements.

The vast majority of Eagle Mountain residents today were not residents when the decision to establish a municipal telephone system was made. Nevertheless, these current residents are bound to a telephone system which has been fraught with facility and plant difficulties, has generated many complaints to the City and to state regulators, is chronically underfunded, charges its subscribers the highest local rates in the state, and likely cannot sustain itself over the long term without both federal and state universal service support assistance.

In November 2002, pursuant to its ordinance, the City conducted a referendum in which the City residents were asked to vote on whether the City's telephone utility should be sold to Direct. In that city-wide referendum, 94% of the voters favored the sale in order to receive the additional service features Direct committed to provide. The service Direct proposes to provide is considerably expanded beyond the service now available; Direct has committed to upgrade the existing switch to the latest manufacturer's release, and to assure service that is on par with the service offered to subscribers throughout the rest

of Utah.

On November 11, 2003, after a nearly two-year negotiation process, the City and Direct executed a sale and purchase agreement (Contract), under the terms of which Direct agreed to purchase the City's municipal telephone system. The Commission has not been asked to approve the Contract, but it has been made available for review to the parties, subject to the Protective Order. The City Council has voted to accept the terms of the Contract negotiated between Direct and the City.

Previously, an impediment to any resolution of the City's telephone service problems has always been the City's unwillingness to sell the system for an amount less than would be required to defease its construction bonds, which until now was an amount greater than a willing buyer might offer for the system. However, as Eagle Mountain has made regular payments on these bonds and has upgraded the physical facilities, the two values have grown closer together. At this point in time, Direct and the City have been able to agree to a purchase price which is acceptable to both parties. Any acquisition "premium"Direct paid for the purchase will not be included in Direct's rate base, nor in future cost recovery. The only support that is needed to make the operation work is federal and state Universal Service Fund support to make up the difference between the reasonable revenue the system can generate and the ongoing costs of operating and maintaining the system.

II. Qwest's Exchange Boundary, Direct's Service Territory, and Study Area Waivers.

In the Stipulation, Qwest agrees to promptly file a request for an amended certificate and a request for a modification to its Lehi Exchange boundary, which will exclude the area now served by the City's municipal telephone system from Qwest's current Lehi Exchange boundaries (conditioned upon the closing of the sale). The service territory of Direct's Certificate shall include all areas within the incorporated limits of the City of Eagle Mountain except for the limited area with customers currently served by Qwest. Qwest shall continue to serve its customers. The Commission expects that Qwest and Direct resolve any service issues in the best interests of the subscribers. The subscribers (or companies) may request the Commission's assistance if necessary. The Commission has no objection to and supports the modification of Qwest's FCC study area that will be needed to consummate the sale and allow transfer of the service area.

III. Direct's Qualifications for a Certificate of Public Convenience and Necessity.

DCRI is an Idaho corporation that since 1952 has operated telephone exchange systems in Idaho under certificated authority granted by the Idaho Public Utilities Commission both as an eligible telecommunications carrier ("ETC"), for purposes of 47 U.S.C. § 214(e)(2), and as an incumbent local exchange carrier ("ILEC"), for purposes of 47 U.S.C. § 251(h). DCRI satisfies the federal requirements for ILEC status in Idaho inasmuch as the Company was a local exchange carrier on the date of enactment of the 1996 Federal Telecommunications Act (1996 Federal Act) and on such date was a member of NECA. DCRI provides local exchange service to approximately 1,500 subscribers in Rockland, Arbon, and the southern half of Bear Lake County in Idaho. DCRI's management has 30 years of experience in the telecommunications industry and is fully capable of operating the telephone system in Eagle Mountain, through its subsidiary DCCV, in a manner that will assure subscribers of reliable, efficient, and high-quality telecommunications service.

DCRI has proposed to operate the Eagle Mountain system through its subsidiary DCCV. Direct has the financial, managerial, and technical experience and resources necessary to operate the telephone system in Eagle Mountain and provide for the system's growth and modernization. DCRI, the

corporate parent of DCCV, agrees to assume ultimate responsibility for the financial stability and sound management of DCCV and will assure the subsidiary's compliance with the rules and regulations of the Commission. To the extent that external financing is required for funding principal or interest, for additional capital investment necessary for plant upgrades, new facilities, and the successful operation of the system Direct is purchasing, DCRI shall bear that responsibility.

IV. Direct's Certificate of Public Convenience and Necessity and Regulated Status.

Utah's 1995 Public Telecommunications Law and the 1996 Federal Act do not specifically provide for situations where an ILEC from another state might receive a certificate to provide telephone service in a rural, high cost area in this state. Because Utah law (Utah Code Ann. § 54-8b-2(6)) defines an "incumbent telephone corporation" as a "telephone corporation . . which, as of May 1, 1995, held a certificate to provide local exchange services in a defined geographic service territory in the state," an ILEC defined by federal law and serving in one state would not meet the state definition if it began to serve in this state after May 1, 1995. However, at Eagle Mountain, there were no telephone facilities present in 1995 or 1996 within the area the City's system was organized to serve, and Direct is taking over service responsibilities for an area that was unserved at the time of either laws' passage. We note that recent FCC

decisions in similar cases have waived ILEC status as a requirement for membership in NECA and for Federal USF participation in circumstances similar to the instant case. [1]

Federal Definitions

Rural Telephone Company Status

It appears to the Commission that Direct's operations at Eagle Mountain classify it as a "rural telephone company" under the definition of 47 U.S.C. § 153(47), in that Direct will operate as a local exchange carrier which provides common carrier service to a local exchange study area that: (a) does not include any incorporated place of 10,000 inhabitants or more; (b) provides telephone exchange service to fewer than 50,000 access lines; and (c) provides telephone exchange service to a local exchange study area of fewer than 100,000 access lines. Eagle Mountain's population, as reported by the Bureau of the Census in July 2002, was 6,093. The City's telephone system serves approximately 2,223 access lines.

[1] See, In the Matter of M&L Enterprises, Inc., d/b/a/ Skyline Telephone Company, FCC 04-86, CC Docket No. 96-45, order released April 12, 2004.

ETC Status

The Commission believes that Direct's operation of the telephone system in Eagle Mountain is consistent with and meets all of the requirements under federal and state law to classify Direct, for purposes of its operations in Utah, as an eligible telecommunications carrier (ETC). 47 U.S.C. § 214(e)(2) allows this Commission to determine whether a carrier is an ETC for purposes of federal recognition of that status. The Commission designates Direct as the area's ETC because the Eagle Mountain area is a rural area under the federal guidelines,[2] and Direct will be: (a) offering the services supported by the federal universal service support mechanisms through the use of its own facilities; [3] (b) advertising the availability of such services and the charges therefore using media of general distribution; (c) no other common carrier provides the services supported by the federal universal service support mechanisms in the area in which DCCV will serve; (d) no other carrier has, prior to the City's construction of the system it operates, installed facilities in the area DCCV will serve; and (e) the City's service area was otherwise not previously served in any manner contemplated by the 1996 Federal Act.

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[2] DCRI's operations in Idaho classify it as a "rural carrier" with respect to those areas it serves in Idaho under 47 U.S.C. § 153(37). We consider the system at Eagle Mountain to meet that definitional test as well.

[3] DCCV will be providing: (1) voice grade access to the public switched network; (2) local usage; (3) touch tone service; (4) single-party service; (5) access to emergency services; (6) access to operator services; (7) equal access to interexchange services; (8) access to directory assistance; (9) toll limitation for qualifying low-income subscribers.

V. Rates and Tariffs.

Direct has proposed, and the Division and Committee agree, that the current rates paid by the City's subscribers shall remain in effect, adjusted to recognize appropriate extended area service and subscriber line charges, until further Order of this Commission.

In order to accurately set rates in the future, the Commission recognizes a need for traffic and cost data. Therefore, within one month after Direct commences its operations, it shall begin to collect traffic and cost data separately for business and residential lines to and from every other Utah County exchange, and shall continue to collect and report for each successive three month period to enable the calculation of EAS rates and traffic stimulation factors. Direct will report this data to the Division and to the Committee within one month of the end of each three-month period. Until these studies enable Direct cost-based EAS rates to be set by the Commission, proxy EAS rates will be set for the Eagle Mountain exchange at the current Qwest rate for the Lehi Exchange, as is reflected in Direct's filings in this Docket. If new facilities are required in order to continue EAS services, a cost study will be conducted to determine whether EAS rates need to be further adjusted to cover the total cost of the service.

Direct's rate for terminating switched access was a subject of much discussion among the parties in this Docket. The Stipulation specifies that this

rate will not exceed 5 cents per minute for 3 years following the date of the contract's closing. Further, in the event the Commission or any party other than Direct seeks an increase in Direct's terminating access rate within those 3 years, the Stipulation specifies that Qwest shall be given notice of the requested increase and an opportunity to be heard.

VI. Direct's Eligibility for Utah Universal Service Fund Support.

Direct can qualify to participate in the Utah USSF, pursuant to Utah Code Ann. § 54-8b-15 and Commission Rule 746-360-6, in that Direct is a facilities-based provider and satisfies the ETC requirements of 47 U.S.C. § 214(e). We find the testimony of the Division's witnesses and Direct's witnesses persuasive regarding the necessity of Universal Service Fund support as a means of assuring affordable service at Eagle Mountain, and it is evident that the current subscribers have borne and must continue to bear the full cost of the operation of the telephone system if Direct cannot qualify for USF support.

The Division witnesses testified that some of the original plant installed by the City did not meet industry standards. These witnesses further testified that much of the non-standard plant has been replaced by the City, and that the Division, in its audit, has made its best effort to remove the remaining non-standard plant, which could be identified, from the Division's calculations and analysis. We conclude that if any of the plant to be purchased by Direct does not meet industry standards, neither state nor federal USF support nor

customer rates shall be used to pay for the costs of replacement, including the cost of un-recovered depreciation. In no event shall any substandard plant be included in rate base, nor associated costs be included in revenue requirement calculations.

FINDINGS AND CONCLUSIONS

1. Pursuant to Utah Code Ann. § 54-4-25, the Commission finds and concludes that it is in the public interest to issue a Certificate of Public Convenience and Necessity authorizing DCRI and DCCV to provide local exchange telecommunications services to subscribers within the City of Eagle Mountain.

2. The Commission finds that the purchase of the Eagle Mountain telephone system by Direct is in the public Interest.

3. The Commission concludes that it supports and will make no objection to any change in FCC study areas needed to consummate the sale and permit Direct to serve the Eagle Mountain area.

4. The Commission finds that Qwest's request for an amended certificate and request for a modification to the Lehi Exchange boundary will leave the City as the sole carrier in an area neither served by nor certificated to any other carrier.

5. The Commission finds and concludes that Direct is a "telephone corporation" as defined in Utah Code Ann. § 54-2-1(23), and that it is a "local

exchange carrier" as defined in Commission Rule 746-240-2(c), and that in the area served by the City's municipal telephone utility, Direct will be providing "local exchange service", as defined in Utah Code Ann. § 54-8b-2(8).

6. The Commission finds that DCRI's experience as a regulated public utility in Idaho will contribute to the more stringent adherence to the Uniform System of Accounts required by public utilities, and that the Eagle Mountain subscribers will benefit from Direct's operations as a fully regulated telephone utility system.

7. The Commission finds and concludes that the City's system, within the area it has served, has functioned as an ILEC; and that when Direct replaces it as the area's carrier, Direct will function as a facilities-based provider, as defined by Commission Rule 746-360-2(E), not a resale provider.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED, that:

1. The Stipulation of the parties in this Docket is hereby adopted and incorporated herein by reference (attached as Appendix I).

2. The application of Direct for a Certificate of Public Convenience and Necessity is granted pursuant to Utah Code Ann. § 54-4-25.

3. Direct's initial basic local rates shall be the rates in effect for the City's system as of the date this Order is issued, adjusted to recognize appropriate extended area service and line charges. These are the rates for

services included in Direct's prefiled exhibits. All of the rates for services as filed in Direct's prefiled exhibits are approved. Adjustments to the rates will be considered in Direct's first rate proceeding or other proceedings by the Commission.

4. Any amount in the purchase price paid by Direct that is above the Commission-determined rate base value shall be booked as an acquisition adjustment and shall not be included in the calculations for development of Direct's rates and USF support.

5. For purposes of setting Direct's rates, all of the revenues Direct generates shall be considered.

6. Any disbursement of State USSF to Direct shall be conditioned upon a satisfactory Commission review of Direct's revenue requirement and rate structure in accordance with Commission Rule 746-360-6(A)(2)(b). Direct may draw State USSF support for Lifeline service as soon as such service is established in accordance with Commission Rule 746-360-6(c).

7. Any modifications to the terms of the Contract shall be served upon the parties to the case.

8. Direct shall notify the Commission of any FCC action or decision upon any application filed by Direct, pertaining to the City's telephone system, prior to the

closing of the contract. Direct shall advise the Commission and the Division of a projected contract closing date not later than 10 days in advance of any such projection.

9. Direct shall file with the Commission semi-annual financial reports of operations and be subject to audit as often as the Division determines is necessary.

10. Direct shall provide an informational copy to the Commission of all filings made by Direct with the FCC and NECA.

11. Direct shall inform customers that they have the right to choose both an intra and interstate carrier other than Direct for their long distance services.

12. Direct shall ensure that no Eagle Mountain subscriber will be in a worse customer position as a result of Direct's purchase of the City's system than they were under the City's service with respect to rates, services offered, and service quality. If this Commission determines at a future time that the subscribers are in a worse position in those specific respects, Direct, consistent with its guarantee, shall be responsible for implementing a satisfactory remedy, consistent with state law.

13. Direct is designated an Eligible Telecommunications Carrier for the area served by the system it is purchasing from the City of Eagle Mountain.

14. Direct shall file with the Commission its operating tariffs, rules, and

regulations not later than 30 days in advance of the projected service cut-over date, and the rates will become effective upon Direct providing service in the Eagle Mountain area.

15. Pursuant to Utah Code 63-46b-12 and 54-7-15, agency review or rehearing of this order may be obtained by filing a request for review or rehearing with the Commission within 30 days after the issuance of the order. Responses to a request for agency review or rehearing must be filed within 15 days of the filing of the request for review or rehearing. If the Commission fails to grant a request for review or rehearing within 20 days after the filing of a request for review or rehearing, it is deemed denied. Judicial review of the Commission's final agency action may be obtained by filing a Petition for Review with the Utah Supreme Court within 30 days after final agency action. Any Petition for Review must comply with the requirements of Utah Code 63-46b-14, 63-46b-16 and the Utah Rules of Appellate Procedure.

DATED at Salt Lake City, Utah this 9th day of August 2004.

/s/ Ric Campbell, Chairman

/s/ Constance B. White, Commissioner

/s/ Ted Boyer, Commissioner

Attest:

/s/ Julie Orchard
Commission Secretary
G#39873

-ATTACHMENT-

-BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH-

IN THE MATTER OF THE APPLICATION OF DIRECT COMMUNICATIONS ROCKLAND, INC., and DIRECT COMMUNICATIONS CEDAR VALLEY, LLC, FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY ALLOWING OPERATION AS AN INDEPENDENT LOCAL EXCHANGE CARRIER.	DOCKET NO. 04-2419-01 STIPULATION

The undersigned parties in the above-entitled Docket, by and through their counsel of record, hereby stipulate and represent to the Commission as follows:

1. The parties have had an opportunity to fully participate in this docket, including three technical conferences conducted for the purpose of evaluating all aspects of the certification petition filed by Direct Communications Rockland, Inc. and its subsidiary, Direct Communications Cedar Valley, LLC (jointly "Direct"). Direct has filed prefiled testimony and exhibits in support of its petition, as well as supplemental direct testimony and updated financial data pertaining to its proposed purchase of the Eagle Mountain City ("the City") municipal telephone system.

2. Direct has worked through a series of issues and questions with the Division of Public Utilities ("the Division"), the Committee of Consumer Services

("the Committee"), the Utah Rural Telecom Association ("URTA"), Beehive Telephone Company, and Qwest Communications ("Qwest"), some of whom have entered into this Stipulation, which resolves their respective issues and concerns if adopted by the Commission.

3. Based upon the Commission's incorporation of the following elements to be incorporated in an Order, the undersigned parties hereby express their approval and assent to issuance by the Commission of the Certificate of Public Convenience and Necessity sought by Direct, pursuant to Utah Code Ann. § 54-4-25, and the undersigned parties hereby stipulate and agree that issuance of such a Certificate to Direct is in the public interest.

4. Based upon the fact of this Stipulation, the parties have not prefiled rebuttal testimony, but some will provide testimony at the hearing scheduled for July 8, 2004. The parties further stipulate and agree that the prefiled direct testimony, supplemental testimony and exhibits submitted by Direct may be received into evidence by the Commission without objection.

5. The parties agree that the Commission should require that any modifications to the sale and purchase agreement be submitted to the Commission prior to the closing. If no objection is raised by any party within 5 business days from the date of such submission, the Commission and the parties will be deemed to have assented, and no further action shall be required of Direct. If any changes to the sale and purchase agreement have been made after closing, the entire sale