

DECISION MEMORANDUM

**TO: COMMISSIONER KJELLANDER
COMMISSIONER SMITH
COMMISSIONER HANSEN
COMMISSION SECRETARY
COMMISSION STAFF
LEGAL
WORKING FILE**

FROM: CAROLEE HALL

DATE: JULY 18, 2003

**RE: DISMISSAL WITHOUT PREJUDICE OF BAK COMMUNICATIONS, LLC'S
APPLICATION FOR A CPCN CASE NO. GNR-T-03-18.**

BACKGROUND

On May 14, 2003, the Commission received an Application for a Certificate of Public Convenience and Necessity (CPCN) from BAK Communications, LLC. The Company also included an Illustrative Tariff. Staff reviewed the filing and found that it was grossly out of compliance with the Commission's Rules of Procedure, Customer Relations Rules and Idaho Statutes. For example, the Company proposes that

should a customer dispute a bill, to avoid disconnection of service, the Customer must submit the claim and, if the bill has not been paid, deposit the amount in dispute with the Commission within seven (7) calendar days after the date the Company notifies the Customer that its investigation and review are completed and that such deposit with the Commission must be made or service will be suspended. The Company wishes that the deposit be made payable to the IPUC.

This violates the Commission's Consumer Rule IDAPA 31.41.01.304, Requirements for Notice before Termination of Local Service. Another example is found under the Company's Limitation of Liability section where the Company states:

In the event an error or omission is caused by the gross negligence of the Company the liability of the Company shall be limited to and in no event exceed the sum of \$5,000.

The Company's Tariff also states:

Credit allowances shall be provided in the form of long distance minutes as provided by our long distance carrier of choice. A long distance credit of 30 minutes will be issued for each 24 hour period that the service facility or circuit is interrupted. Credits shall not be provided for impaired service, facilities or circuits.

This clearly is a violation of Commission Customer Relation Rule 503, which explicitly states that if local service is out for 24 hours the Customer is to receive a 30-day credit for local service. Staff states there are many other flaws in the Company's filing but for the sake of brevity has just highlighted a few.

On June 9, 2003, Staff prepared and mailed a letter with a marked up copy of the Application and Tariff to the Company. In its letter, Staff directed the Company to the Commission's home page where the Rules of Procedure and Customer Relations Rules are located. Staff recommended that the Company use the "model tariff" that is provided to assist new competitive carriers. Staff also provided a telephone number for the Company to call for assistance in bringing the Application and Tariff into compliance. The Company was given until July 1, 2003 to correct and resubmit its filing.

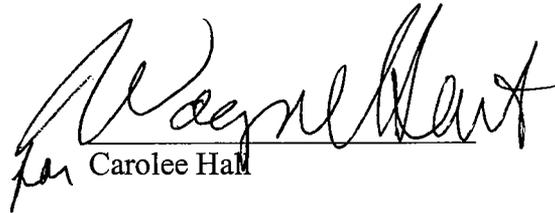
On July 3, Staff sent an e-mail to Mr. Manzilla, Chief Operations Officer for BAK Communications, LLC, and explained that Staff would request that the Commission dismiss the Company's Application for failure to correct and submit its corrected Application and Illustrative Tariff. Staff placed a final deadline on the Company for a response by July 8, 2003. On July 8, 2003 at 4:00 p.m., Staff received a response to its e-mail wherein the Company indicated that it was working on its revised Application and Tariff and requested two more days. Staff agreed to allow two more days for the Company to complete and resubmit its revised Application and Illustrative Tariffs. As of July 17, 2003, Staff had not received a revised Application, Illustrative Tariff or any correspondence from the Company.

STAFF RECOMMENDATION

Staff recommends that the Commission dismiss BAK Communications, LLC's Application for a CPCN and its Illustrative Tariff without prejudice.

COMMISSION DECISION

Does the Commission wish to dismiss BAK Communication, LLC's Application for a CPCN and Illustrative Tariff without prejudice?


for Carolee Hall

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