

DECISION MEMORANDUM

TO: COMMISSIONER KJELLANDER
COMMISSIONER SMITH
COMMISSIONER HANSEN
COMMISSION SECRETARY
COMMISSION STAFF
LEGAL

FROM: CECELIA A. GASSNER

DATE: JULY 31, 2006

SUBJECT: APPLICATION OF DIRECT COMMUNICATIONS STAR WEST, INC.
FOR APPROVAL OF A CERTIFICATE OF PUBLIC CONVENIENCE
AND NECESSITY TO PROVIDE LOCAL SERVICE IN IDAHO; CASE
NO. DCS-T-05-1

On August 9, 2005, Direct Communications Star West, Inc. ("Direct" or "Company") filed an Application for a Certificate of Public Convenience and Necessity with the Commission. In its Application, Direct states that it currently provides broadband and dial-up Internet access to over 3,000 residents and businesses in southeastern Idaho. Direct intends to provide Voice over Internet Protocol (VoIP) telecommunications services to its current customers and to potential customers in Idaho.

Direct is an Idaho corporation with corporate headquarters in Rockland, Idaho. The Company has a Certificate of Incorporation dated February 23, 1993, and also a Certificate of Good Standing issued by the Idaho Secretary of State on June 3, 2005. The Company has provided financial information and the appropriate contact information for its registered agent for service of process within Idaho. The Company also filed a revised illustrative tariff on June 29, 2006.

On July 7, 2006, the Commission issued a Notice of Application and Modified Procedure, requesting comments regarding the Company's filing. Order No. 30094. The Commission received comments from Commission Staff and from Qwest Corporation. No other comments were submitted.

COMMENTS

Staff Comments

Staff reviews all requests for a Certificate of Public Convenience and Necessity (CPCN) pursuant to *Idaho Code* §§ 61-526 through -528, IDAPA 31.01.01.111 and 112 (Rules 111 and 112), and Procedural Order No. 26665. To obtain a CPCN, an applicant must provide the Commission with the following information: (1) name, address, and form of business; (2) the date on which the applicant proposes to begin construction or anticipates that it will provide service, including a written description of customer classes and services proposed to be offered; (3) the proposed service territory; (4) certain financial information; (5) maps regarding the proposed service area; (6) a proposed initial tariff and price sheets; (7) contact information; (8) interconnection agreements, if any; (9) an agreement to comply with the Commission's Rules; and (10) an escrow account with a bonded escrow agent if the Company requires advanced deposits from its customers. Order No. 26665.

Through its review of the Application and numerous discussions with the Company, Staff has determined that the Company's filing complies with the requirements of the Commission. However, Staff notes that in its Application the Company has indicated that Direct will compete with Direct Communications Rockland, Inc. ("Rockland") and Qwest. Rockland is the Incumbent Local Exchange Carrier (ILEC) within the service territory and receives federal and state Universal Service Funding. While this service territory arrangement is highly unusual, Staff does not believe it is cause for denial of the Company's Application. That said, Staff believes that some monitoring may be warranted to avoid any possible conflict between the closely held companies. In its Application the Company stated that it understands and agrees to comply with Commission rules and requirements. Staff further believes that the Company possesses the requisite financial, managerial and technical qualifications necessary to operate as a provider of telecommunications services.

Based on its review of the Application, Staff recommends approval of the Application for a Certificate of Public Convenience and Necessity with a waiver of the escrow account requirement until such time as the Company decides to collect deposits. In the future, should the Company decide to collect deposits, Staff recommends that the Company be ordered to comply with the escrow requirement as well as the Commission's Rules for interest on deposits.

Qwest Comments

Qwest Corporation ("Qwest") filed comments with the Commission regarding this Application, expressing concern regarding the effect of granting Direct's Application on rural telecommunications competition in general, and on customers of Direct Communications Rockland and Idaho customers who pay into the Idaho Universal Service Fund (USF) more particularly. Qwest comments that rural telephone companies are currently afforded certain protections against competition. It states "if rural companies such as Rockland are now open to competition from non-regulated affiliates, Qwest submits that the time has come to withdraw all special competitive protections that have sheltered these companies." Qwest Comments, p. 3. Qwest acknowledges that the Idaho Legislature maintains authority to enact or repeal statutes relevant to such protections, but recognizes that the Commission plays an important role in implementing competition in rural areas.

Qwest's comments note that the Company states that it intends to compete with Direct Communications Rockland in a rural area. Qwest believes that as customers move to the Company's services, Direct Communications Rockland will experience a corresponding loss of customers, likely resulting in Direct Communications Rockland needing to seek additional sources of revenue. These additional sources could be a rate increase from remaining customers or an increased draw from the Idaho USF.

Qwest believes that it may be appropriate for the Commission to "impose additional financial reporting and cost accounting requirements" on Rockland and the Company. Qwest Comments, p. 2. It expresses a request that the effect of the competition between Rockland and the Company be considered by this Commission.

COMMISSION DECISION

Does the Commission desire to approve Direct's Application and grant it a Certificate of Public Convenience and Necessity? If so, does the Commission desire to waive the escrow account requirement until such time as the Company decides to collect deposits? Does the Commission desire to impose any further requirements on the Company or another party?


Cecelia A. Gassner

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