

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE APPLICATION)
OF IDAHO BIG SKY TELECOM FOR A) CASE NO. GNR-T-03-15
CERTIFICATE OF PUBLIC CONVENIENCE)
AND NECESSITY TO PROVIDE LOCAL)
EXCHANGE TELECOMMUNICATIONS) ORDER NO. 29898
SERVICES.)

In April 2003 Idaho Big Sky Telecom (Idaho Big Sky or IBST) filed an Application for a Certificate to provide local, long-distance, cellular and Internet services within Idaho. Idaho Big Sky is headquartered in Hallandale, Florida and operates as a general partnership. Two of the four partners are Nicholas Cuneo, Jr. (Managing General Partner) and James Bramble. In its Application, IBST stated that it intended to act as a CLEC and as a reseller of telecommunications services under contract with Qwest Corporation. On August 20, 2003, the Commission issued a Notice of Application and Notice of Modified Procedure soliciting comments on Idaho Big Sky's Application. For reasons set out below, we deny the Application.

THE INITIAL COMMENTS

In response to the Notice of Modified Procedure, the Commission received written comments from the Commission Staff and from another company named Big Sky Telecom, Inc. from Emmett. Gerry Lambert is the proprietor of Big Sky Telecom. He indicated that his company has been operating since 1997, is a registered Idaho corporation, and has a registered web domain of "BigSkyTel.com." Mr. Lambert said that his company operates as a CLEC and as an Internet service provider in Idaho. Although he did not object to the competition represented by IBST's entry into Idaho, he did object to the likelihood of customer confusion between two companies with nearly identical names.

In its comments Staff recommended that the Application be denied for two reasons. First, Staff asserted that IBST's Application failed to adequately demonstrate that the Company can operate competently as a telecommunications carrier. In particular, the Application did not identify "any relevant telecom experience of Company officials." Staff Comments at 2. Second, Staff was concerned that the Application does not demonstrate that IBST has the financial ability

to adequately provide service. In particular, its financial information was not audited and it did not show any previous telecommunications revenues. *Id.* at 3.

Staff also commented that the Secretary of State's office no longer operates as the "gatekeeper" of similar business names. Registering an "assumed business name" as IBST has done does not authorize its business operations. Use of a similar business name may be viewed as an unfair business practice if the similarity in names causes customer confusion. Staff Comments at 2. Staff also stated that although the Company's president, Nick Cuneo, indicated that the Company would submit additional information to address Staff's concerns, such information was not forthcoming.

DEPARTMENT OF FINANCE INVESTIGATION

Shortly after filing its comments, the Staff learned that IBST was under investigation by the Idaho Department of Finance for allegedly selling unregistered securities in Idaho. In June 2004, the Department filed a civil suit against IBST, Big West Telecom, Nicholas F. Cuneo, James N. Bramble, and two other individuals. The Department alleged that the defendants sold unregistered securities to Idaho customers and that they failed to register as securities salesmen in Idaho prior to selling the unregistered securities. The Department also alleged that IBST made false statements to prospective Idaho customers that it was properly registered in Idaho as a telecommunications provider. The defendants purportedly represented to Idaho investors that the Company would provide local, long-distance, cellular and Internet telephone service in eastern Idaho. The Department asserted that Idaho investors sustained losses exceeding \$100,000.

In March 2005, the Department announced that it received a default judgment in Fourth District Court against IBST and the other defendants.¹ The District Court found that the defendants violated the Idaho Securities Act and enjoined them from further violations. The judgment also ordered the defendants to provide restitution to Idaho investors in the amount of \$100,000 and ordered penalties against the defendants in an amount of \$990,000.

STAFF'S SUPPLEMENTAL COMMENTS

On August 12, 2005, Staff filed supplemental comments addressing the default judgment awarded to the Idaho Department of Finance. The Staff stated that on July 18, 2005, it sent a certified letter to IBST at its listed offices in Hallandale, Florida. The Staff advised the

¹ In its Press Release regarding the default judgment, the Department of Finance noted that IBST was "in no way associated with an Internet service company in Emmett, Idaho, that has a similar name."

Company that it was aware that a default judgment had been entered against it in Fourth District Court and that the Staff intended to again recommend to the Commission that IBST's Application for a Certificate be denied. Supp. Comments at 2. The Staff's letter requested that if the Company wished to address the default judgment and Staff's recommendation, it should submit further comments in this action no later than August 8, 2005.

On August 29, 2005, Staff sent a follow-up certified letter to IBST requesting further comments no later than September 13, 2005. Although the receipt shows that the second letter was delivered, no further response from IBST was received. Consequently, Staff renewed its recommendation that the Application of Idaho Big Sky Telecom be denied.

FINDINGS

Based upon the default judgment obtained by the Idaho Department of Finance and the Company's lack of response to Staff's supplemental comments, we find it reasonable to deny IBST's Application for a Certificate. The Court's judgment found that IBST and at least two principal owners violated the Idaho Securities Act and sold unregistered securities to Idaho residents. The Company also did not submit additional information in response to Staff's initial comments or supplemental comments. Accordingly, IBST's Application is denied.

ORDER

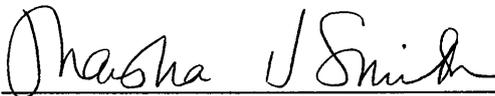
IT IS HEREBY ORDERED that Idaho Big Sky Telecom's Application for a Certificate to provide telecommunications services within Idaho is denied.

THIS IS A FINAL ORDER. Any person interested in this Order (or in issues finally decided by this Order) or in interlocutory Orders previously issued in this Case No. GNR-T-03-15 may petition for reconsideration within twenty-one (21) days of the service date of this Order with regard to any matter decided in this Order or in interlocutory Orders previously issued in this Case No. GNR-T-03-15. Within seven (7) days after any person has petitioned for reconsideration, any other person may cross-petition for reconsideration. See *Idaho Code* § 61-626.

DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 21st
day of October 2005.



PAUL KJELLANDER, PRESIDENT

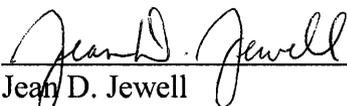


MARSHA H. SMITH, COMMISSIONER



DENNIS S. HANSEN, COMMISSIONER

ATTEST:



Jean D. Jewell
Commission Secretary

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