

**THE STATE CORPORATION COMMISSION  
OF THE STATE OF KANSAS**

Before Commissioners: Shari Feist Albrecht, Chair  
Jay Scott Emler  
Pat Apple

In the Matter of the Application of Magna5 LLC )  
for a Certificate of Convenience and Authority to ) Docket No. 18-XOCT-271-COC  
Provide Resold Local Exchange Within State of )  
Kansas. )

**ORDER AND CERTIFICATE**

The above-captioned matter comes before the State Corporation Commission of the State of Kansas (Commission) for consideration and determination. Having examined its files and record and being fully advised in the premises, the Commission finds and concludes as follows:

**I. BACKGROUND**

1. On December 21, 2017, Magna5 LLC, f/k/a X5 OpCo LLC<sup>1</sup>, herein referred to as Magna5, filed an Application requesting a Certificate of Convenience and Authority to provide Competitive Local Exchange Carrier (CLEC) service in the State of Kansas. Magna5 is currently authorized to provide Interexchange Services within the State of Kansas pursuant to a Certificate issued February 23, 2016, in Docket No. 16-XOCT-246-COC.<sup>2</sup>

2. On January 29, 2018, the Commission Staff (Staff) submitted its Report and Recommendation dated January 22, 2018, providing its analysis and recommendation regarding Magna5's Application. According to Staff, Magna5 now seeks to expand its existing authority to include providing CLEC services within Kansas for subscribers through facilities acquired through

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<sup>1</sup> Pursuant to the Commission's Order of December 6, 2016, issued in Docket No. 17-XOCT-208-CCN, X5 OpCo LLC's name was changed to Magna5 LLC.

<sup>2</sup> Pursuant to the Commission's Order of February 23, 2016, issued in Docket No. 16-XOCT-246-COC, X5 OpCo LLC, n/k/a Magna5 LLC was issued a Certificate of Convenience and Authority to authorizing the company to provide Interexchange service in Kansas.

any Incumbent Local Exchange Carrier (ILEC). The company indicates that once Interconnection Agreements are finalized with any ILEC, it understands that such contracts must be submitted to the Commission for approval prior to offering service. Magna5 is a foreign limited liability company properly registered with the Kansas Secretary of State's office where its status is shown to be *active and in good standing*.<sup>3</sup>

## **II. DISCUSSION AND ANALYSIS**

3. The Commission derives its authority to supervise telecommunications public utilities from K.S.A. 2016 Supp. 66-1,188. K.S.A. 2016 Supp. 66-131(a) provides in part that:

No common carrier or public utility...governed by the provisions of this act shall transact business in the State of Kansas until it shall have obtained a certificate from the corporation commission that public convenience and necessity will be promoted by the transaction of said business and permitting said applicants to transact the business of a common carrier or public utility in this state.

In determining whether the public convenience will be promoted by the transaction of said business, Staff points out that the Commission looks at a number of factors when determining whether a particular application is consistent with the public interest. Regarding such factors, Staff cites K.S.A. 2016 Supp. 66-2005(w) which provides in part that:

"...telecommunications carriers that were not authorized to provide switched local exchange telecommunications services in this state as of July 1, 1996...must receive a certificate of convenience based upon a demonstration of technical, managerial and financial viability and the ability to meet quality of service standards established by the commission".

4. According to Staff, the combined service of the executive staff of Magna5 includes twenty-plus years specifically in telecommunications with additional background in non-telecommunications financial leadership positions. Staff further states that the financial records

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<sup>3</sup> Report and Recommendation, page 1.

submitted by the company support Magna5's financial ability to operate a business. Staff notes that the company will not collect deposits or advanced payments. Based on Staff's investigation, it determines the company has demonstrated the managerial, technical and financial ability to provide Competitive Local Exchange service in Kansas. Staff further adds that in the course of its investigation, it found no evidence of any enforcement proceedings against the company.<sup>4</sup>

5. Based on its investigation, Staff recommends the Commission approve Magna5's Application requesting Certificate authority to provide Competitive Local Exchange Carrier service in Kansas. Staff further determines that the granting of Magna5's Application and issuance of the requested Certificate would be in the public interest of Kansans. At the same time, Staff recommends that upon certification Magna5 be directed to comply with the following requirements:

- (i) That Magna5 file Interrogatory Reports with the Commission, remain current with the Kansas Secretary of State's office, pay all Commission and Kansas Universal Service Fund (KUSF) assessments, and follow the Telecommunications Carrier Code of Conduct.
- (ii) That Magna5 register with GVNW Consulting, Inc., the KUSF Administrator, for KUSF purposes within 30 days of an order granting the company's Application.
- (iii) That once Magna5 begins generating Kansas intrastate assessable retail revenue, that the company, within 30 days of commencing operations, ensure that it has made the appropriate KUSF remittance and payment election via the Company Identification and Operations Form (Attachment B) and submit the relevant Carrier Remittance Worksheets and assessment payments to GVNW.
- (iv) That Magna5 notify the Commission of any changes of contact personnel, address and/or phone numbers.

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<sup>4</sup> Id., page 2.

Magna5's failure to meet the foregoing requirements could result in the revocation of its Certificate of Convenience and Authority.<sup>5</sup>

### **III. FINDINGS AND CONCLUSION**

6. Pursuant to K.S.A. 2016 Supp. 66-1,188, the Commission has jurisdiction to supervise and control telecommunications public utilities doing business in Kansas. Magna5 is a telecommunications public utility under K.S.A. 2016 Supp. 66-1,187 and is subject to the Commission's jurisdiction. The Commission adopts Staff's analysis and recommendation of January 22, 2018, as stated in its Report and Recommendation, which is attached hereto and made a part hereof by reference, and finds that Magna5's Application should be granted and that a Certificate of Convenience and Authority should be issued to Magna5 authorizing it to engage in the business of providing Competitive Local Exchange Carrier services in the State of Kansas.

### **IT IS, THEREFORE, BY THE COMMISSION ORDERED AND CERTIFIED THAT:**

A. Magna5 LLC's Application filed in this matter on December 21, 2017, is hereby granted and Magna5 is hereby issued a Certificate of Convenience and Authority authorizing the company to provide Competitive Local Exchange Carrier services in the State of Kansas.

B. Magna5 is directed to comply with the filing, payment, and notification requirements set forth in paragraph 5 above. Failure to meet these requirements could result in revocation of the company's Certificate.

C. The parties have fifteen (15) days, plus three (3) days if service of this Order is by mail, from the date this Order was served in which to petition the Commission for reconsideration of any issue or issues decided herein. K.S.A. 66-118b; K.S.A. 2016 Supp. 77-529(a)(1).

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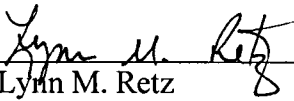
<sup>5</sup> Ibid., pages 2 and 3.

D. The Commission retains jurisdiction over the subject matter and the parties for the purpose of entering such further order or orders as it may deem necessary.

**BY THE COMMISSION IT IS SO ORDERED AND CERTIFIED.**

Albrecht, Chair; Emler, Commissioner; Apple, Commissioner

Dated: FEB 06 2018

  
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Lynn M. Retz  
Secretary to the Commission

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Order Mailed Date

FEB 07 2018

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Shari Feist Albrecht, Chair  
Jay Scott Emler, Commissioner  
Pat Apple, Commissioner

Sam Brownback, Governor

## REPORT AND RECOMMENDATION UTILITIES DIVISION

**TO:** Chair Shari Feist Albrecht  
Commissioner Jay Emler  
Commissioner Pat Apple

**FROM:** Paula Artzer, Senior Telecommunications Analyst  
Christine Aarnes, Chief of Telecommunications  
Jeff McClanahan, Director of Utilities

**DATE:** January 22, 2018

**SUBJECT:** Docket No. 18-XOCT-271-COC  
In the Matter of the Application of Magna5 LLC for a Certificate of Convenience  
and Authority to Provide Resold Local Exchange Within State of Kansas.

### **EXECUTIVE SUMMARY:**

Magna5 LLC, formerly X5 OpCo LLC, (Magna5) has submitted an Application for Authority to provide resold Competitive Local Exchange Carrier (CLEC) service in the state of Kansas. Staff has researched the Application as part of its normal approval process and recommends approval of the Application.

### **BACKGROUND:**

On December 21, 2017, Magna5 filed an Application requesting a Certificate to provide CLEC services in Kansas. In this Application, Magna5 requests authority to provide CLEC services within Kansas for subscribers through facilities acquired through an Incumbent Local Exchange Carrier (ILEC). Magna5 indicates once Interconnection Agreements are finalized with any ILEC, they understand the contracts must be submitted to the Commission for approval prior to offering service.

Magna5 is a Kansas Limited Liability Company and is properly registered with the Kansas Secretary of State's Office and its status is "active and in good standing". The Company currently holds an Interexchange Certificate of Convenience in the state of Kansas. The existing Certificate was applied for and approved February 23, 2016, in Docket 16-XOCT-246-COC under the Company's former name X5 OpCo LLC. The name change request to Magna5 was approved in Docket 17-XOCT-208-CCN, December 6, 2016. The Company is current with all filings and assessments.

### **ANALYSIS:**

Pursuant to K.S.A. 66-131, no common carrier or public utility shall transact business in the state of Kansas until it shall have obtained a Certificate from the Commission that public convenience will be promoted by the transaction of said business and permitting said applicants to transact the business of a common carrier or public utility in the state.

In making the determination as to whether the public convenience will be promoted by the transaction of said business, the Commission determined that it would look at a number of factors when determining whether a particular application is consistent with the public interest. The factors may include, but are not limited to, the provider's commitment to meet all requirements of the existing Statutes and Orders and modifications specified in House Bill 2201.

K.S.A. 2012 Supp. 66-2005 (w) states:

...telecommunications carriers that were not authorized to provide switched local exchange telecommunications services in this state as of July 1, 1996...must receive a certificate of convenience based upon a demonstration of technical, managerial and financial viability and the ability to meet quality of service standards established by the commission.

The combined service of the executive staff with Magna5 has twenty plus years specifically in telecommunications, with additional background in non-telecommunications financial leadership positions. The CEO is Gregory Forrest. The financial records submitted support the Applicant's financial ability to operate a business. Staff issued Information Request No. 1 on January 17, 2018, inquiring if the Company intended on collecting deposits from new customers. The Company responded to the Information Request the same day and said no, they did not intend to collect deposits. Based on the information submitted and the investigation Staff has performed, the Company has shown to have the managerial, technical and financial ability to provide Competitive Local Exchange service in Kansas.

The Applicant stated in their filing that the Company had no enforcement proceedings involving the Company. Staff investigated and confirmed they found no evidence of any enforcement proceedings against the Company.

### **RECOMMENDATION:**

Staff recommends the Commission approve Magna5's request for Certification to provide Competitive Local Exchange services in the state of Kansas. The Applicant has shown the technical, managerial and financial ability to provide Competitive Local Exchange service in Kansas. Based on the findings discussed above, Staff believes it would be in the public interest of Kansans to grant this request. Upon Commission approval, Magna5 is required to file Interrogatory Reports, remain current with the Kansas Secretary of State's office, pay all Commission and Kansas Universal Service Fund (KUSF) assessments, and follow the Telecommunications Carrier Code of Conduct.

Staff recommends that the Commission direct the Company to register with GVNW Consulting, Inc., the KUSF Administrator, as a CLEC provider for KUSF purposes within 30 days of an Order granting the Company's Application. Once the Company begins generating Kansas intrastate assessable retail revenue, the Company should be directed to, within 30 days of commencing operations, ensure that it has made the appropriate KUSF remittance and payment election via the Company Identification and Operations Form (Attachment B) and submit the relevant Carrier Remittance Worksheets and assessment payments to GVNW. Staff recommends the Applicant be reminded of the need to notify the Commission of any changes of contact personnel, address and/or phone numbers. Failure to meet these filing requirements could result in the revocation of its Certificate of Convenience and Authority.



**CERTIFICATE OF SERVICE**

18-XOCT-271-COC

I, the undersigned, certify that the true copy of the attached Order has been served to the following parties by means of

**FEB 06 2018**

first class mail/hand delivered on \_\_\_\_\_.

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\*\*\*Hand Delivered\*\*\*

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/S/ DeeAnn Shupe

DeeAnn Shupe

Order Mailed Date

**FEB 07 2018**