

DECISION MEMORANDUM

TO: COMMISSIONER KJELLANDER
COMMISSIONER SMITH
COMMISSIONER HANSEN
JEAN JEWELL
LEGAL
COMMISSION STAFF
WORKING FILE

FROM: DOUG COOLEY

DATE: JULY 2, 2003

RE: IDACOMM, INC.'S APPLICATION FOR BROADBAND EQUIPMENT
TAX CREDIT; CASE NO. GNR-T-03-17.

BACKGROUND

On May 2, 2003, the Commission received an Application from IDACOMM, Inc. to receive an investment tax credit for eligible broadband equipment pursuant to Order No. 28784 and *Idaho Code* § 63-3029I(4). To be eligible for the tax credit, the taxpayer must apply for and obtain from the Commission an Order confirming that installed equipment qualifies for the tax credit.

DISCUSSION

IDACOMM stated that, during calendar year 2002, it installed Alcatel brand fiber optic cable and supporting splicers and conduit. IDACOMM also installed LuxN brand optical multiplexers and supporting underground vaults and power supply materials for the provision of high-speed Internet and other point-to-point data services to customers in Idaho's Treasure Valley. IDACOMM indicated that it offers high-speed access to customers at transmission rates from 1.544 Megabits per second (Mbps) up to 1000 Mbps. One hundred percent of IDACOMM's customers are Idaho subscribers of which approximately five percent are IDACORP-related companies.

STAFF REVIEW

Staff has reviewed the list of proposed broadband equipment submitted by IDACOMM and believes the equipment identified qualifies for the investment tax credit pursuant to *Idaho Code* § 63-3029I. Staff was concerned that IDACOMM's offering of dark fiber, rather than providing dial tone, switching or transmitting the signals for its end-use customers, did not constitute "telecommunications service" as described in § 63-3029(I)(3)(b)(i) thereby disqualifying IDACOMM for the broadband investment tax credit. Dark or "unlit" fiber does not have the electronics transmitting information between the ends of the fiber lengths but is made available for customers to use their own electronics to transmit signals between points.

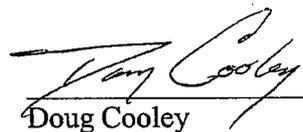
IDACOMM claims it is eligible for the tax credit because it is a "telecommunications carrier" as defined in the Communications Act of 1934 as amended. See *Idaho Code* § 63-3029I(3)(b)(i). According to the Federal Communication Commission (FCC), "Because dark fiber is unused transport capacity, we find that it is a "feature, function, and capability of facilities used to provide telecommunications services." The FCC goes on to say that "...the term" used in the provision of telecommunications service" in section 153(29) refers to network facilities or equipment that is "customarily employed for the purpose" of providing a telecommunications service."¹ Although IDACOMM may not be a telecommunications carrier as defined in the Idaho utilities law (see Order Nos. 28187 and 28497), the installed dark fiber is used for the provision of telecommunication service under federal law and therefore qualifies as telecommunication equipment under *Idaho Code* § 63-3029I(3)(b)(i).

Staff recommends approval of the Company's Application and further recommends that the Commission forward the approving Order and a copy of the original Application to the Idaho Tax Commission.

COMMISSION DECISION

Should the Commission approve IDACOMM, Inc.'s Application for the broadband investment tax credit?

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Doug Cooley

¹ *In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, Third Report and Order Fourth Further Notice of Proposed Rulemaking, para. 339 and 340, Sept. 15, 1999.